

**A REVIEW OF THE LEGAL FRAMEWORK ON MATRIMONIAL PROPERTY IN
UGANDA**

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CS21BII/065

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF
UGANDA CHRISTIAN UNIVERSITY**

May, 2025



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DECLARATION

I NAMUTOSI IMMACULATE, do hereby declare that this work, save for the Sources herein acknowledged, is my own and the same has never been presented anywhere else for any examination or academic award.

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APPROVAL

This is to confirm that NAMUTOSI IMMACULATE completed the aforementioned research work under the direction of MRS. SARAH CHEMONGES TABOSWA, partially meeting the requirements needed to be awarded a Bachelor of Laws degree at Uganda Christian University-Mukono Campus.

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RESEARCH SUPERVISOR

ACKNOWLEDGEMENT

First and foremost, I extend my deepest gratitude to the Almighty God, whose unwavering grace and strength have carried me through every challenge and enabled me to see this research to its completion. It is by His guidance that I remained steadfast and did not give up.

I am profoundly grateful to my beloved mother, whose tireless support financially, emotionally, and spiritually has been the cornerstone of this journey. Your unwavering belief in me and constant encouragement have left me eternally indebted to you. Special thanks go to my dear sisters, Colette and Genevieve Mukhwana, as well as the Byenek Family, for their continued encouragement and motivation throughout the course of this dissertation. Your support has meant the world to me. I also wish to express my heartfelt appreciation to Mr. Kirya Kenneth for his generous and unconditional assistance during the entire submission process. Your guidance and support were truly invaluable. Lastly, my sincere thanks to Mr. Matovu and Ms. Annet for their help with printing my work and for lifting me up in prayer during this journey. Your kindness and support did not go unnoticed. To all of you, I am deeply thankful.

I would also like to extend my sincere gratitude to my supervisor, Mrs. Sarah Chemonges Taboswa, for her consistent guidance, insightful feedback, and unwavering support throughout the course of this research. Her mentorship has been instrumental in bringing this work to completion. I am equally thankful to all my friends who have stood by me—whether through their physical presence, encouragement, or spiritual support. Your kindness and solidarity have meant more than words can express. May God richly bless each of you and prosper the work of your hands. Indeed, our shared vision for 2025 is destined to come to fruition.

LIST OF CASES

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2. Julius Rwabinumi V Hope Bahimbisomwe (Civil Appeal No.10 of 2009) at page 23
3. Lailai Ghinamouze V The Queen (1956) 23 EACA 609
4. Muwanga Kintu V Myellious Kintu High Court Divorce Appeal No.135 of 1997
5. Kagga V Kagga High Court Divorce Cause No.11 of 2005
6. Chapman V Chapman (1969) ALL ER 476
7. Kivuitu V Kivuitu (1990–94) EA 20, (1991)2 KLR 241
8. Ayiko Mawa Solomon V Lekuru Annet Ayiko Divorce Cause No.0001 of 2015
9. Echaria V Echaria [2007] KLR
10. Enid Tumwebaze V Mpeirwe Stephen & Anor UGHC No.12 of 2013
11. Florah Rwamarungu V DFCU Leasing Co. Ltd High Court Divorce Cause No.03 of 1998
12. Gissing V Gissing [1970] 2 EA 7896
13. Law Advocacy for Women Uganda v Attorney General Constitutional Petitions No.13 of 2005 and No.05 of 2006
14. Muthembwa v Muthembwa [2002]1 EA 186

15. Alice Okiror & Another v Global Capital Savings 2004 & Another UGCOMMC No.62 of 2012
16. Petitt v Petitt [1969]2 AER386
17. Wamono Shem v Equity Bank Uganda Ltd & Another UGCOMMC No.98 of 2013
18. . Mayambala v Mayambala HCDC No.3/98
19. Case v Ruguru [1970] 1 EA 55
20. Jackline Ambayo v Joseph Aserua Civil Appeal No.100 of 2015
21. Olinga v. Wadada (Divorce Cause 88 of 2022)
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LIST OF STATUTES

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1. The Constitution of the Republic of Uganda, 1995 as amended
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3. Land Act Chapter 227 (As Amended)
4. Marriage Bill of 2024
5. Mortgages Act No.8 of 2009
6. The Judicature Act Cap 13
7. The Divorce Act Chapter 249

KENYAN LEGISLATION

1. Matrimonial Property Act No. 49 of 2013, Laws of Kenya.

GHANA LEGISLATION

1. Matrimonial Causes Act, 1971 (Act 367)
2. The Constitution of Ghana, 1992

TAZANIAN LEGISLATION.

1. The Law of Marriage Act Cap. 29, R.E 2019. Laws of Tanzania

UNITED STATES LEGISLATION

1. The Married Women's Property Act, 1893
2. Matrimonial Property Act of 1967
3. The Uniform Marital Property Act (UMPA), 1983

UNITED KINGDOM LEGISLATION

1. Married Women's Property Acts of 1870 and 1882
2. The Law of Property Act, 1925

INTERNATIONAL AND REGIONAL INSTRUMENTS

1. African Charter on Human and Peoples Rights, entered into force on 21st, October, 1986
2. Convention on the Elimination of all Forms of Discrimination Against Women, G.A. Res. 34/180, 34 UN GOAR, Supp. (No.46), UN Doc. A/34/46, at 193(1979), entered into force on 3rd September, 1981, G.A. Supp. (No.46)
3. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)
4. Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10th December, 1948 at Palais, de Chalillot Paris.

LIST OF ACRONYMS

1. MWPA- Married Women's Property Act, 1882
2. UDHR- Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10th December 1948.
3. CEDAW- Convention on the Elimination on all forms of Discrimination Against Women, Adopted by General Assembly Resolution 34/180 of 18th December 1979.
4. ACHPR- African Charter on Human and People's Rights (also known as the Banjul Charter) founded on the 27th of June, 1981 and came into force on the 21st day of October in 1986.
5. V- Versus

ABSTRACT

Matrimonial property governance changed during the colonial and post-colonial periods, moving away from the pre-colonial cultural and customary law viewpoints and toward a more defined and acceptable system of resolving property disputes in marriages without discriminating against women.

