

STATUTORY INSTRUMENTS SUPPLEMENT

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**Bill No. 16**

*The Succession (Amendment) Bill*

**2018**

THE SUCCESSION (AMENDMENT), BILL 2018.

**MEMORANDUM**

**1. Policy and Principles**

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

**2. Defects in the Existing Law**

The current law on succession in Uganda is the Succession Act Cap 162 which commenced on 15<sup>th</sup> 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 Due to passage of time, some aspects of the Succession Act have become outdated, especially in light of the Constitution, Government policies, emerging international best practices and the legal environment.

In its current form, the Succession Act impedes protection of the rights of children, women and a right to inherit property of a deceased relative and therefore some provisions are unconstitutional.

In addition, recent Constitutional Court pronouncements have rendered some of the provisions of the Succession Act unconstitutional. For instance, in the case of *Law & Advocacy for Women in Uganda v Attorney General of Uganda*, Constitutional Petition No. 13 of 05, the Constitutional Court held that sections 2(n) that provides for legal heir (I) (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, 33, and 44 of the Constitution.

Further, in the case of *Administrator General Vs. Charles Acire & Another*. HCCS. 235/1994, Court pointed out the fact that section 311 of the Succession Act which provides that, “where any person entitled to a share in the distribution of the estate of an intestate is a child, the Succession law does not make provisions specifying the duties of the person holding the property, manner of investing the property, provisions for account to the child when he or she becomes of age and does not provide penalties for breach of these duties.”

These rulings created a lacuna in the Succession Act which need to be addressed urgently.

In relation to the above the Uganda Law Reform Commission carried out a study on the law of succession and produced a report titled, *Uganda Law Reform Commission Study Report on the review of laws on Succession in Uganda, 2014* which established several challenges within the law and practices of succession including the discriminatory nature of the provisions of the Succession Act and obsolete fines and penalties.

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

**3. Remedies proposed to deal with defects in existing Law.**

There is therefore need to amend the Succession Act to bring it in conformity with the Constitution, current Government policy and international best practices. The following are some of the issues addressed in the Bill—

- (a) Provision for gender equality in matters of succession in accordance with articles 21 and 33 of the Constitution;
- (b) Reservation of principal residential property and other residential property for the surviving spouse and children;
- (c) revision of percentages of the distribution of the estate of an intestate;
- (d) provision for the appointment, powers and duties of guardians;
- (e) provision for equal status of children whether or not born out of wedlock;
- (f) repeal provisions that were declared unconstitutional by the Constitutional Court including those that have become obsolete;
- (g) harmonise the definition of child to conform to the Constitution;
- (h) revision of the provisions relating to domicile of spouses upon marriage;
- (i) revision of the percentages of distribution of the estate of an intestate;
- (j) provide for the appointment of a guardian for a minor by either parent;

- (k) provide for the powers and duties of a guardian; and
- (l) provide for the lapse of probate or letters of administration after three years subject to renewal by court;

**4. Provisions of the Bill.**

**Clause 1**—of the Bill proposes to amend section 2 of Succession Act to define important words used in the Bill and to harmonise other definitions with the Constitution.

**Clause 2**—seeks to repeal Section 3 of the principal Act in order to harmonise the principal Act with articles 21 and 33 of the Constitution on gender equality.

**Clause 3 & 4**—seeks to repeal Section 6 and 7 of the principal Act respectively which emphasises the distinction between children of legitimate and illegitimate birth when determining domicile and address discrimination against children born out of wedlock.

**Clause 5**—seeks to amend Section 9 of the principal Act to eliminate the use of discriminatory language and use gender inclusive terminologies.

**Clause 6**—seeks to amend Section 13 of the principal Act that provides for a minor's domicile in order to align it with the Constitution.

**Clause 7**—seeks to substitute Section 14 of the principal Act that provides for domicile of a married woman in order to up hold the Constitutional standard of equality between spouses at the start, during and at dissolution of marriage.

**Clause 8**—seeks to repeal Section 15 that provides that domicile of a married woman depends on that of her husband to harmonise the principal Act with article 31 of the Constitution.

**Clause 9**—seeks to repeal Section 16 of the principal Act that provides for a minor's acquisition of new domicile because it was dealt with under Clause 6.

**Clause 10**— seeks to amend Section 18 of the principal Act that provides for succession to movable property to remove discrimination based on sex.

**Clause 11**—seeks to repeal Part III of the principal Act that provides for the various degrees of consanguinity to remove discrimination based on sex.

**Clause 12**—seeks to amend section 26 of the principal Act that provides for devolution of residential holdings in order to vest them in the surviving spouse and children.

**Clause 13**—seeks to amend section 27 of the principal Act that governs distribution of property of an intestate in order to include female intestates who had previously been excluded and to revise the percentages of distribution of the estate of an intestate.

**Clause 14**—seeks to amend section 28 of the principal Act in order to replace any reference to “wives” with the word “spouses” and introduce guidelines for distribution of property among members of the same class.

**Clause 15**—seeks to amend section 29 of the principal Act in order to preserve the principal residential property for the spouse and lineal descendants and to create an offence and deterrent penalty for persons who evict or attempt to evict lawful occupants.

