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Legal Alert: Proposed Amendments to Succession Law in Uganda

NEW! ALP Succession Law News

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The Succession (Amendment) Bill, 2021 seeks to accord equal rights between men and women under the succession law in terms of domicile, property, residential holdings, maintenance, guardianship, etc. and address the lacuna in the law in the aftermath of the 2007 decision in Law Advocacy for Women in Uganda v. Attorney General

New proposed amendments under the *Succession (Amendment) Bill, 2021*

Background

In 2007, the Constitutional Court, in *Law Advocacy for Women in Uganda v. Attorney General*, Const. Petition Nos 13/2005 & 05/2006, ruled and declared that sections 2(n)(i) and (ii), 14, 15, 26, 27, 29, 43, and 44 of the *Succession Act*, Cap 162 and rules 1, 7, 8, and 9 of the Second Schedule of the same Act were inconsistent with and contravened Articles 21(1), (2), (3), 31, and 33(6) of the Constitution and, as such, were null and void.

The provisions of the act were discriminatory on the basis of sex. Sections 2(n)(i) and (ii) of the Succession Act defining "legal heir" provided that a male heir was preferred to a female one. The provisions of section 14 and 15 provided only for domicile of a wife during marriage and there was no provision for a husband to take the wife's domicile. Sections 26 and 29 and rules 1, 7, 8, and 9 of Schedule 2 to the Act provided for occupancy of the matrimonial home in which a woman ceased to occupy the principal residential property if she married but was silent on the same for men who remarry. Section 27 of the Act, which governed the distribution of property of intestate deceased persons, had no provision for female intestate and under sections 43 and 44 of the Act, which provided for the appointment of the testamentary guardian, it was only a father who, by will, could appoint a guardian or guardians for his child during minority.

The Act was declared as discriminatory in as far as it discriminated on the basis of sex and did not accord equal treatment in the division of property between male and female.

The declaration by court left a lacuna in the law which the Bill seeks to address by amendments to the Act in order to accord equal rights between men and women and bring the *Succession Act* in conformity with the Constitution of Uganda as highlighted below.

Proposed changes in the 2021 Amendment Bill

- (a) *Gender neutral language*: The Bill substitutes discriminatory words—e.g., "a married woman or woman" to spouse; "man" to "person"—and inserts immediately after the word "his" the word "or her", "father" the word "or mother", "son" the words "or daughter" etc.
- (b) *Age of Minority*: The Bill replaces the age of minority of 21 years with 18 years bringing it in conformity with the provisions of the Constitution.
- (c) *Domicile*: The Bill introduces domicile of choice where a person may upon marriage, acquire the domicile of his or her wife and upon dissolution of marriage, a spouse may acquire any other domicile. In addition, the Bill repeals the provision on that provides a woman's domicile follows her husband.

- (d) *Distribution of Property*: The Bill revises percentages for the distribution of an estate. Where an intestate is survived by a spouse, a lineal descendant, a dependant relative and customary heir, it increases the percentage of the spouse from 15% to 20% and reduces that of dependant relatives from 9% to 4% but maintains the percentages of the lineal descendants at 75% and the customary heir at 1%.

The Bill introduces a provision to provide that 20% of a deceased's estate shall not be distributed but shall be held in trust for the education, maintenance, and welfare of the minor children; children above 18 years but below 25 years, if at the time of the death, these children were undertaking studies and were not married; children with disabilities who are above 18 years if at the time of the death, these children were not married and were wholly dependent on the intestate for their livelihood.

- (e) *Residential Holdings*: The residential holding of a deceased person shall devolve equally to the surviving spouse and lineal descendants who were normally resident and any person who evicts or attempts to evict them commits an offence and is liable to a penalty. The descendants shall be deemed to hold the property as joint tenants.
- (f) *Replacement of derogatory language*: The Bill repeals phrases like dumb, deaf, blind, or lunatic and replaces them with suitable terms like person with a hearing impairment, physical impairment, speech impairment, visual impairment, and person with a mental illness or mentally impaired person.
- (g) *Maintenance*: The Bill extends maintenance to spouses, children, lineal descendants and dependants who can apply to court for maintenance if they are left out in the will.
- (h) *Guardianship*: The Bill provides that either parent of a minor may, by will, appoint a guardian for the minor.

It introduces testamentary, customary and statutory guardians whose provisions align the *Succession Act* with the *Children's Act*, Cap 59 and gives priority to the latter Act in cases of conflict with a provision in the *Children's Act* regarding guardianship.

The Bill lists the persons who qualify as guardians and restricts statutory guardianship to citizens of Uganda. It introduces a customary guardian who shall be appointed by family members of a minor in given circumstances and the guardian must be confirmed or rejected by court through an application to Court.

Custody by a guardian is not automatic and a guardian shall apply to court to exercise powers of custody and disposing property of minors.

The powers to remove a guardian is proposed to be with only the High Court and not any court of jurisdiction in Uganda.

- (i) *Attestation to wills*: The Bill makes it a requirement for each of the witnesses to write his or her name and address on every page of the will in the presence of testator.
- (j) *Void wills*: The Bill adds other factors that make a will void, as to include fraud, undue influence, duress, coercion, mistake of fact, or abuse of position of trust or vulnerability rather than just fraud or coercion under the current law.
- (k) *Discretion of Court in the grant of probate of letters of administration*: The Bill grants court discretion to determine whether a person who is otherwise qualified to be granted probate is fit and proper and may defer the appointment to a later date or refuse to grant probate where an applicant is not suitable.
- (l) *Mismanagement of an estate*: Any person who, before grant of letters of administration or probate, misapplies the estate of a deceased and subjects it to loss or damage commits an offence and is subject to a penalty under the Bill.
- (m) *Administration of an estate*: the Bill introduces a provision for surviving spouses to have preference over any other person in the administration of the estate of the deceased.
- (n) *Timeline of administration and execution of an estate*: An administrator or executor shall administer the estate for a period not exceeding 2 years unless extended for a further period of 2 years by court.

- (o) *Intermeddling*: The Bill broadens the section that provides for intermeddling and makes it an offence. It adds that intermeddling constitutes acts done even before the grant of letters of administration or probate and the penalties for intermeddling.
- (p) *Joint administration*: The Bill provides that where there are several executors, executrices or administrators, their powers shall be exercised jointly and that all parties shall sign all the documents necessary for the administration of the estate.
- (q) *Consent*: The Bill introduces a requirement for the consent of spouses and lineal descendants prior to disposal of estate property by administrators.

Conclusion

The proposed amendments in the Bill, if passed, would transform the law of succession in Uganda by clearing the *lacunas* in the *Succession Act* Cap 162 to provide for gender equality and repealing provisions that were declared unconstitutional and, in addition, they would solidify principles for the distribution of the estate of deceased persons in Uganda.

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