However, aside from **the 1995 Constitution of the Republic of Uganda, as amended**, there remains an undiscovered gap in the legal framework that governs the partition of marriage property in Uganda. Judicial decisions regarding the division of matrimonial property have exhibited inconsistencies leading to an evolving legal landscape in the landmark case of **Julius Rwabinumi v Hope Bahimbisomwe S.C.C.A No.10 of 2009**, the Supreme Court emphasized that only property jointly acquired during the marriage is subject to division, with each party's share reflecting their contribution.

Other than that, subsequent cases have demonstrated varying interpretations. These discrepancies highlight the absence of a consistent legal framework, resulting in courts exercising broad discretion. The implications for jurisprudence include unpredictability in legal outcomes and potential perceptions of judicial bias, underscoring the need for comprehensive legislative guidelines to ensure uniformity and fairness in matrimonial property divisions and lack of a clear guideline for the quantum of contributions especially indirect contributions.

This has resulted into inconsistencies, gender imbalances, uncertainties and failure to determine the fate of matrimonial property rights especially during the dissolution of the marriage. However, there have been several attempts to try and appropriately address the issue by drafting and tabling measures such **the Marriage Bill 2024**.

On that note, countries like Ghana, Tanzania and Kenya each enforced laws specifically concerning matrimonial property which have enabled them in determining and addressing matrimonial property rights. Uganda still lags behind its counterparts since it still relies on case law and common law principles for determining matters that are to do with matrimonial property rights of which at times lead to issues of constitutional interpretation and inconsistency in some cases.

CHAPTER ONE: INTRODUCTION OF THE STUDY

1.1 Introduction

The recognition of duties between spouses has a long historical trajectory, leading to the evolution of fiduciary spousal obligations.¹ Traditionally, the husband, by virtue of his control and management over community property, assumed the role of a trustee for the wife and the family.²

This research study is a comprehensive exploration of the challenges and ambiguities surrounding matrimonial property laws in Uganda, focusing on the conflicting statutory, customary, and case law frameworks. This dynamic highlights the necessity of safeguarding matrimonial property and ensuring justice in its management, particularly concerning both men and women.

This study investigates the impact of these anomalies on equitable property distribution that come from a lack of a clear, complete legal framework leading to judicial discretion and potentially biased rulings. Spousal rights and the acknowledgment of both monetary and non-monetary contributions made inside marriages are two other areas of inconsistency in this regard. Disparities in the division and inheritance of matrimonial property may result from the interplay between the Marriage Act, Chapter 251, the Divorce Act, Chapter 249, and the Land Act, Cap 227. This study also suggests tangible ways to integrate Uganda's legal

¹ Deborah H. Bell, "Equitable Distribution: Implementing the Marital Partnership theory Through the Dual Classification System," *Miss. Law Journal* (1997) p.115.

² M. Zola and Deborah E. Zolla, "Marital Duty", London: Pitman Publishing (2006). Available at <http://www.zollalaw.com/pdf/maritalduty.pdf> (last accessed on 20th December, 2024).

regime with regional and international standards to ensure fairness and justice in matrimonial property cases.

1.1.2 IMPORTANT DEFINITIONS.

According to Lord Penzance's definition in **Hyde v. Hyde and Woodhouse**³, marriage is "the voluntary union for life of one man and one woman, to the exclusion of all others." Christian marriage customs are in line with this concept, which also recognizes the differences between Islamic and traditional Ugandan marriages, which legalize polygamy under the Marriage and Divorce of Mohammedans Act (Cap 252) and the Customary Marriage (Registration) Act (Cap 248).

According to Justice Bbosa J. in **Muwanga v. Myllious Kintu**⁴, matrimonial property is defined as property that a married couple identifies as their home or property acquired through their direct or indirect contributions; it may be jointly registered or in one spouse's name under a trust basis. The Supreme Court noted in **Julius Rwabinumi v. Hope Bahimbisomwe**⁵ that there are different interpretations of what constitutes matrimonial property, including property held in trust for the clan, property acquired prior to marriage, personal property acquired during marriage, and the home selected by the couple. **Article 26(1)**⁶ ensures that personal property ownership is guaranteed, ensuring that marriage does not negate individual rights.

³ (1866) L.R. 1 P&D 130

⁴ High Court Divorce Appeal No. 135 of 1997

⁵ Civil Appeal No.10 Of 2009

⁶ The 1995 Constitution of Uganda as amended

A **prenuptial agreement** is a contract or an arrangement made before marriage that lays down the terms in case of a divorce for the purpose of protecting both spouses in circumstances of an unforeseen future in which the marriage comes to an end⁷.

A **postnuptial agreement** is an arrangement where the disputing spouses are given the opportunity to negotiate and reach a mutual agreement on the division of their matrimonial property following the issuance of a decree absolute by the court formally ending the marriage.

According to **Section 40 of the Land Act. Cap 227, as amended**, family land is defined to include; land where the family typically resides and land where they obtain their livelihood, such as farmland⁸.

1.1.3 Background to the Study

In the United States of America, the common law position in relation to marriage property was that unmarried women held much the same property rights as males, but wives exercised only a shortened proprietary capacity. Women in America were no longer regarded as persons after marriage; they were not allowed to file lawsuits, sign legally binding contracts, serve as guardians or executors of estates, or transfer property without their husbands' consent. Afterwards, in **1893, the Married Women's Property Act⁹**, the first law created in Mississippi, was intended to allow married women the ability to own property, enter into contracts, and receive compensation in order to change the common law standing.

⁷ <https://www.legalteamforlife.com/family/prenuptial-and-postnuptial-agreement>.