**Clause 16**—seeks to amend section 30 of the principal Act that provides for Separation of husband and wife in order to take into account the spouse at whose instance the termination occurred as well as instances of abandonment.

**Clause 17**—seeks to repeal section 35 of the principal Act that provides for settlement of a minor’s property in contemplation of marriage in order to align it with the Constitution that provides that marriage shall be between two consenting adults.

**Clause 18**—seeks to amend section 36 of the principal Act by repealing subsection (2), to remove Repugnant terms like insane.

**Clause 19**—seeks to amend section 38 of the principal Act to provide periodical payments for maintenance of the spouse, lineal descendants and dependant relatives.

**Clause 20**—seeks to amend section 43 of the principal Act to provide for appointment of a guardian by either parent.

**Clause 21**—seeks to amend section 44 of the principal Act that governs the hierarchy of people who can be appointed statutory guardians to include female relatives.

**Clause 22**—seeks to introduce a new section 44A into the principal Act that makes provision for a guardian appointed by the deceased parent to act jointly with the surviving parent.

**Clause 23**— seeks to amend section 45 of the principal Act to eliminate reference to a magistrate grade III that has since become redundant.

**Clause 24**—seeks to amend section 46 of the principal Act so as to clearly spell out the powers and duties of statutory guardians under the Act.

**Clause 25**—seeks to amend section 47 of the principal Act to broaden the circumstances under which a will is declared void.

**Clause 26**—seeks to amend section 55 of the principal Act to introduce a new subsection (2) to disqualify a person who participated in the preparation of a will from being a witness to prove the validity or invalidity of the Will.

**Clause 27**—seeks to amend section 86 of the principal Act to align specific definitions with the interpretation section.

**Clause 28**—seeks to repeal section 87 of the principal Act.

**Clause 29**—seeks to amend section 179 of the principal Act to eliminate the use of discriminatory language and use gender inclusive terminologies.

**Clause 30**—seeks to insert a new section 201A to give the surviving spouse priority to administer the property of the deceased spouse.

**Clause 31**—seeks to amend section 202 of the principal Act by subjecting it to section 201A of the Act.

**Clause 32**—seeks to amend section 203 of the principal Act to subject grant of letters of Administration to any other relative to the new section 201A which now seeks to give priority to administer to the surviving spouse.

**Clause 33**—seeks to amend section 204 of the principal Act to provide for grant of Letters of administration to be made jointly by persons of the same class.

**Clause 34**—seeks to insert a new section 204A in the principal Act that provides for notice to be given by persons or entities applying to administer an estate.

**Clause 35**—seeks to amend section 215 of the principal Act to provide for administration of an estate during minority of a sole executor or residuary legatee.

**Clause 36**—seeks to amend Section 234 of the principal Act to add a ground upon which letters of administration may be revoked or annulled.

**Clause 37**—seeks to amend section 249 of the principal Act to create an offence and penalty for making false statements under the Act.

**Clause 38**—seeks to amend section 258 of the principal Act in order to provide for the lapse of probate after three years subject to renewal by court.

**Clause 39**—seeks to amend section 259 of the principal Act in order to provide for the lapse of letters of administration after three years subject to renewal by court.

**Clause 40**—seeks to insert a new section 267A of the principal Act that empowers a judge to refer certain matters relating to application, grant or revocation of probate or letters of administration to a registrar.

**Clause 41**—seeks to amend section 268 of the principal Act to create an offence and penalty for intermeddling.

**Clause 42**—seeks to amend section 270 of the principal Act to provide for disposal of property with the consent of the spouse and beneficiaries.

**Clause 43**—seeks to amend section 272 of the principal Act to provide for powers of several executors or administrators to be exercised jointly.

**Clause 44**—seeks to amend section 273 of the principal Act to provide for application by surviving executors or administrators for leave of court to act as sole executor or administrator.

**Clause 45**—seeks to repeal section 276 of the principal Act that provides for powers of a married executrix or administratrix.

**Clause 46**—seeks to amend section 279 of the principal Act to insert a new subsection (2) as a consequential amendment to protect the principal residential property or other residential property from debts acquired by the deceased prior to his or her death.

**Clause 47**—seeks to amend section 311 of the principal Act to insert new considerations to be taken by court when appointing a personal representative.

**Clause 48**—seeks to amend section 331 of the principal Act to provide for the procedure where the deceased has left property in a foreign country.

**Clause 49**—seeks to amend section 332 of the principal Act in order to create an offence and penalty for an executor or administrator who misuses the estate of the deceased.

**Clause 50**—seeks to amend section 333 of the principal Act to create an offence and penalty for an executor or administrator who occasions loss to the estate of the deceased.

**Clause 51**—seeks to insert a new section 333A of the principal Act that protects a beneficiary's interest in an estate.

**Clause 52**—seeks to amend section 335 of the principal Act to enhance the penalty for failure by the executor or administrator to deliver to court revoked or annulled probate or letters of administration.

**Clause 53**—seeks to amend the principal Act to provide for miscellaneous amendments.

**Clause 54**—seeks to repeal the First Schedule to the principal Act that provides for the table of consanguinity for being redundant since Clause 11 repealed Part III to which it relates.

