

A Critical Analysis of Women Rights to Inherit Property in Bukonzo East Constituency, Kasese District

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ABSTRACT

Women in Uganda have made significant strides in achieving the rights to education, employment, and participation in public affairs among others. However, when it comes to the right to inherit property from their parents and husbands, women have been left behind despite Government's efforts geared towards ensuring that women too are considered for inheritance of property on equal footing with men.

The low achievement for women in this area of property inheritance is attributed to traditional customary norms and practices which have created a male-centered and male dominated society across the country. The traditional customary norms and practices favour men as the only persons who can inherit and own property while women are restricted to user rights only. On addition, even when user rights are allowed, the input of a women's into the development of the property especially land and proceeds derived therefrom are never considered as a contribution that create an interest worth being owned and capable of being bequeathed by a woman. In Uganda, ownership and possession of land especially customary land tenure is dominated by men. This has increasingly put women at a disadvantage.

This article identifies the obstacles/causes why women are still being marginalized when it comes to inheritance of property despite the government efforts and the legal framework in place, it also discusses the possible solutions to end the problem, and offers recommendations which includes enhancement of sensitizations and awareness, and closing lacunas that exist in the law.

INTRODUCTION

The written law in Uganda came into force through colonialism. Consequently, the laws which applied in England became applicable in Uganda by virtue of the Order in Council¹. Before that time, cultural practices and traditional customs constituted the law of African societies with each society having strong beliefs and attaching much importance on its own cultural practices and that was the norm of the time to such a level that even the women valued such practices as binding.

Unfortunately, however, these cultural practices did not recognize the right of women to inherit property which were known as only available for inheritance by the male gender. It should also be noted that discriminatory practices still existed even during the colonial era where for instance the Married Women

¹ 1902 East African Order In Council

Property Act was only applicable to non-Africans not until 1962 when Uganda became independent that it started to apply to all women.

After Uganda's independence in 1962, various laws came into place to allow women inherit and own property. An example is the 1967 Constitution of Uganda, the Succession Act, and the Divorce Act among others. According to the current 1995 Constitution of the Republic of Uganda as amended unlike the 1962 and the 1967 Constitutions, every Ugandan has a right to own property.

Be that as it may, customary rules and practices remain valid as long as they are not repugnant to written law, equity and good conscience, and do not contradict any provision of the Constitution of the Republic of Uganda 1995 as amended which is agreed to be the Supreme Law of Uganda with binding force on all persons and authorities such that anything that is inconsistent with it becomes null and void to the extent of the inconsistency²

Although the Constitution of the Republic of Uganda 1995 as amended provides for equality of men and women in all aspects, a big number of women in Uganda do not enjoy the equality provided by the Constitution. A good example is when it comes to inheritance of properties.

Women have been subjected to forced evictions/exclusions after the death of their husbands or parents. The worst scenarios come when women are denied a say over properties on which they have made bigger contributions be it direct or indirect contribution. The forceful eviction/exclusion of women from inheritance of properties like residential holdings and lands for cultivation has subjected them to a lot of misery to an extent that at some point, women have committed suicide leaving behind orphans who turn into street children.

There are situations where the inheritance is accepted but with stringent conditions attached thereby making it meaningless.

Uganda is still having alarming numbers of cases where in-laws are found to have evicted widows after the death of their husbands especially if the marriage was childless. This is caused by the fact that some communities and cultures still consider a wife as not part of their clan and thus expected to return back to their parental routes or fend for herself. In situations where the widow is given chance to stay, she is assigned a male member of her deceased husband's family to inherit her and take control of all properties of the family as the widow remains with no say and as her contribution to the acquisition and development of those properties is given a deaf ear.

DEFINITION OF INHERITANCE

According to Collins COBUILD Advanced Learner's Dictionary; an "Inheritance" is property which you receive from someone who has died. Inheritance is also defined as property that you receive after the death of a friend or a relative³

Inheritance is also known as succession and as far as property is concerned, it applies upon the death of the owner of the property or a holder of an interest in property. In modern society, the process of inheritance is regulated in detail by the procedures set by the rules and regulations stipulated in the written law.