⁸ Land Act Cap. 277, as amended

⁹ The Married Women's Property Act, 1893

With time, other statutes that kept molding and influencing the laws in matrimonial property in the United States of America include; **Matrimonial Property Act of 1967** which gave each spouse control over their community property, including personal earnings and separate property revenues. It also gave married women more control over their property and joint decisions about the couple's home. **The Uniform Marital Property Act (UMPA)** was enacted in 1983 and defined the ownership and division of property in the case of a divorce or death. It established a category of assets that belonged to the entire marriage.¹⁰

In the United Kingdom, the evolution of matrimonial property law reflects a significant transformation from a system that severely restricted married women's property rights to one that promotes greater fairness and equality. The landmark **Married Women's Property Acts of 1870 and 1882** played a pivotal role in this shift, granting married women the legal ability to own, acquire, and dispose of property independently, as if they were unmarried. These legislative milestones, highlighted by the UK Parliament, marked a turning point in women's legal autonomy. This progress was further advanced by **the Law of Property Act 1925**, which established equal inheritance rights for spouses, allowing them to inherit from each other and from their children on equal terms¹¹.

On the other hand, Property obtained by a couple before or during their marriage is not governed by any laws in Uganda. Women living together are not protected by the

¹⁰ David H. Bromfield, Women and the Law of Property in Early America, 85 MICH. L. REV. 1109 (1987) Available at: <https://repository.law.umich.edu/mir/vol85/iss5/23>

¹¹ <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/propertychildren>

limited statutory provisions that define matrimonial or family property pertaining to couples, such as the Land Act¹², the Marriage Act¹³, the Mortgage Act¹⁴, or the Insolvency Act¹⁵. In **Patrick Namenkere v Florence Mwanja**¹⁶, court held that invalid marriages resulting into cohabitation hence property acquired did not constitute matrimonial property. In **Wamono Shem v Equity Bank**¹⁷, the plaintiff claimed to be married customarily and produced an agreement showing payment of dowry. Nevertheless, the Customary Marriage Registration Act did not record the marriage. The court decided that since marriage had not been established, spousal permission was not necessary.

Uganda's marriage property laws have advanced significantly. Understanding how women's property rights were viewed by society at various points in Uganda's history is essential to comprehending the development of matrimonial property law. It is difficult to separate the law pertaining to women's property rights from matrimonial property law. When Twinomujuni JA said in **Julius Rwabinumi v. Hope Bahimbisomwe**¹⁸ that "A woman was regarded as a property of the man and totally incapable of holding property of her own independently of the man and totally incapable of holding property of her own independently of the man," there is arguably no stronger argument to support this factual assertion. With regard to this, previous

¹² Cap 227, as amended

¹³ Cap 251

¹⁴ No.8 of 2009

¹⁵ No.14 of 2011

¹⁶ Court of Appeal Civil Appeal No. 37 of 2004

¹⁷ [2013] UGCOMMC 98

¹⁸ Civil Appeal No.10 of 2009

court rulings ruled that women in marriage were not allowed to purchase and own real estate.

According to Lynn Khadhadiagala¹⁹, the law's role with marriage property changed between the 1960s and 1995. According to Khadhadiagala, courts did not support a more patriarchal view of the family until the late 1960s, and by the 1990s, the legal assumption that the male head of the home owns the property was ingrained in judicial doctrine. Twinomujuni's ruling in **Rwabinumi v. Hope Bahimbisomwe**²⁰, which noted that the law has a long tradition of considering women as lesser marital partners, is reiterated in this postulation.

In Uganda's pre-colonial era, customary law governed matrimonial property. Cultural practices often saw women as property and labor providers. Upon divorce, women were not entitled to property, as highlighted by Twinomujuni JA in **Julius Rwabinumi v. Hope Bahimbisomwe**²¹.

Courts during the colonial era construed customary law in ways that were advantageous to women. **The Married Women's Property Act of 1882** was one of the statutory frameworks brought about by colonial influences. As a result, Ugandan courts were forced to employ common law principles while addressing matrimonial property law matters.

¹⁹ Khadhadiagala. L, Journal of African Law; Negotiation law and Custom; Judicial Doctrine and Women's Property rights in Uganda, 2002, Oriental and African Studies UK, page 1.

²⁰ Civil Appeal No.30 of 2007

²¹ Civil Appeal No. 30 of 2007

Legal reforms were motivated by post-colonial human rights campaigning. The right to own property was guaranteed by **Article 26(1)**²² of the 1995 Constitution, which was further explained in the **Moonlight Ssenooba v. Attorney General**²³ case. In that case, the court determined that the English Women's Property Act of 1882, which permitted women to own property in their own right names, also applied to Uganda's legal system.

The **Marriage Bill of 2017** suggested a more expansive definition of matrimonial property that would include both early startup funds and separate property given by a spouse. In the a similar vein, during parliamentary debate, **the Marriage Bill, 2024**, attempted to clearly define matrimonial property, which includes the marital residence, domestic property, assets acquired during the marriage, and real estate that provides the majority of the family's income.

The principle of equality in marriage is also enshrined in the Ugandan Constitution under **Article 31(1) (b)**²⁴, which affirms equal rights for spouses before, during, and after marriage. It does not, however, offer clear instructions for handling matrimonial property during or after the dissolution of a civil marriage, and difficulties still exist, especially when it comes to calculating non-monetary contributions to property distribution. To remedy these loopholes, legislative initiatives like the Marriage Bill of 2024 ensures equal rights for both spouses regardless of their individual contributions, and also enhances the legal framework surrounding matrimonial property. It offers a clear definition of what constitutes

²² The 1995 Constitution of the Republic of Uganda as amended

²³ (1974) HCCS No. 894 of 1973

²⁴ The 1995 Constitution of the Republic of Uganda as amended

matrimonial property, thus closing existing legal loopholes. The bill also establishes penalties for reclaiming marriage gifts post-union dissolution, with the goal of reducing disputes and ensuring fair treatment of both parties²⁵.

Municipal laws governing matrimonial property disputes around the world should be in line with social standards and natural justice principles. For instance, the title theory has been superseded in the US by the equitable distribution principle. By allocating property fairly and taking into account the contributions of both parties, this idea guarantees justice regardless of whether the division is strictly equal. It is from these laws that Uganda should pick a leaf so as to enhance on the laws relating to matrimonial property.