**Clause 55**—seeks to repeal the Second Schedule to the principal Act that provides for rules relating to the occupation of the residential holding as this has been dealt with within the provisions of the Act.

**Clause 56**—seeks to introduce a new schedule, the Fifth Schedule to the principal Act that provides for the value of the currency point.

HON. KAJUNGU MUTAMBI R.C.

*District Woman Representative*

*Mbarara District.*

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## THE SUCCESSION (AMENDMENT) BILL, 2018

## ARRANGEMENT OF CLAUSES

*Clause*

1. Amendment of section 2 of the Succession Act.
2. Repeal of section 3 of the principal Act.
3. Repeal of section 6 of the principal Act.
4. Repeal of section 7 of the principal Act.
5. Amendment of section 9 of the principal Act.
6. Replacement of section 13 of the principal Act.
7. Replacement of section 14 of the principal Act.
8. Repeal of section 15 of the principal Act.
9. Repeal of section 16 of the Principal Act.
10. Replacement of section 18 of the principal Act.
11. Repeal of Part III of the principal Act.
12. Replacement of section 26 of the principal Act.
13. Replacement of section 27 of the principal Act.
14. Amendment of section 28 of the principal Act.
15. Replacement of section 29 of the principal Act.
16. Amendment of section 30 of the principal Act.
17. Repeal of section 35 of the principal Act.
18. Amendment of section 36 of the principal Act.
19. Amendment of section 38 of the principal Act.
20. Replacement of section 43 of the principal Act.
21. Replacement of section 44 of the principal Act.
22. Insertion of new section 44A to principal Act.
23. Amendment of section 45 of the principal Act.
24. Replacement of section 46 of the principal Act.
25. Replacement of section 47 of the principal Act.
26. Replacement of section 55 of the principal Act.
27. Replacement of Section 86 of the principal Act.

28. Repeal of section 87 of the principal Act.
29. Replacement of section 179 of the principal Act.
30. Insertion of new section 201A to the principal Act.
31. Amendment of section 202 of principal Act.
32. Replacement of section 203 of the principal Act.
33. Replacement of section 204 of the principal Act.
34. Insertion of a new section 204A to the principal Act.
35. Replacement of section 215 of the principal Act.
36. Amendment of section 234 of the principal Act.
37. Replacement of section 249 of the principal Act.
38. Amendment of section 258 of the principal Act.
39. Amendment of section 259 of the principal Act.
40. Insertion of new section 267A to the principal Act.
41. Replacement of section 268 of the principal Act.
42. Replacement of section 270 of the principal Act.
43. Replacement of section 272 of the principal Act.
44. Replacement of section 273 of the principal Act.
45. Repeal of section 276 of the principal Act.
46. Replacement of section 279 of the principal Act.
47. Amendment of Section 311 of the principal Act
48. Substituting of section 331 of the principal Act.
49. Replacement of section 332 of the principal Act.
50. Replacement of section 333 of the principal Act.
51. Insertion of new section 333A to the principal Act.
52. Amendment of section 335 of the principal Act.
53. Miscellaneous amendments to the principal Act.
54. Repeal of the First Schedule to the principal Act
55. Repeal of the Second Schedule to the principal Act.
56. Insertion of Fifth Schedule to the principal Act.

A BILL for an Act

Entitled

**THE SUCCESSION (AMENDMENT) ACT, 2018**

An Act to amend the Succession Act, Cap 162, to bring it in conformity with the Constitution of the Republic of Uganda and provide for gender equality in accordance with articles 21 and 33 of the Constitution; to repeal sections that were declared unconstitutional by the Constitutional Court; to streamline the definition of child to conform to the Constitution; to refine the definition of customary heir or heiress to remove discrimination; to clearly provide for the protection of principal residential property for the benefit of the surviving spouse and lineal descendants; to revise the percentages of distribution of the estate of an intestate; to provide for the appointment of a guardian for a child by either parent; to provide for the powers and duties of a guardian; to introduce modern terminologies and definitions of those who suffer from mental illness; and repeal repugnant terms such as “lunatics” and “insane”; to provide for the lapse of probate or letters of administration after three years subject to renewal by court; to enhance certain offences and penalties for contravention of the Act; and to provide for related matters.

BE IT ENACTED by Parliament as follows—

**1. Amendment of section 2 of the Succession Act.**

The Succession Act in this Act referred to as the principal Act is amended in section 2—

- (a) by substituting for paragraph (b), the following—
- “(b) “child,” means an offspring of 18 years and below, including a child adopted by the deceased under the laws of Uganda;
- (b) by inserting a new paragraph immediately after paragraph (d) as follows—
- “(da) “currency point” has the value assigned to it in the Fifth Schedule;”
- (c) by substituting for paragraph (e) the following—
- “(e) customary heir or heiress” means a person recognised under the rites and customs of a particular tribe or community of a deceased person as being the customary successor of that person;”
- (d) by substituting for paragraph (f), the following—
- “daughter” means a female child or lineal descendant and includes a daughter adopted in a manner recognised under the laws of Uganda;”
- (e) by substituting for paragraph (g) the following—
- “dependent relative includes a parent, a brother or sister, a niece or nephew, a grandparent or grandchild who, on the date of the deceased’s death, was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable to a person of his or her station;”
- (f) by inserting immediately after paragraph (j), the following—
- “(ja) “guardian” means a person having legal and parental responsibility for a child and includes a customary guardian;”