² Article 2 of the Constitution of Uganda 1995 as amended

³ <https://www.vocabulary.com>

INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF WOMEN RIGHTS TO INHERIT PROPERTY

The Universal Declaration of Human Rights, 1948

This declaration seeks to ensure that there is recognition of the inherent dignity of mankind and ensuring that there is equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world⁴

The declaration recognizes that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards each other in a spirit of brotherhood⁵. The Universal Declaration of Human Rights also makes it clear that everyone is entitled to all rights and freedoms set forth in the declaration without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status⁶

Article 17 of the Universal Declaration of Human Rights 1948, recognizes the right of an individual to own property whether alone or in association with others and such an individual shall not be arbitrarily deprived of their property.

Convention on the Elimination of all forms of Discrimination against Women (CEDAW) of 1979.

This convention is often described as the “*Bill of Rights for Women*”

This convention defines what constitutes discrimination against women and puts in place an agenda for national action to end the discrimination and this is strengthened by the fact that any state which accepts to ratify the convention is deemed to have committed itself to incorporate within its municipal law the principle of equality of men and women in their legal framework and to abolish discriminatory laws and then to adopt the appropriate ones that prohibit discrimination against women. This is meant to ensure that all acts of discrimination against women by persons or organizations or enterprises are completely eliminated off the globe.

The state parties to this convention keep on meeting in what is normally called “sessions” to review the progress on the implementation of the provisions of the convention and other matters arising.

REGIONAL INSTRUMENTS

African Charter on Human and Peoples’ Rights

This charter recognizes the right of every individual to enjoy the rights and freedoms recognized and guaranteed under the charter without distinction of any kind such as race, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status⁷. Under article 3 of the charter, every individual is equal before the law and entitled to equal protection of the law

Article 18(3) of the African Charter, creates an obligation on member states to ensure that discrimination against women is eliminated and ensure that the right of women and the child as stipulated in international declarations and conventions are protected.

⁴ Preamble to the Universal Declaration of Human Rights

⁵ Article 1 of the Universal Declaration of Human Rights

⁶ Article 2 of the Universal Declaration of Human Rights

⁷ Article 2 of the African Charter

The Maputo Protocol on the Rights of Women in Africa

The Maputo Protocol provides a legal framework for ensuring that civil and political, economic, social and cultural, as well as environmental rights for all African women are respected and protected. This is geared by the fact that despite the positive achievements registered recently in decision making, women who constitute the largest proportion of the African population still remain vulnerable and impoverished due to challenges caused by social, economic, cultural, and political marginalization, gender-based violence and discrimination.⁸

This protocol guarantees extensive rights to women especially the right to end harmful traditional practices and it is considered as one of the most progressive human rights instruments globally.

As of June 2023, 44 African States out of 55 African Union member states had ratified the Maputo Protocol on women's rights.

In an effort to operationalize article 26 of the Maputo Protocol, Uganda submitted its initial report under the Maputo Protocol on 6th September 2023⁹

Conclusion

The international legal framework for the protection of women rights to inherit property is founded in the above conventions for which Uganda is a signatory. It is important to note that there other conventions/international instruments on protection of the right of women from discrimination.

THE NATIONAL LEGAL FRAMEWORK

Constitution of the Republic of Uganda, 1995 as amended

This has been proclaimed as the most gender sensitive constitution in Sub-Sahara Africa since it protects women's rights. Firstly, the Constitution provides for a right to equality and freedom from discrimination - including that based on sex (Article 21), and guarantees rights for women (Art. 33). It enjoins the State to take the responsibility to take steps that favour disadvantaged groups, women inclusive (Art. 32 (1)). One of the steps is to prohibit laws, cultures, customs and traditions which are against the dignity or interests of women (Article 32(2)).

Secondly, article 26(1) provides for the right to any person(s) (including women) to own property individually or with others. One of the most vulnerable in this respect is widows, and the Constitution protects them by enjoining parliament to make laws which enable widows to inherit property of their dead spouses (Art. 14 (5)). Thirdly, it gives women the framework to challenge any violations of these rights in competent courts of law (Art. 50).