This study aims to fill these gaps by examining the idea of matrimonial property in light of legal ambiguities and contradictions in Uganda's framework governing matrimonial property and offering practical suggestions to guarantee an equitable and just division of assets between the spouses both during and after the marriage's dissolution.

1.2 Statement of the Problem.

The division of matrimonial property is not covered by any of Uganda's marriage-related laws. As Justice Esther Kisaakye noted in the case of **Rwabinumi v. Bahimbisomwe**²⁶, Ugandan courts have observed the lack of a precise statutory definition that separates matrimonial property from individually owned property for

²⁵ <https://www.parliament.go.ug/news/3350/new-marriage-bill-provides-property-rights-child-protection> (Posted on Friday, 4th October, 2024)

²⁶ S.C.C.A No.10 of 2009

married individuals. Many advocates for women's rights have called attention to this disparity. Due to the lack of legislative clarity, courts have been forced to use a great deal of discretion in establishing the laws governing matrimonial property, especially when it comes to separation, divorce, and deathbed inheritance. Because each judge may base their findings on a variety of different reasons, the reliance on judicial discretion has resulted in an inconsistent and ambiguous legal approach.

In order to help create a more transparent and just legal framework for the division of matrimonial property in Ugandan marriages, the study will examine the difficulties, legal voids, and lost opportunities in this field.

On the other hand this research study will also examine the advancements introduced in the 2024 Marriage Bill concerning matrimonial property, including the legal reforms and protections it offers to spouses.

1.3 Objectives

1.3.1 General Objective

To review the legal framework on matrimonial property in Uganda.

1.3.1 Specific Objectives

- a) To determine which institutions are pertinent and how well-equipped they are to handle the problems of distributing marital property after a divorce.
- b) To learn about the difficulties Ugandans face while sharing marital property.

- c) To gain deeper insight into the advancements introduced in the 2024 Marriage Bill concerning matrimonial property.
- d) To propose a legal framework in regards to matrimonial property.

1.4 Research Questions

- a) To what extent do Ugandan laws adequately address the issue of property distribution between spouses?
- b) If the current rules are thought to be insufficient, is there an effort to create a new legislation to address the problems of distributing matrimonial property after a divorce?
- c) What is the 2024 Marriage Bill intended to accomplish in respect to matrimonial property in Uganda?
- d) What legislative changes are required to improve the fairness of matrimonial property cases?

1.5 Significance of the Study

This research aims to explore effective mechanisms for enhancing the management of matrimonial property while also serving as a foundation for further studies in this field. Additionally, it seeks to ensure equitable distribution of property due to the rising number of conflicts over matrimonial assets. By providing strategies for fair conflict resolution, this study will help families settle their disputes more equitably. Furthermore, it will assist the country in identifying and addressing gaps within the

current legal framework, ensuring that the laws fulfill their intended purpose effectively.

1.6 Justification of the study

The concept of matrimonial property has long been a subject of legal discourse in Uganda. As society evolves, so do the complexities surrounding marriage, property ownership, and divorce settlements. The existing legal framework governing matrimonial property in Uganda has been instrumental in regulating the distribution of assets in marriage and upon dissolution. However, several gaps and inconsistencies necessitate a comprehensive review to ensure fairness, equity, and protection of the rights of spouses. This research provides a justification for a review of Uganda's legal framework on matrimonial property, focusing on legal loopholes, gender equity, dispute resolution, and alignment with international legal standards

1.7 Scope of the Study

The scope of the study entailed the geographical, time and subject scope in this research.

1.7.1 Geographical Scope

With a focus on the national, international, and regional legal framework as well as the inconsistencies and contradictions within Uganda's laws governing marriage property, the study was conducted in Kampala, Uganda.

1.7.2 Time Scope

The research took a span six months, providing adequate time for comprehensive analysis and review.

1.7.3 Subject Scope

The subject of concentration was based on reviewing the legal framework in Matrimonial Property in Uganda.

1.8 Hypothesis

The review of Uganda’s legal framework on matrimonial property contributes to a more equitable, transparent, and just system by addressing existing gaps, eliminating gender disparities, improving dispute resolution, and ensuring compliance with international legal commitments.

1.10 Conceptual Framework

The research study centered on key concepts which are matrimonial property, existing laws and judicial discretion which serves as the independent variables, and inconsistencies and contradictions on the equitable property distribution laws, spousal property rights, recognition of contributions both monetary and non-monetary within marriages, which function as the dependent variable.

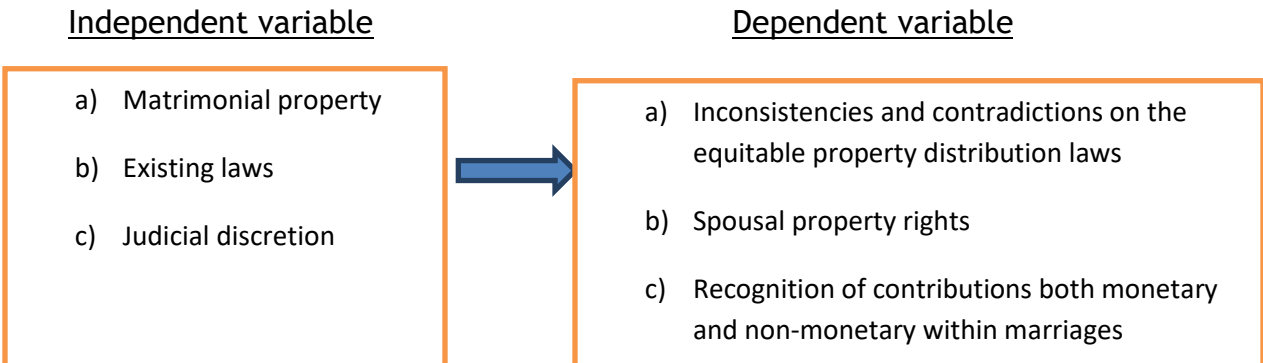


Figure 1

1.11 Conclusion

This study critically reviews the legal framework of matrimonial property in Uganda. By addressing fundamental questions about identifying the important institutions and their sufficiency in dealing with the issues of distribution of matrimonial property upon divorce, finding out issues that are encountered in sharing matrimonial property in Uganda and to provide legal adequacy and proposing actionable reforms, it aims to bridge existing gaps in the regulatory framework, fostering equality and justice for all spouses.