- (g) by repealing paragraph (l);
- (h) by repealing paragraph (n);
- (i) by inserting immediately after paragraph (n) the following—

“(na) “lineal descendant” means the offspring of the deceased regardless of the age of the off spring including those adopted by the deceased under the laws of Uganda;”

- (j) by repealing paragraph (o);
- (k) by inserting immediately after paragraph (p) the following—

“(pa) “other residential property” means—

- (a) a residential property owned by the deceased as a residential property but not usually occupied by him or her, the surviving spouse or any children under the age of eighteen years.
  - (b) a country home occasionally occupied by him or her, surviving spouse and any children under the age of eighteen years;”
- (l) by inserting immediately after paragraph (r) the following—

“(ra) “principal residential property” means the residential property normally occupied by the deceased, spouse and any child under the age of eighteen years as their principal residential property and includes the house and the chattels in the house and the land on which the house is located and from which they derive sustenance.”

- (m) by repealing paragraph (t);
- (n) by repealing paragraph (u);

- (o) by inserting immediately after paragraph (u) the following—

“(ua) separation” means separation for a period of at least six months consecutively either—

- (i) by agreement, where the parties consent to suspend the marriage in writing and the consent is witnessed by at least one representative of each party; or
- (ii) by judicial order, where one or both parties petition court asking for a suspension of the marriage on evidence that the parties can no longer live together;”

- (p) by inserting immediately after paragraph (v) the following—

“(v) “spouse” means a husband or wife married in accordance with the laws of Uganda or in accordance with the laws of another country and recognised in Uganda as a marriage and

- (q) by substituting for paragraph (v) the following—

“(vb) “son” means a male child or lineal descendant and includes a son adopted in a manner recognised under the laws of Uganda.”

**2. Repeal of section 3 of the principal Act.**

Section 3 of the Principal Act is repealed.

**3. Repeal of Section 6 of the Principal Act**

Section 6 of the principal Act is repealed.

**4. Repeal of section 7 of the principal Act.**

Section 7 of the principal Act is repealed.

**5. Amendment of section 9 of the principal Act.**

The principal Act is amended in section 9—

- (a) by substituting for the word “man” the word “person”; and
- (b) by inserting immediately after the word “his” wherever it appears, the word “or her”.

**6. Replacement of section 13 of the principal Act.**

The principal Act is amended by substituting for section 13 the following—

**“13. Domicile of origin of a child.**

Where a parent or guardian of a child is domiciled in Uganda, that child is domiciled in Uganda.”

**7. Replacement of section 14 of the principal Act.**

The principal Act is amended by substituting for section 14 the following—

**“14. Domicile of choice.**

A person may acquire the domicile of his or her spouse upon marriage.

**8. Repeal of section 15 of the principal Act.**

Section 15 of the principal Act is repealed.

**9. Repeal of section 16 of the Principal Act.**

Section 16 of the Principal Act is repealed.

**10. Replacement of section 18 of the principal Act.**

The principal Act is amended by substituting for section 18 the following—

“18. Where a person dies leaving movable property in Uganda, in the absence of proof of any domicile elsewhere, succession to the property shall be regulated by the laws of Uganda.”

**11. Repeal of Part III of the principal Act.**

Part III of the principal Act is repealed.

**12. Replacement of section 26 of the principal Act.**

Section 26 of the principal Act is amended-by substituting the following—

**“26. Devolution of residential property**

Notwithstanding section 25, the principal residential property and any other residential property including the chattels therein shall devolve to the surviving spouse and lineal descendants of the deceased.”

**13. Replacement of section 27 of the principal Act.**

The principal Act is amended by substituting for section 27 the following—

**“27. Distribution on the death of an intestate.**

(1) Subject to sections 29 and 30, the estate of an intestate, except his or her principal residential property or other residential property, shall be divided among the following classes in the following manner—

- (a) where the intestate is survived by a spouse, a lineal descendant and a dependent relative—
  - (i) the spouse shall receive 50 percent;
  - (ii) the dependant relatives shall receive 9 percent;
  - (iii) the lineal descendants shall receive 41 percent of the whole of the property of the intestate,
- (b) where the intestate leaves no surviving spouse or dependant relative under paragraph (a) (i) or (ii) of this paragraph capable of taking a proportion of his or her property, that proportion shall go to the lineal descendants;
- (c) where the intestate is survived by a spouse and a dependent relative but no lineal descendant—
  - (i) the spouse shall receive 80 percent; and
  - (ii) the dependent relative shall receive 20 percent, of the whole of the property of the intestate;
- (d) where the intestate is survived by a spouse or a dependent relative but no lineal descendant, the spouse or the



dependent relative, as the case may be, shall receive 100 percent, of the whole of the property of the intestate;

- (e) where the intestate leaves no person surviving him or her, capable of taking a proportion of his or her property under paragraph (a), (b), (c) or (d), the estate shall be divided equally between the relatives nearest in kinship to the intestate;
- (f) where the intestate leaves no person surviving him or her, capable of taking a proportion of his or her property under paragraph (a), (b), (c), (d) or (e), the whole of their property shall be managed by the Administrator General in accordance with the Administrator General's Act.

