

THE LAW AND PRACTICE IN SUCCESSION AND ESTATES MANAGEMENT

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CHIEF MAGISTRATES AND MAGISTRATES GRADE 1**

21.03.2024

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Legal framework

The legal framework governing succession and estates management in Uganda is primarily contained in the Succession (Amendment) Act, 2022 but can also be found under;

- The Administrator Generals Act, Cap. 157
- The Probate (Resealing) (Amendment) Act, 2021
- The Administration of Estates (Small Estates) (Special Provisions) (Amendment) Act No.5 of 2022
- The Children Act, Cap 59
- The Children (Amendment) Act 2016
- The Persons with Disabilities Act, 2020, Act 3 of 2020
- The Magistrates Courts Act, Cap 16

Legal framework cont'd

- The Customary Marriages Registration Act
- The Estates of Missing Persons (Management) Act, Cap 159
- The Marriage Act
- The Births and Deaths Registration Act
- The Civil Procedure Act, Cap 71
- The Civil Procedure Rules, S.I 71-1

Historical background

- The law of succession and management of estates in Uganda has undergone a lot of evolution, from being purely colonial inspired, and largely inapplicable to the majority of Ugandans, to recognizing the cultural aspects of Ugandan society and to now being impactful in the fight towards equality of all persons under the law.
- It has its roots in the Succession Ordinance of 1906, which was originally derived from English Law. This ordinance was however, not comprehensive, which in turn undermined its effectiveness. The Succession Ordinance 1906 became the Succession Act, Cap. 139 in the 1964 Edition of the Laws of Uganda.
- The Succession Ordinance of 1906 was amended in 1972 through the Succession (Amendment) Decree, which addressed several deficiencies in the ordinance but exhibited significant gender-based discrimination in its provisions.

Historical background cont'd

- The Succession Act, Cap. 162 was then enacted to consolidate the Succession (Amendment) Decree, 1972 and the Succession Act, Cap. 139 of 1964 Edition of the Laws of Uganda.
- This Act also had several gaps and anomalies which resulted in several of its provisions being challenged in court and subsequently being declared unconstitutional by the Constitutional Court in **Law Advocacy for Women in Uganda Vs. Attorney General, Constitutional Petition No. 13 of 2005 and 05 of 2006**
- The Succession (Amendment) Act 2022, was subsequently enacted to address the lacunas in the Succession Act, Cap. 162.

Reforms

The Succession (Amendment) Act 2022 reformed the law of succession in Uganda by providing for gender equality and repealing provisions that were declared unconstitutional, as well as solidifying principles for the distribution of the estates of deceased persons in Uganda. Some of the salient reforms brought by the amendment include;

- The Succession (Amendment) Act 2022 uses gender neutral language. It removed language that promoted discrimination on the basis of sex, **S.5 & S.69**
- It repeals the words ‘legitimate’ and ‘illegitimate’, **S.1(e)**, and applies equally to all children regardless of their parentage.
- In conformity with **Articles 21 & 35 of the Constitution**, the Succession (Amendment) Act 2022 also substituted sections which used the derogatory language for persons with hearing, speech or visual impairments **S. 21(b)(3)**

Reforms cont'd

- The Succession (Amendment) Act 2022 expanded the scope of actions that make a will void to include abuse of position of trust or vulnerability, fraud, undue influence, duress, coercion, mistake of fact , **S.30**
- It also requires every witness to a will to sign, write their name and address on each page of the will, in the presence of the testator **S.31**
- It also provides for gifts given in contemplation of death and allows the donor to recover any such gift, within 6 months of their recovery **S.35**
- The Act recognized the different forms of guardianship, and highlighted a list of persons, in order of priority, to take up guardianship of a child of the deceased. **S.24-26**

Reforms cont'd

- A guardian has been given specific duties under the Act, including, custody of the minor, and checks on how a guardian may exercise their powers have also been put in place, **S.28**
- The Act gives preference to the surviving spouse to administer the estate of their deceased spouse **S.42**
- The Act also empowers persons with mental illness to administer estates if court finds them to be fit and proper to do so. **S.37 & 39**
- The Act gives court the power to remove or defer the appointment of someone granted probate or letters of administration if they are found unfit for the role, **S.39(c)**

Reforms cont'd

- The Act streamlines and provides for the different percentages according to which the estate of an intestate is divided, based on various circumstances and relationships in **S.14**
- The Act also protects the matrimonial home/ residential home from distribution as part of the deceased's estate, unless a residence of equivalent value or status is provided for the surviving spouse, and, or lineal descendants and criminalizes their eviction or attempted eviction, **S.13 & 21**
- It also introduced a requirement for the consent of spouses and lineal descendants prior to the disposal of estate property by administrators. However, the Act also empowers the executor or administrator to apply to court for redress where consent is unreasonably withheld by the spouse and descendants. **S.58**

Reforms cont'd

- It protects the rights of a surviving spouse who remarries before the estate of the deceased is distributed, who shall be entitled to the share they would be entitled to under the law.
- The Act provides that a surviving spouse of an intestate shall not take any interest in the estate of the intestate if, at the time of death of the intestate, the surviving spouse was separated from the intestate. However, there are exceptions to this provision, **S.17**
- The application for probate shall be made within one year from the date of death of the testator. The Act provides that where a person named as executor in a will does not apply for probate within one year, a beneficiary under the will may, with the will annexed, apply for letters of administration. **S.50**

Offences under the Succession (Amendment) Act 2022

- Intermeddling with the estate of a deceased person, **S.57**
- Evicting or attempting to evict a beneficiary who is entitled to occupy the residential holding or any other residential holding, **S.13 & 21**
- Misapplying the estate of the deceased or subjecting it to loss or damage, before the grant of letters of administration, **S.38 & 40**
- An executor, executrix or administrator misapplying, misappropriating or being unable account for the proceeds accruing to the estate of a deceased person or to a beneficiary of the estate, **S.65**

Offences under the Succession (Amendment) Act 2022

- An executor or administrator occasioning loss to the estate by negligent act or omission, **S.66**
- Knowingly giving false information or making false statements in a petition or declaration relating to an estate of a deceased person, **S.51**
- A guardian misappropriating the property of a minor, **S.28**
- A person omitting willfully and without reasonable cause to deliver revoked probate or letters of administration to court

Applying for grant of letters of administration or probate

Letters of administration are applied for in instances where;

- the deceased died intestate, or
- where the deceased left a will but they did not nominate an executor, or
- where they nominated an executor but the person nominated has declined to apply for a grant of probate or, they have since died

Jurisdiction[As per the magistrates courts Act]

Arbitration.

Process of obtaining letters of administration or probate

- Minutes of the family meeting choosing administrator(s)
- Minutes of meeting before CAO
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- Death certificate of deceased
- Certificate of No Objection from Administrator General{not necessary in small estates,but by practice obtained.]
- Petition containing a list of all the beneficiaries and properties of the deceased
- Advert in newspaper of wide circulation for 14 days

Process of obtaining letters of administration or probate cont'd

- Presentation before a judge or Magistrate
- A caveat may be lodged by a person opposing the grant of letters of administration or probate. **S.52**
- The Court shall not take any step to process the grant unless the caveat has been vacated voluntarily, or where the Court makes a decision that the caveat should be vacated
- Both the caveator and or the petitioner are required to commence a civil suit challenging the petition or the caveat within six months of the caveat being lodged. If either of them fails to institute the suit within six months of the caveat being lodged, both the caveat and the petition shall lapse. However, if the caveator fails to sue and their caveat lapses, they are barred from lodging another caveat in respect of the same estate. **S.53**