CHAPTER SYNOPSIS

Chapter one provides an introduction and defines key terms, focusing on the background of the study, the problem statement, research objectives, research questions, the significance and justification of the study, the scope, and methodology.

Chapter two delves into literature review.

Chapter three presents the methodology in which this research study shall be conducted.

Chapter four delves into an analysis of the concept of matrimonial property and how effective are these laws, for example the International laws, the Marriage Act Cap 251, the Divorce Act Cap 144 and case law.

Chapter five outlines the study's findings, addresses the aims of the research and questions, and concludes with recommendations on the topic.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter analyzed essential literature previously published on the topics at hand that will further be discussed in relation to their support or contradiction of the topic at hand. The theoretical review shall include the general overview of the selected literature that influenced this study whereas the conceptual review will delve into the literature in a thematic manner and the concepts that arise therein.

2.2 Theoretical review

Okumu Wengi²⁷ underscores the historical inequalities faced by women regarding matrimonial property in Uganda. Traditionally, women were perceived as a source of labor and, by extension, part of the property acquired through dowry or bride price. This perception entrenched a system where women's contributions to matrimonial property were undervalued. The absence of specific matrimonial property laws historically reflected and perpetuated inequality between spouses, demonstrating the need for legal reforms to address such systemic injustices. In the case of **LilaiGhinamouze v The Queen**²⁸, court held that all chattels in the matrimonial home are naturally presumed to be property of the husband. Even if the husband died intestate during the wife's life, the property did not revert to her. However, the author was not exhaustive on various ways matrimonial property should be divided during and after divorce.

²⁷Okumu Wengi, "Weeding the Millet Field, Women's Grassroots Justice in Uganda," page 47

²⁸ (1956) 23 EACA 609

According to **Prof. Sylvia Tamale**²⁹ she highlights the role of women's rights movements and the National Resistance Movement (NRM) government in advancing gender equality in Uganda. These efforts culminated in the promulgation of the 1995 Constitution, which enshrined principles of gender equality and women's participation in public life. This landmark constitutional development, supported by advocacy groups, laid the foundation for addressing inequalities in matrimonial property distribution. She also goes on to appreciate the necessary reforms in marriage, divorce and succession that have enforced due to government's efforts. However, translating constitutional principles into actionable laws remains a challenge of which this research study seeks to address. The author did not also stress some of the government policies or institutions and their adequacy in dealing with the issues of sharing matrimonial property fairly and equally upon divorce of which this research study will focus on.

Carolyn Frantz and Hanouch Dagan³⁰ argue that the concept of equal sharing of marital property encourages transparency between spouses regarding their contributions. They note that marriage, as a contractual arrangement, allows parties to choose legal regimes that suit their preferences, or they could also resort to making a **prenuptial agreement**, but this choice should not lead to unfair advantage for one spouse. Similarly, Frantz emphasizes that matrimonial property laws should uphold egalitarian principles through equal division, ensuring neither spouse is subordinated. These perspectives reinforce the need for Uganda's legal framework to

²⁹ Maria Nassali, "The politics of Putting Asunder: Divorce, Law and the Family in Uganda," Fountain Publishers, page 188.

³⁰ Carolyn J. Frantz and Hanouch Dagan, Properties of Marriage, 104 Colum L Rev 75(2004), page 97

adopt equitable standards in addressing matrimonial property disputes. In the case of **Julius Rwabinumi v Hope Bahimbisomwe**, Twinomujuni JA held that the time the bride groom and bride becomes husband and wife, all the property they own becomes joint matrimonial property and on separation they should be equally divided and shared to the extent possible and practicable. However, the authors did not emphasize in what ways the legislature will reform laws that will enable in the equal and fair distribution of property during divorce to which this research study shall address.

According to **Dr. Ben Kiomba Twinomugisha**³¹ he argues that discriminatory customary practices perpetuate inequalities in matrimonial property rights. He emphasizes that the state has an obligation to eliminate both legal (de jure) and practical (de facto) forms of discrimination arising from such customs. Customary laws often disregard the non-monetary contributions of spouses, reinforcing disparities and undermining efforts to achieve equity. The researcher agrees with this and thus addressing these practices requires harmonizing statutory and customary laws to reflect constitutional principles of equality.

Similarly, the article **Women's Rights to Property in Marriage, Divorce, and Widowhood**³² in Uganda delves into the Problematic Aspects critiques statutory and customary laws for being discriminatory against women in property distribution. While the author rightly identifies the oppressive nature of these laws, they fail to acknowledge that men, too, can face discrimination in certain contexts. For instance,

³¹Dr. Ben K. Twinomugisha, *African Customary Law and Women's Human Rights in Uganda*, 2008, page.451

³²Anthony Luyikira Kafumbe, *Women's Rights to property in Marriage, Divorce, and Widowhood in Uganda: The Problematic Aspects*, Human Rights Review, 11th June 2009, Kampala page 6

in the case of **Kolya v. Kolya**³³ (Civil Suit No. 150 of 2016), the High Court determined that a husband's attempt to bequeath matrimonial property to an heir, excluding his wife, was unconstitutional. The court upheld the wife's right to the property, emphasizing that cultural practices cannot override constitutional protections against discrimination.

Additionally, the article narrowly focuses on land ownership, neglecting other forms of matrimonial property such as movable assets and choses in action. The researcher acknowledges the merit in highlighting the discriminatory aspects of the law but argues that a more effective approach would involve enacting specific legislation on fair and equal distribution of matrimonial property during divorce rather than piecemeal amendments to existing laws to which in this research it is provided.