(2) A person may apply to court for an order that he or she is entitled to the deceased's estate or occupation of the principal residential property occupied by the deceased.

(3) In making the order under subsection (2), court shall have due regard to—

- (a) the nature of the relationship between the deceased and the applicant;
- (b) any contribution made by the applicant to the deceased's estate; and
- (c) any other relevant evidence that the court deems necessary."

**14. Amendment of section 28 of the principal Act.**

Section 28 of the principal Act is amended—

- (a) by substituting for subsection (1) the following—

"(1) In the distribution of property among members of the same class, the administrator shall consider the circumstances of each case including the age, contribution, duration of marriage or degree of dependency of the beneficiary"

- (b) by inserting immediately after subsection (1) the following—

“(1a) A person aggrieved by the decision of the administrator under subsection (1) may appeal to court against the decision within fourteen days from the date of the decision.”

**15. Replacement of section 29 of the principal Act.**

The Principal Act is amended—

- (a) by substituting for section 29 the following—

**“29. Reservation of a principal and any other residential property from distribution.**

(1) A spouse or child of an intestate occupying a principal residential property or any other residential property under section 26 shall not be required to bring that occupation into account in assessing any share in the property of an intestate to which the spouse or child may be entitled under section 27.

(3) A person who evicts or attempts to evict the lawful occupants of the principal residential property or any other residential property commits an offence and is liable on conviction to a fine not exceeding one hundred sixty-eight currency points or imprisonment not exceeding seven years or both.”

**16. Amendment of section 30 of the principal Act.**

Section 30 of the principal Act is amended as follows—

- (a) by substituting for the headnote, the following—

**“30. Separation of spouse.”**

- (b) by substituting for subsection (3) the following—

“(3) Notwithstanding subsection (1), a court may, on application by or on behalf of the spouse within 6 months

after the death of the other party, before distribution of the intestate property, declare that subsection (1) shall not apply to the applicant.”

**17. Repeal of section 35 of the principal Act.**

Section 35 of the principal Act is repealed.

**18. Amendment of section 36 of the principal Act.**

Section 36 of the principal Act is amended as follows—

- (a) by repealing subsection (2).
- (b) by substituting for subsection (3) the following—

“(3) A person who has a hearing impairment, a speech impairment or a visual impairment is not incapacitated from making a will if he or she is able to do so.”

- (c) by substituting for subsection (4) the following—

“(4) A person who ordinarily has a mental illness may make a will during an interval in which he or she is of sound mind.”

- (d) by inserting immediately after subsection (5) the following—

“(6) Notwithstanding subsection (1), where a person making a will is married or has children, the principal residential property or any other residential property shall not form part of the property to be disposed off in a Will and shall be reserved for the welfare of the testator’s spouse and lineal descendants.”

**19. Amendment of section 38 of the principal Act.**

Section 38 of the principal Act is amended—

- (a) by substituting for subsection (1) the following—

“(1) Where a person dies domiciled in Uganda leaving a spouse, lineal descendant or dependent relative,

if the court, on application by or on behalf of the spouse, lineal descendant and dependent relative of the deceased, is of opinion that the disposition of the deceased's estate effected by his or her will is not such as to make reasonable provision for the maintenance of that spouse, lineal descendant and dependent relative, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's estate for the maintenance of that spouse, lineal descendant and dependent relative."

- (b) by substituting for Paragraph (a) of subsection (2) the following—

"(2) (a) subject to subsection (3), where the deceased's estate produces an income, by way of periodical payments, the order shall provide for their termination not later than—

- (i) in case of a spouse, until he or she remarries, or misuses the principal or other residential property;
- (ii) in case of a child, until the child attains the age of eighteen years or as the court may determine;
- (iii) in the case of a lineal descendant who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining himself or herself, marriage or the cessation of the disability, whichever comes first;"
- (iv) in the case of other dependent relative, as the court may determine.

**20. Replacement of section 43 of the principal Act.**

The principal Act is amended by substituting for section 43, the following—

**"43. Testamentary gurdian**

"(1) A parent may by will appoint a guardian for his or her child.

(2) A person shall not, by will deprive another person of parental rights except where the parental rights were removed by court.”

**21. Replacement of section 44 of the principal Act.**

The principal Act is amended by substituting for section 44 the following—

**“44. Statutory guardians.**

On the death of either a father, a mother or both parents of an infant, where no guardian has been appointed by the will of the father or mother of the infant or if the guardian appointed by the will of either the mother or father is dead or refuses to act, the following persons shall in the following order of priority, be the guardian or guardians of the infant child of the deceased—

- (a) the father or mother of the deceased parent of the infant.
- (b) if the father and mother of the deceased parent of the infant are dead, the brothers and sisters of the deceased;
- (c) if the brothers and sisters of the deceased are dead, the brothers and sisters of the deceased’s father and mother;
- (d) If there is no person willing or entitled to be a guardian under subsection (1) (a), (b), or (c), the court may, on the application of any person interested in the welfare of the infant, appoint a guardian.”
- (e) For the avoidance of doubt, the guardian appointed shall be a citizen of Uganda.