Land Act, 1998 as amended

The Land Act provides that women should comprise at least a third (1/3) of the membership of land management bodies in the country. These include Communal Land Management Associations (CLMA), Uganda Land Commission (ULC), District Land Boards (DLB) and Area Land Committees (ALC); this is according to Sections 16(4-b), 47(4), 57(3) and 65 (2)). However, the District Land Tribunal (DLT).

The Act also protects women's interests by nullifying decisions on customary tenure that denies women access to ownership, occupation or use of any land (section.27). In marriage, the Land Act demands that the written consent of the resident spouse(s) be sought before the sale, mortgage and transfer of family land is concluded (Section 38A and 39).

⁸ <https://au.int>

⁹ <https://achpr.au.int/index.php/en/state-reports>

Succession Act as amended

The Act protects the family home for use by the widow and children of a deceased spouse as long as she does not remarry another man, a daughter who has not attained 21 years of age and the son who has not attained 18 years of age.

Local Council Courts Act 2006 and the Local Council Courts Regulations 2007

The Local Council Courts Act 2006 and the Local Council Courts Regulations 2007 provide for a composition of the court with a mandatory provision for women. The quorum for a Local Council 1 and 2 court is not complete without at least 2 women present, while the quorum for a Local Council 3 court is not complete without one woman present (Section 4, and Regulation 19)

This law provides for women participation in Local Council Courts' decisions to ensure that if there are issues concerning women then they are not decided by only men. However, the fraction of the women composition is 2/5 in the Village and Parish Court, and 1/3 in the Sub-County/Division court.

According to Regulation 21 of the Local Council Courts Regulations 2007, decisions are made by consensus but if there is no consensus realised, the decision of the majority of the members prevails. The unequal composition of women on the quorum creates a disadvantage to women when critical issues affecting women is being decided and one of such issues may include the right to inherit property if the property has been trespassed on by male relatives of the deceased without the consent of the widow in possession of such a property as a beneficiary¹⁰

The Human Rights (enforcement) Act, 2019

This Act exists to give effect to article 50(4) of the Constitution of Uganda by providing for the procedure of enforcing human rights under chapter 4 of the Constitution¹¹

Sections 4,5,6,7,8 and 9 of the Act provides for the manner of enforcement of rights, the jurisdiction of courts and the orders that may be made by the courts while handling human rights matters.

Conclusion

In Uganda, there is a permanent conflict between two different legal spheres: customary law and modern or state law. State law is based on colonial legislation and different legal texts adopted after the country's independence. Whether prior to independence or not, most of these texts reflect values which are foreign and in contradiction with customary methods of managing property. Customary rules still exist and are currently still being enforced by those of believe in them. When faced with the power of state regulation, traditional practices and customs propose the centuries-old nature of customary law concerning property

INSTITUTIONAL FRAME WORK

International level

At international level, there are international human rights courts (IHRC) created specifically to supervise the effective implementation of their respective Human Rights treaties. A good example is the Inter-American Court of Human Rights, the African Court on Human and Peoples' Rights, and the European Court of Human Rights¹².

National Level

The High court of Uganda

Under section 4(1)(a) of the Human Rights Act 2019, non-derogable rights are enforceable before the

¹⁰ ISRAEL KABWA –VS- MARTIN BANOBA MUSIGA, SCCA 52/1995.

¹¹ Long title for the Human Rights (enforcement) Act 2019

¹² <https://academic.oup.com/edited-volume/42603/chapter-abstract>

High Court which is created by article 129(1)(c) of the Constitution of Uganda.

The Magistrates Courts

There are Magistrates Courts established under section 3 of the Magistrates Courts Act as amended. The Grades of Magistrates are: Chief Magistrate, Magistrate Grade 1, and Magistrate Grade II.¹³ The jurisdiction of the Magistrates as per their grades is provided under section 207 of the Magistrates Courts Act.

Section 5 of the Human Rights (enforcement Act) 2019, confers jurisdiction upon the Magistrates Courts to hear and determine applications relating to enforcement or violation of Human Rights and freedoms guaranteed in chapter 4 of the Constitution. The application can be brought in any language whether orally in writing.¹⁴

The Uganda Human Rights Commission

This is established by article 51 of the Constitution of Uganda and one of its functions is to investigate, at its own initiative or on a complaint made by any person or group of persons against violation of any human right.¹⁵

Obstacles that hinder women from the enjoyment of their right to inherit property in Bukonzo East Constituency.