According to **Yasin Mugerwa** he highlights the challenges in implementing laws related to matrimonial property. **Mugerwa**³⁴ notes that the contentious Marriage and Divorce Bill was seen as an opportunity for women to negotiate property rights within marriage. However, societal attitudes often stigmatize women advocating for property rights, while some exploit these laws for personal gain. These challenges underscore the importance of comprehensive legal reforms and public awareness campaigns. The researcher agrees with the fact that most subordinate laws are discriminatory in nature in relation to women, therefore in this research, it is provided for. However, the author did not emphasize that there should be equal and

³³ Civil Suit No.150 of 2016

³⁴ Yasin Mugerwa, “*Dilemma Sets in a Marriage Bill Returns.*” Available at:<http://www.monitor.co.ug/Magazines/PeoplePower/Dilemma-sets-in-as-Marriage-Bill-returns/-/689844/2631426/-/item/1/-/rpvqlx/-/index.html> (accessed on the 19th, December, 2024)

fair distribution of matrimonial property during divorce to which in this research study it is provided for.

According to **Doreen Namyalo**³⁵ she emphasizes the state's duty to integrate international and regional human rights instruments into domestic law. Instruments such as the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** provide a framework for addressing gender-based discrimination in matrimonial property matters. Namyalo argues that Uganda's ratification of these treaties should inform amendments to existing laws to ensure equitable distribution of property during marriage, upon dissolution, or in cases of widowhood. The researcher agrees with the aligning of domestic laws with the international law standards so as to address the systemic discrimination and promote justice such as equal and fair distribution of matrimonial property during divorce, which is provided for in this research study.

According to **Nigel Lowe, in Bromley's Family Law**³⁶, he delves into the quantification of shares in matrimonial property, focusing on trusts and estoppel. He highlights resulting trusts where titles are registered solely in one spouse's name, constructive trusts based on mutual promises, and proprietary estoppel or agreements altering beneficial interests. While Lowe's analysis is commendable for its structured approach to quantification, it falls short in addressing scenarios where these legal constructs are inapplicable. This study seeks to explore such overlooked circumstances and provide a more comprehensive framework for quantifying shares in

³⁵ <http://www.channelafrica.co.za/sabc/home/channelafrica/news>

³⁶ N V Lowe and G Douglas, Bromley's Family Law, 10th Edition, Oxford University Press, 2007 pg 164-170

regards to non-monetary contributions in matrimonial property during divorce that the author did not address.

Another notable contribution is an article from **New Vision**³⁷, which emphasizes the necessity of enacting matrimonial property laws in Uganda, drawing parallels with countries like Kenya, Ghana, and Tanzania. Although the author presents a compelling argument for legislative reform, they do not thoroughly analyze the shortcomings within Uganda's existing legal frameworks governing matrimonial property that should guide such reforms. This study seeks to bridge those gaps, with a particular focus on the equitable distribution of matrimonial property and the acknowledgment of non-monetary contributions especially those made by women. It goes beyond advocating for fairness and equality in property division during divorce by also tackling the often overlooked challenge of quantifying non-financial contributions. Through this approach, the research aims to propose practical, actionable solutions to promote true equity in the distribution of matrimonial assets.

These perspectives collectively highlight the need for Uganda to reevaluate its matrimonial property regime, and incorporate equitable principles that recognize the contributions of all spouses. Theoretical underpinnings, from gender equality to international human rights, provide a robust foundation for such reforms.

³⁷ Francis Emorut, New Vision, 'Parliament asked to enact matrimonial property law.' Available at: New Vision (accessed on 28th December, 2024).

2.3 Conceptual review

2.3.1 Understanding Matrimonial Property in Uganda's Legal Context

Marriage is a cornerstone institution in Uganda, regulated under five distinct legal frameworks such as civil, church, Hindu, Islamic, and customary marriage laws. Each marriage type is governed by respective statutes, including the Marriage Act³⁸, Divorce Act³⁹, Hindu Marriage⁴⁰ and Divorce Act, Marriage and Divorce of the Mohammedans Act⁴¹, and the Customary Marriage (Registration) Act⁴². While these laws provide guidelines for marriage and related rights, they are largely silent on the equitable distribution of matrimonial property, particularly upon divorce or death. This gap often leaves spouses, especially women, vulnerable to inequitable outcomes, necessitating a redefinition of matrimonial property laws to promote fairness and equality to which this research shall address.

2.3.2 Historical and Colonial Influence on Matrimonial Property Laws

The concept of matrimonial property in Uganda has evolved from customary practices to the current statutory regime. In pre-colonial times, land and property were communal and governed by customary norms, allowing both men and women to use land for livelihood. The colonial period introduced statutory laws, including the **1900 Buganda Agreement and the Married Women's Property Act (MWPA) of 1882**, which marked a significant shift toward individual property rights. However, the application

³⁸ Marriage Act Chapter 251

³⁹ Divorce Act Chapter 249

⁴⁰ Hindu Marriage and Divorce Act Chapter 250

⁴¹ Marriage and Divorce of the Mohammedans Act Chapter 252

⁴² Customary Marriage (Registration) Act Cap 248

of these laws was initially limited to non-Africans, and their eventual extension to Ugandans was inconsistent, creating a fragmented legal framework that persists to this day. Therefore, this research will provide for the ways in which these laws concerning matrimonial property in Uganda can be reformed so as to promote equality and fairness while dividing matrimonial property during divorce.

2.3.3 Current Legal Framework and Inadequacies

The **1995 Constitution of Uganda** enshrines the principles of equality and non-discrimination, including equal rights⁴³ within marriage and property ownership⁴⁴. However, the absence of a statutory definition of matrimonial property has resulted in reliance on judicial discretion to determine what constitutes such property. Courts, guided by varying interpretations, often assess spousal contributions to property acquisition during marriage, leading to inconsistent rulings. This judicial variability highlights the inadequacies of the current legal framework in addressing matrimonial property matters comprehensively to which this research shall address in relation to the equal and just distribution of matrimonial property and also including how non-monetary are assessed and recognized within the legal framework.