**22. Insertion of new section 44A to principal Act.**

The principal Act is amended by inserting immediately after section 44 the following—

**“44A. Relationship between a surviving parent and appointed guardian.**

(1) A guardian appointed under section 43 shall act jointly with the surviving parent of the child unless the court otherwise directs.

(2) A guardian of a child may by will appoint another person as the guardian of the child upon his or her death.

(3) Where more than one guardian is appointed or different guardians are appointed by both parents, the persons appointed shall act jointly, after the death of the last surviving parent.

(4) Where the surviving parent objects to joint guardianship, or where the appointed guardian considers that the surviving parent is unfit to act as a guardian of the child, the guardian or the parent of the child may apply to the court and the court may—

- (a) reject the application and the parent and guardian shall continue to act jointly; or
- (b) order that the parent or guardian is unfit to act as a guardian and appoint a relative of the child or a person who is willing to act as a guardian of the child to act jointly with the parent or guardian or both of them.”

**23. Amendment of section 45 of the principal Act.**

Section 45 of the principal Act is amended by deleting the words “other than a court presided over by a magistrate grade III.”

**24. Replacement of section 46 of the principal Act.**

The principal Act is amended by substituting for section 46 the following—

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

(1) Where a guardian is appointed under section 43 of the Act, the guardian may apply to court to exercise any of the following powers and duties—

- (a) to have custody of the child;
- (b) to administer the property of the child and in particular to receive, recover or invest the property for the benefit of the child;

(2) Where the statutory guardian is appointed as the personal representative to manage the child's share of the estate, the statutory guardian shall—

- (a) take all reasonable steps to safeguard the property of the child from loss or damage; and
- (b) annually account in respect of the child's property to the parent, court or custodian of the child or to any other person as the court may direct.

**25. Replacement of section 47 of the principal Act.**

The principal Act is amended by substituting for section 47 the following—

**“47. Will obtained by fraud, undue influence, duress, coercion, mistake of fact or importunity.**

A will or any part of a will, the making of which has been caused by fraud, undue influence, duress, coercion, mistake of fact or by such importunity which takes away the free will of the testator is void.”

**26. Replacement of section 55 of the principal Act.**

The principal Act is amended by substituting for section 55 the following—

**“55. Witness not disqualified by interest or by being executor.**

(1) A person shall not by reason of interest in, or by his or her being an executor of a will be disqualified as a witness to prove the execution of a will or to prove the validity or invalidity of a will.

(2) Except in the case of an advocate, subsection (1) shall not apply to a person who participated in the writing or preparation of the will.”

**27. Replacement of Section 86 of the principal Act.**

The principal Act is amended by substituting for section 86 the following—

**“86. Construction of terms**

1) In a will—

- (a) “child” applies only to a lineal descendant;
- (d) “grandchild” applies only to the child of the lineal descendant;
- (e) “descendants” apply to all lineal descendants of the person whose descendants are spoken of;
- (f) “nephew” and “niece” apply only to a child of brother or a sister;

(2) Words in a will expressive of collateral relationship apply alike to relatives of full and of half-blood; and all words in a will expressive of relationship apply to a child in the womb who is afterwards born alive.”

**28. Repeal of section 87 of the principal Act.**

Section 87 of the Principal Act is repealed.

**29. Replacement of section 179 of the principal Act.**

The principal Act is amended by substituting for section 179 the following—

**“179. Property transferable by gift made in contemplation of death.**

(1) Subject to sections 26 and 29, a person may dispose, by gift made in contemplation of death any movable property which he or she could dispose of by will.

(2) A gift is said to be made in contemplation of death where a person who is ill and expects to die shortly of his or her illness delivers to another person the possession of any movable property to keep as a gift in case the donor dies.

(3) A gift made in contemplation of death may be resumed by the donor.

(4) 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.”



**30. Insertion of new section 201A to the principal Act.**

The principal Act is amended by inserting immediately after section 201 the following—

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

(1) The surviving spouse shall have first priority to administer the estate of the deceased spouse.

(2) The priority of the surviving spouse under subsection (1) may be disregarded by an order of court and administration granted to another person other than the spouse of the deceased where he or she—

- (a) intermeddles with the estate; or
- (b) is mentally impaired and unable to manage the estate.”

**31. Amendment of section 202 of principal Act.**

The principal Act is amended in section 202 by inserting immediately after the word “Act”, the words “and section 201A of this Act”.

**32. Replacement of section 203 of the principal Act.**

The principal Act is amended by substituting for section 203 the following—

**“203. Citation of persons entitled in priority to administer.**

Subject to section 201A, administration shall not be granted to any relative if there is some other relative entitled to a greater proportion of the estate until a citation has been issued and published in the manner prescribed under this Act calling on that other relative to accept or refuse letters of administration.”

**33. Replacement of section 204 of the principal Act.**

The principal Act is amended by substituting for section 204 the following—

**“204. Entitlement between members of the same class.**

Where there are two or more persons who are entitled to the same proportion of the estate, they shall be equally entitled to

administration, and a grant may be made to one or some of them jointly after citation has been issued and published in the manner prescribed in this Act.”