Deeply rooted traditional customs and practices

Among the Bakonzo tribe of Bukonzo East constituency in Kasese district, the traditional belief is that God created man and woman but the woman is to be under the control of a man as a helper of the man to produce children and give domestic labour. Men are discouraged from marrying lazy women.

Among the Bakonzo tribe of Bukonzo East constituency of Kasese District, blood is the spring of life and a child possesses the blood of the father not the mother and hence belongs to the clan of the father.

The Bakonzo people of Bukonzo East constituency Kasese district have 14 main clans with each clan being sub-divided into several extended families commonly known as sub-clans (Olhughanda) according to ancestral lineage with a sub-clan head (Mukulhu w'olhughanda); but it is believed that the members of these several sub-clans share one common ancestor who founded the clan (Thatha Kulhu). The nuclear family is the smallest unit and a subject of the bigger extended family (sub-clan). The nuclear family is headed by the father (Thatha) who is answerable to the "Extended family head" who also chairs a committee whose composition is made up of other members of that extended family and their role is to make decisions which they feel appropriate for their extended family. The resolutions passed or approved by the extended family committee are believed to be binding and any family member who does not follow them risks being isolated or disowned as a punishment for disobedience.

Among the Bakonzo tribe of Bukonzo East constituency of Kasese District, property of an extended family member is counted as part of wealth for the bigger extended family/sub clan and the same is expected to remain within the sub-clan from generation to generation. There is a time honoured relationship between property and the sub-clan from which the owner of the property comes from. To be precise, property ownership is attached to the sub-clan of the owner and thus property like land is owned under clan setting. The Bakonzo people live on the hills of the Rwenzori Mountain and as of today it is the practice to find blood relatives of a certain sub-clan/extended family occupying an entire hill from the bottom up to its top

¹³ Section 4 of the Magistrates Courts Act

¹⁴ Section 5(2) and (3) of the Human Rights (enforcement) Act 2019.

¹⁵ Article 52(1)(a) of the Constitution

as their ancestral generational land with old bark trees believed to have been planted by their departed ancestor long time ago. Therefore property and the extended family are inseparable and extended family membership is all about being considered as having the blood of that particular family lineage and the same is a route of title to possession of customary land for a particular sub-clan. The sub-clan members are entitled to occupy their ancestral land and secure it continually for generations and never to allow its occupation by people who do not share blood relationship with them.

It is believed that the women will get married off and therefore they do not need to own any property which is preserved for the extended family from generation to generation. The main feeling is that the women will take the property to the sons in law who are not members of the extended family and even their off springs who are their direct beneficiaries are considered as blood of the sons in-laws' side and thus the extended family does not feel secure to see their property being taken over by people who do not belong to their sub-clan. They feel that in future they may gradually lose the whole of their cradle land to people who are not of their sub-clan blood.

On the other hand, even when women get married, they are not considered as blood members of their husband's family and therefore the husband's extended family too is not willing to allow her to inherit property under a feeling that she is not of their blood. When it comes to inheritance of property, the women face discrimination from both their home side as well as the husband's side.

The limited right of occupancy provided to widows by the Succession Act does little to provide any substantive, enforceable legal rights. The legal heir can, for instance, remove the widow at any time by showing that "suitable alternative accommodation is available," or by simply declaring that she is not adequately maintaining the premises or bringing false allegations that she is bringing new men into the house. Moreover, the right of occupancy grants the widow only limited control of the property. Unlike a right to own land in "freehold," the widow's occupancy may be subject to the land rights of the clan, who may appropriate the land as "customary tenured" land. Under this regime, the widow cannot develop the land through the construction of additional structures. She cannot mortgage the property, lease it, or control the proceeds from the sale of cash crops. Male clan members or in-laws, therefore, control the major economic decisions of a widow and her household.

The Bakonzo custom also terminates a widow's right to occupy the home of her deceased husband if she remarries or is suspected of having a relationship after the death of her husband.

In-laws may simply stipulate that she may remarry or declare that she is of marriageable age, and use this as a pretext to evict her from her home.