2.3.4 Comparative Perspectives from Other Jurisdictions

Countries like Kenya, Tanzania, and Ghana have enacted comprehensive matrimonial property laws that provide clear guidelines for property division. **Kenya's Matrimonial**

⁴³ Article 20 of the 1995 Constitution of the Republic of Uganda as Amended

⁴⁴ Article 26(1) of the 1995 Constitution of the Republic of Uganda as Amended

Property Act ⁴⁵emphasizes equal sharing and recognition of both monetary and non-monetary contributions. **Section 7 of the Matrimonial Property Act, 2013** provides that ownership of matrimonial property is determined by contribution of each spouse towards its acquisition. Contribution may be monetary or non-monetary, such as domestic work, child care and companionship.

This principle was emphasized in the Supreme Court's decision in **JOO v MBO**⁴⁶, the court held that the equal status of spouses within a marriage does not inherently guarantee an equal division of matrimonial property upon divorce. Rather, it emphasized that the distribution of property should be based on the actual contributions whether direct or indirect made by each spouse throughout the marriage⁴⁷.

Similarly, Ghana's matrimonial regime incorporates principles of fairness and equity in distribution of matrimonial property⁴⁸. Several factors are considered in achieving a fair and just distribution of the marital property upon dissolution of the marriage in Ghana and these include; the In Ghana, the type of marriage plays a significant role in determining how property is viewed and divided during a divorce, as the country recognizes customary, civil, and religious marriages each with its own legal implications. Property division is also influenced by each spouse's contributions to the marriage, with courts acknowledging both financial and non-financial inputs. Where

⁴⁵ Matrimonial Property Act No.49 of 2013, Laws of Kenya

⁴⁶ <(2023)<https://new.kenyalaw.org/akn/ke/judgment/kes/2023/4/eng@2023-01-27>> (Miscellaneous Application E237 of 2023) [2024] KEHC 8014 (KLR) (Family) (14 June 2024)

⁴⁷ <https://www.mmsadvocates.co.ke/matrimonial-property-division-kenya-how-courts-determine-contributions-and-ownership-rights> (posted on 3rd December, 2024)

⁴⁸ Matrimonial Causes Act, 1971 (Act 367) and the Constitution of Ghana, 1992, Laws of Ghana

one spouse has contributed substantially more than the other, this disparity is reflected in the allocation of assets. Additionally, courts take into account the future needs of each spouse, including considerations such as childcare responsibilities and retirement provisions. The duration of the marriage is another key factor, thus, longer marriages often result in a more equal distribution of property, whereas shorter marriages may lead to a less balanced outcome.⁴⁹

In Tanzania, the legislation governing matrimonial property under **Section 114 (1)**⁵⁰ authorizes the courts of law to order for the division of assets attained by the spouses during the existence of the marriage through their joint efforts and also the courts should recognize marital property in their tangible nature that are in the names of parties in a marriage relationship. **Section 114 (2) (b)**⁵¹ further provides that the court shall have regard to the extent of the contributions made by each party in money, property or work towards the acquiring of the assets. This provision grants the court the authority to distribute assets acquired during the marriage in a manner that is fair and just, taking into account the contributions both monetary and non-monetary made by each spouse. These frameworks serve as benchmarks for Uganda, emphasizing the need for legislative reforms to harmonize conflicting laws and align with international best practices to which this research shall address.

⁴⁹ <https://mondaq.com/divorce/divorce/1605540/understanding-marriage-property-settlement-in-ghana-a-guide-for-uk-expats> (posted on 3rd April, 2025)

⁵⁰ The Law of Marriage Act Cap. 29, R.E 2019. Laws of Tanzania

⁵¹ The Marriage Act, Cap 29, R.E of 2019, Laws of Tanzania

2.3.6 Gender Equality and International Legal Obligations

International conventions, such as the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW⁵²)** and the **African Charter on Human and People’s Rights (ACHPR)⁵³**, mandate equality in matrimonial property rights. Uganda’s ratification of these treaties obligates the state to align domestic laws with international standards. Incorporating these principles into the national legal framework would ensure equitable treatment of all spouses and the protection of the rights of women, widows, and cohabitees, addressing historical and systemic injustices to which this research study shall address.

⁵² Article 40 of the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979), arts. 1–2, 15–16, entered into force Sept. 3, 1981, ratified by Uganda July 22, 1985, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

⁵³ African [Banjul] Charter on Human and People’s Rights, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), art. 18, *entered into force* Oct. 21, 1986, *ratified by Uganda* May 10, 1986), available at http://www.achpr.org/english/info/charter_en.html

CHAPTER THREE: METHODOLOGY

3.1 Research Design

Given the nascent state of matrimonial property regulation in Uganda, this study will employ a quantitative research methodology in other words the desk-review methodology, as the nature of the topic is primarily descriptive. The research will aim to establish relationships between the dependent and independent variables, enabling a thorough analysis of the existing problem or gap. By quantifying data, the study seeks to provide an objective and measurable understanding of the issues surrounding the research topic, ensuring that conclusions drawn are based on solid evidence.

3.2 Data Analysis and Collection

Data for this research will be gathered through the review of existing documents and records. These will include primary sources such as Acts of Parliament, international treaties, conventions, and secondary sources such as newspapers, relevant textbooks, scholarly articles, and journals. Additionally, credible online sources will be consulted to gather comprehensive data that pertains to the research topic. This collection method ensures a broad and diverse range of information, which will serve as the foundation for the analysis. The analysis will involve examining the collected data to identify patterns, trends, and insights that shed light on the existing issues and gaps.

3.3 Data Instruments

The researcher plans to use several tools for data collection, processing, and analysis. A computer will be used, primarily with software like Microsoft Word and

Excel, to type, organize, and analyze the data. A mobile phone will also be employed to access and retrieve relevant online sources. These tools will assist in gathering, processing, and analyzing the data effectively. Once the data is compiled, it will be converted into hard copies, making it accessible for future researchers, academics, or policymakers who may need to reference or build upon this work. The use of these instruments ensures that the research process is efficient, thorough, and results in a well-documented study.