**34. Insertion of a new section 204A to the principal Act.**

The principal Act is amended by inserting immediately after section 204 the following—

**“204A. Citations or notice by persons or entities applying to administer.**

(1) Subject to section 6(3) of the Administrator General’s Act, any person or entity applying for letters of administration shall give notice in writing in the presence of a witness, to the spouse, lineal descendant and dependant relative of the deceased, of the person’s intention to apply for letters of administration at least thirty days prior to applying for the letters of administration.

(2) Where the applicant is unable satisfy the terms of subsection (1), he or she shall—

- (a) affix a copy of the notice in a conspicuous part of the house of the spouse, lineal descendant and dependent relatives; and
- (b) publish the notice in a newspaper of wide circulation, at least fourteen days prior to applying for letters of administration.”

**35. Replacement of section 215 of the principal Act.**

The principal Act is amended by substituting for section 215 the following—

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

(1) When a child is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the guardian of the child or to such other person as the court shall think fit, until the child attains the age of eighteen years, at which period, and not before, probate of the will shall be granted to him or her.

(2) Where the sole executor or sole residuary legatee is eighteen years the court may where it deems necessary for the benefit of the person, grant him or her letters of administration or probate under the supervision of court or the Administrator General.”

**36. Amendment of section 234 of the principal Act.**

Section 234 of the principal Act is amended in subsection (2) by inserting immediately after paragraph (e) the following—

“(f) the person to whom the grant was made has mismanaged the estate or not complied with the conditions of the grant;”

**37. Replacement of section 249 of the principal Act.**

The principal Act is amended by substituting for section 249 the following—

**“249. Punishment of false statement in petition or declaration.**

Where any petition or declaration which is required to be verified contains any statement which the person making the statement, or the verification knows or believes to be false, that person commits an offence and is liable, on conviction, to a fine not exceeding one hundred sixty eight currency points or imprisonment not exceeding seven years or both.”

**38. Amendment of section 258 of the principal Act.**

Section 258 of the principal Act is amended by renumbering the existing provision as subsection (1) and inserting immediately after it, the following new subsections—

“(2) The grant of probate under subsection (1) shall be valid for a period of three years from the date of issue.

(3) Notwithstanding subsection (2), the court may on such terms and conditions as it deems necessary extend the period.”

**39. Amendment of section 259 of the principal Act.**

Section 259 of the principal Act is amended by renumbering the existing provision as subsection (1) and inserting immediately after it, the following—

“(2) The letters of administration granted under subsection (1) shall be valid for a period of three years from the date of issue.

(3) Notwithstanding subsection (2), the court may on such terms and conditions as it deems necessary, extend the period.”

**40. Insertion of new section 267A to the principal Act.**

The principal Act is amended by inserting the following new section immediately after section 267—

**“267A. Powers of the Registrar.**

(1) Where a judge deems an application for grant or revocation of probate or letters of administration can be handled by a registrar, the judge may refer the matter to the registrar and the registrar may make the grant or revocation.

(2) A person aggrieved by an order made by the Registrar under subsection (1) may appeal to the High Court within fourteen days from the date the order was issued.

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

**41. Replacement of section 268 of the principal Act.**

The principal Act is amended by substituting for section 268 the following—

**“268. Intermeddling.**

(1) A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor or administrator, while there is no rightful executor or administrator in existence, thereby makes himself or herself an executor commits an offence.

(2) Subsection (1) shall not apply in cases where—

- (a) the intermeddling with the goods of the deceased is for the purpose of preserving them, providing for the deceased's funeral or for the immediate necessities of the deceased's family or property; or
- (b) the dealing is in the ordinary course of business with goods of the deceased received from another.

(3) A person who contravenes the provision of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or imprisonment not exceeding ten years or both."

**42. Replacement of section 270 of the principal Act.**

The principal Act is amended by substituting for section 270 the following—

**"270. Disposal of property.**

An executor or administrator may, with the consent of the surviving spouse and all other beneficiaries of the estate, dispose of the property of the deceased either wholly or in part."

**43. Replacement of section 272 of the principal Act.**

Section 272 of the principal Act is substituted with the following—

**"272. Powers of several executors or administrators to be exercised jointly.**

Where there are several executors, or administrators, the powers granted to them, shall be exercised jointly unless otherwise directed by court."

**44. Replacement of section 273 of the principal Act.**

The principal Act is amended by substituting for section 273 the following—

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

Upon the death of one or more executors or administrators, the survivor shall seek the leave of court to act as a sole executor or administrator with the consent of the beneficiaries."

**45. Repeal of section 276 of the principal Act.**

Section 276 of the principal Act is repealed.

**46. Replacement of section 279 of the principal Act.**

The principal Act is amended by substituting for section 279, the following—

**“279. Property of the deceased.**

(1) An executor or administrator shall manage, with reasonable diligence, the property of the deceased, and collect the debts that were due to him or her at that time of his or her death.

(2) Debts incurred by the deceased against the principal residential property or any other residential property during marriage without written consent of the spouse who, prior to the deceased’s death shared that principal residential property or any other residential property with the deceased, shall be void and excluded from payment from the deceased’s estate.