The succession act gives power to women to control land and inherit 20% of her husband's property in case of death. However, among the Bakonzo in Bukonzo East it's not the case. The law is not well followed. Women are terminated from inheriting property, they can only use it on condition that when the male children grow up they will take over that land. The widow is allowed to occupy the residential home in trust for the male last born (endungo). This contradicts the existing Succession Act.

According to the succession act (Cap 268), it is provided that:

Subject to section 29 and 30, the estate of an intestate, except for his or her residential holding or other residential holding, shall be divided among the following classes, the spouse shall receive 20 percent. This clearly shows that the customary practice by the Bakonzo tribe in Bukonzo East constituency of appointing an overseer to be as a policeman for the deceased's entire estate still contradicts with what the Succession Act provides. It is also a clear indication that in rare situations where the 20 percent is given, women do not even enjoy independent inheritance over the 20 percent that the law gives because there is interference

from the family overseer who ensures that the woman does not sell or bequeath the same to a non-family member. A complete inheritance should give the beneficiary all the power to independently own, use, sell and transfer, donate or bequeath at will to any person of their choice. An inheritance that does not give such powers is simply purported and falls short of being called as an inheritance. Therefore whereas the law exists it faces strong contradictions with the existing customary rules/norms/practices.

The Banyabindi culture has a practice where female beneficiaries are not allowed to inherit property of their deceased parents. The estate is distributed to male beneficiaries and each female beneficiary is entrusted under the care and supervision of a male beneficiary. Among the Bakonzo custom, whenever a lady gets married, the father will pick one of the goats brought for dowry and give it to one of his sons and it has an implication that the said son is the one who has powers of supervision over the sister who has gotten married and if the marriage fails, the sister shall return and stay under the care of the brother. The question is: what if the son refuses to welcome back such a sister?

According to the culture of the Basongora who are pastoralists, a daughter is given cows at her marriage which cows are taken to her husband. She is not entitled to any more share of her deceased parents' estate which is only available for distribution to the male beneficiaries.

According to custom, females marry into the clans of their husband and it is the woman who moves from her original clan to come and stay with her husband in the husband's clan. In most traditional Ugandan communities and especially in rural areas, the clan do allocate customary property (especially land) to the man upon his marriage. The matrimonial home is usually built on customary property which is regarded as the husband's property until he dies, at which point the customary practice is that ownership reverts to the clan for an appropriate clan decision where customary rules systematically exclude females from participating in such decision making. Eventually, the females are excluded from enjoying a right to inherit and own such a property which the clan considers to have reverted to it.

The persistent customary norms/practices/beliefs which mistreat women as not members of their father's clan because they will get married and go to stay with their husbands, but while also the husband's family doesn't treat them as members of their clan because they don't belong to their blood has created a situation where women have lost enjoyment of their right to inherit property from both sources, that is to say: inheriting part of their parents' property and also from their deceased husbands and as a result their security has only depended on producing male children to inherit their husbands' properties and remain to only be taken care of by their sons who may take care or not. A person who does not own any property is ideally perceived to be a poor person and therefore the traditional practices and customs which deny women a right to inherit property exist to keep women as poor as possible and to be in a state of dependency forever.

Illiteracy, lack of awareness, and lack of capacity

.The situation has been worsened by the fact that majority of the widows are illiterate and live in rural areas where awareness is too low or non-existent and for the few cases that are reported to government agents, lack of technical capacity to handle and sometimes corruption.

Loopholes within the law

Under the Succession Act¹⁶, a spouse is only entitled to 20 percent of the estate of the deceased spouse. This means that a widow is entitled to 20 percent of her husband's estate. The biggest issue is the

¹⁶ Section 14 of the Succession (amendment) Act 2022 which made a replacement of section 27 of the Act.

determination of the extent of her husband's estate in situations where properties are acquired before or during marriage and she (the widow) made indirect or direct contributions to the acquisition or the development of the said properties; for example let's look at customary land which a man had acquired from his clan many years back but the said customary land has been heavily developed jointly by him and his wife. The widow's contribution in such situation is not precisely explained and provided under the Succession Act. This loophole in the law has created a gap where women are cheated of a good percentage of what rightfully belong to them and only left with no option than to only take the 20 percent which the law provides.

The law is there and that is the Succession Act (Cap 268) as amended which provides percentages in intestate succession hence giving the widow 20 percent of the estate to be inherited and the rest of the percentages to the heir, dependent relatives and lineal descendants¹⁷

The Administrator General's Act¹⁸ creates a legal requirement for reporting the death of a deceased person to the office of the Administrator General who in turn makes inquiries and demand for a number of requirements before issuing a certificate of no objection. One of such requirements is the minutes of the deceased's family. This is one area where the leadership of the extended family have gotten an opportunity to intimidate women with threats not to avail minutes unless she consents to be joined with one of their own male member of the extended family. The added family representative is meant to ensure the woman is under check and to ensure that the interests of the extended family are protected no matter what the law provides. Any objections from the widow eventually result into conflicts where the added family member acts with impunity because he has the support of the sub-clan/extended clan leadership. Whereas the law seems not to exclude widows from the requirement of reporting to the Administrator General for a certificate of no objection, the practice in courts has made presentation of a certificate of no objection a mandatory requirement such that without it, letters of administration cannot be granted. Eventually, for purposes of securing a certificate of no objection, the widow is forced to either dance to the tunes of the family members to secure family minutes and family consent or else she gets frustrated.

On the contrary however, the males have all the freedom to deliberate on issues and where possible oppose any decision which doesn't appear well with their interests.

Some of the possible solutions to the above obstacles that limit the women from enjoying their right to inherit property in Bukonzo East constituency;

The men and women are not sensitized about the percentage of sharing as provided by the succession Act. There is need for community outreach programs to sensitize both men and women about testate and intestate succession.

Men and women should be sensitized about the advantages of making a will and thus encouraged to have it. This is because a will communicates the wishes of the deceased and once it is found valid, it is enforced as it is without any other reference to customary norms and practices. In effect, a will takes precedence over the customary norms and practices that sometimes hinder the full enjoyment of the right to inherit property by women.

Public awareness about access to courts. The percentage of sharing as provided by law and the provisions of wills are sometimes flouted by administrators and executors who are mainly men with a mindset that women are inferior and thus should receive their shares at the wish of the administrator or the executor. Many beneficiaries have ended up being suppressed and their rights sat on because they don't know where

¹⁷ Section 27 of the Succession Act

¹⁸ Section 4

to start from and hence the need for sensitization on access to courts. Government and NGOs should put in place more pro-bono centres and paralegal centers to aid the poor/indigent women who have good cause but with no financial means to enforce the cause in courts.

The offices of community development officers and probation and social welfare should be empowered with some technical knowledge about the rules and guiding principles on succession through trainings and seminars so that they are able to properly guide on succession disputes because they are well established at every Sub-county.

Sensitization on mindset change. As long as the communities are well sensitized about the law on succession, then the road is at least clear because the people will be knowing what to do in line with the law. This is because much of the infringements have happened due to a wrong mindset that women are not supposed to inherit property or if they do, their shares should not be equivalent to that of male beneficiaries.

Recommendations

1. Men and women should be sensitized about the advantages of making a will so that their intended beneficiaries whether male or female are not frustrated by family members who are still tied to discriminatory traditional beliefs and customs. This is because a will communicates the wishes of the deceased and once it is found valid, it is enforced as it is without any other reference to customary norms and practices.
2. Sensitization on mindset change. As long as the communities are well sensitized about the law on succession, then the future will be clear because the people will be knowing what to do in line with the law and they will be knowing where to report in case their legally protected inheritance rights are threatened as sensitization will equally result in public awareness about access to courts of law and other law enforcement agencies like police. Sensitization will also change the mindset of the perpetrators who will also refrain from indulging in discriminatory customary practices.
3. Government should consider to abolish and criminalize discriminatory customary practices which have been found to be one of the obstacles that hinder women from enjoying their right to inherit property.
4. Government should invest more in capacity development of Local Council Executive members, the Community Development Officers, the Police, the Probation Officers, and paralegal service providers because these are the first line officers/foot solidiers at the grass root/rural community level so that they are able to appropriately intervene, advise, and direct in cases where people are fighting to discriminate and deny women from getting their rightful share of the estate of their deceased parents/husbands

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