**47. Amendment of Section 311 of the principal Act.**

The principal Act is amended by inserting immediately after subsection (2) the following—

“(2a) The court shall, in making the appointment referred to in subsection (2) take into consideration the following factors—

- (a) The child’s wishes if he or she is of sufficient maturity to form an intelligent preference;
- (b) the existence of an established relationship between the child and the person to be appointed; and
- (c) the best interests of the child.

(2b) The child’s share in intestacy shall only be used for the benefit of the child.

(2c) The appointment referred to in subsection (2) shall terminate when the child attains the age of eighteen years.

(2d) Upon termination of appointment under subsection (2), all the remaining assets shall be transferred to the child upon attaining the age of eighteen years.”

**48. Substituting of section 331 of the principal Act.**

The principal Act is amended by substituting for section 331 the following—

**“331. Procedure where deceased has left property in a foreign country.**

(1) Any person applying to the High Court for a grant of probate or letters of administration shall, if at that time or at any time, after he or she has reason to believe that the deceased has left property in a foreign country, notify the court to that effect.

(2) The court may at the time of granting probate or letters of administration, or at any time after that, on being notified of the existence of property belonging to the deceased in a foreign country, order that no claims other than claims entitled to priority be paid until the expiration of a period not exceeding eighteen months from the making of the order.

(3) A statement duly certified by a competent court in the foreign country and filed in the High Court of Uganda within the period ordered under subsection (2), showing the assets and liabilities of the estate of a deceased person within the respective jurisdictions of those courts, may be taken into account by an executor or administrator in Uganda, and the court may order that the assets be distributed in such manner as to secure the payment of all claims, other than those entitled to priority, rateably with those certified by the courts of the foreign country as under this subsection.

(4) The court may order that any balance remaining in the hands of an executor or administrator after payment of claims in Uganda, whether in full or rateably under the provisions of this

section, may be transmitted in whole or in part to an executor or administrator of the estate in the foreign country.

(5) An executor, executrix or administrator acting in good faith under an order of the court under subsection (4) shall not be liable to be sued in respect of that action.”

**49. Replacement of section 332 of the principal Act.**

The principal Act is amended by substituting for section 332 the following—

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

(1) Where an executor or administrator misapplies the estate of the deceased or proceeds from the disposition of the estate, or subjects it to loss or damage, the executor or administrator commits an offence and is liable, on conviction, to a fine not exceeding ten thousand currency points or imprisonment not exceeding seven years or both.

(2) The court shall in addition to the penalty under subsection (1) order the person to make good the loss or damage occasioned to the estate or beneficiaries.”

**50. Replacement of section 333 of the principal Act.**

The principal Act is amended by substituting for section 333 the following—

**“333. Liability of executor or administrator for neglect.**

(1) Where an executor or administrator occasions a loss to the estate by neglecting to get any part of the property of the deceased, the executor or administrator commits an offence and is liable, on conviction, to a fine not exceeding ten thousand currency points or imprisonment not exceeding one year or both.

(2) The court shall in addition to the penalty under subsection (1) order the person to make good the loss or damage occasioned to the estate or beneficiaries.”



**51. Insertion of new section 333A to the principal Act.**

The principal Act is amended by inserting immediately after section 333 the following new section—

**“333A. Beneficiary’s estate not to form part of any payment.**

(1) A person who acts on behalf of the beneficiaries of an estate in any matter shall not acquire any part of the beneficiary’s interest in the estate as payment for the services rendered.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred twenty currency points or imprisonment not exceeding five years, or both.

**52. Amendment of section 335 of the principal Act.**

Section 335 of the principal Act is amended by substituting for subsection (2) the following—

“(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both and the Court shall in addition order the person to make good the loss or damage occasioned to the estate or beneficiaries.”

**53. Miscellaneous amendments to the principal Act.**

The principal Act is amended—

- (a) by substituting, wherever they appear, for reference—
  - (i) “husband” a reference to “spouse;”
  - (ii) “wife” a reference to “spouse;”
  - (iii) “father” a reference to “parent;”
  - (iv) “lunatic” and “insane” a reference to the words “mentally impaired person;”
  - (v) “man” a reference to “person;”
  - (vi) “wives” a reference to “spouses;”
  - (vii) “son” a reference to “child;”

- (b) by inserting wherever the following words appear the following—
- (viii) “heir” insert “or heiress”;
  - (ix) “his” insert “or hers”;
  - (x) “him” insert “or her”;
  - (xi) “executor” insert “or executrix”; and
  - (xii) “Testator” insert “or testatrix”

**54. Repeal of the First Schedule to the principal Act.**  
The First Schedule of the principal Act is repealed

**55. Repeal of the Second Schedule to the principal Act.**  
The Second Schedule of the principal Act is repealed.

**56. Insertion of Fifth Schedule to the principal Act.**  
The principal Act is amended by inserting immediately after Fourth schedule the following.

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**“Fifth Schedule**

*Section 2*

**CURRENCY POINT**

A currency point is equivalent to twenty thousand Uganda shillings.”

**Cross References**

Administrator Generals Act, Cap 157  
Penal Code Act, Cap 120.