3.5 Ethical Considerations

Ethical standards will be upheld throughout the research process. Participation will be voluntary, and respondents' anonymity and confidentiality will be ensured. Surveys and interviews will be conducted professionally to avoid bias or undue influence. Structured interviews will allow for deeper exploration of issues beyond the scope of surveys, ensuring the collection of comprehensive and reliable data.

3.6 Anticipated Methodological Constraints

Potential challenges include delayed responses to questionnaires, time constraints arising from the dual-method approach, and a lack of cooperation from some respondents. Efforts will be made to mitigate these issues through follow-up reminders and clear communication of the study's importance and benefits.

CHAPTER FOUR:

ASSESSMENT OF THE LEGAL REGIME GOVERNING THE DIVISION OF MATRIMONIAL PROPERTY AT THE DISSOLUTION OF THE MARRIAGE IN UGANDA.

4.0 INTERNATIONAL, REGIONAL AND DOMESTIC PERSPECTIVES OF THE DIVISION OF MATRIMONIAL PROPERTY AT THE DISSOLUTION OF MARRIAGE.

4.1 INTRODUCTION

The concept of matrimonial property only comes about due to the marriage factor and therefore for any right to such property, there has to have been a legal marriage in place to derive such rights as was noted in **Case v Ruguru**⁵⁴ where the court indicated that where there is no proof of the existence of a legal marriage, neither party was entitled to such rights in matrimonial property. And in fact there is no such thing as marital property whatsoever in a situation where is no legal marriage that is valid.

Several international instruments call for equal and fair division of property between spouses. Most notably, they include the Universal Declaration of Human Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the International Convention on the Elimination of All Forms of Discrimination against Women. These have really tried to put together the international standards in matrimonial property division since these aim for equal rights to property when the marriage has dissolved.

⁵⁴ [1970] 1 EA 55

4.2 REGIONAL LEGAL FRAMEWORK

4.2.1 The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol).

The Women's Protocol represents a significant milestone in advancing and safeguarding women's rights across Africa, as it establishes a thorough legal foundation for holding African states accountable for violations of those rights. It strengthens the existing international instruments that validate the respect and protection of women's rights and is also notably recognized as the first international legal document to explicitly guarantee women's sexual and reproductive rights, including access to medical abortion under specific circumstances. **Article 6** of the Maputo Protocol mandates that member states treat men and women as equal partners within marriage, granting them the same legal rights.

Furthermore, **Article 7** of the Maputo Protocol obliges States that are party to it to ensure that women and men have equal rights when it comes to cases of separation, divorce, or annulment. This includes not only equal access to initiate such proceedings but also the right to a fair and equitable distribution of marital property upon the termination of the union.

In regards to this human rights-based framework, it is absolutely evident that women's rights to property after divorce are firmly protected.

4.3 INTERNATIONAL LEGAL FRAMEWORK

4.3.1 The Universal Declaration of Human Rights.

Article 16 (1) of the Universal Declaration of Human Rights is to the effect that men and women, having reached the age of majority, without any limitation due to race, nationality, or religion, have the right to marry and establish a family. Men and women also have equal rights during their marriage and at its dissolution. At the breakdown of the marriage, that is when marital property and property rights take effect. Therefore, each spouse has a right to the property.

4.1.4 The International Convention on the Elimination of all Forms of Discrimination against Women.(CEDAW) G.A. Res. 34/180, 34 UN GOAR, Supp. (No.46), UN Doc. A/34/46, at 193(1979), entered into force on 3rd September, 1981, G.A. Supp. (No.46)

The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in **Article 16(1)** binds the state parties to adopt appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Furthermore, it binds that, subject to the principle of equality, **Article 16(1) (h)** gives both spouses equal rights regarding ownership, acquisition, management, enjoyment, and disposal of property, whether for free or valuable consideration.

Therefore, along with the foregoing instruments, the relevant international law on the division of matrimonial property ensures equitable sharing of matrimonial property among spouses, prioritizing the obligation of States to adopt proper legislation for equal sharing of property in the event of dissolution or annulment of

marriage. However, in Uganda, that is not the case, property is usually shared on a case by case basis, thus; generally such empowerment is left to the disposition of the courts to divide the property whenever the marriage is dissolved since it is regarded as one of the remedies for divorce, and therefore equal division becomes mostly uncertain.

In Uganda, statutory laws regulating the division of matrimonial property include the Constitution⁵⁵, the Divorce Act Cap 249, as well as subsequent divorce acts and established common law case precedent. These frameworks nonetheless tend to insufficiently spell out the parameters that are usually used for the dividing the marital property, in particular the identification of indirect contribution by respective parties. Thus, courts primarily exercise their discretion, based on the unique circumstances of each case and on applicable precedents established in prior cases.

4.4 NATIONAL LEGAL FRAMEWORK.

4.4.1 The Constitution of the Republic of Uganda 1995, as amended

The 1995 Constitution marked a foundational milestone in a series of ongoing legal reforms aimed at enhancing the protection of women's rights within Uganda's formal legal system. **Article 21(1)** of the Constitution affirms the principle of equality before the law.

Chapter Four of the 1995 Ugandan Constitution explicitly prohibits all the various manifestations of gender-based discrimination and thus affirms that men and women

⁵⁵ The 1995 Constitution of the Republic of Uganda, as amended

are to be treated equally in status and rights. It guarantees every individual the right to own property and specifically ensures that women also benefit from property rights on an equal level with men. Additionally, it acknowledges the historical marginalization of women and, in response, provides special support and protections for women and mothers as per **Article 33 (3)**. Furthermore, it renders any customary laws, cultural practices, or traditions that perpetuate gender discrimination invalid and unconstitutional as per **Article 33 (6)**

Equality has also been expanded to cover property rights under **Article 26(1)**⁵⁶, which grants every person, man or woman, the right to hold property on their own. Furthermore, there is a more rigorous attitude that is taken in relation to matrimonial property rights both during marriage and upon dissolution, as contained in **Article 31(1)**⁵⁷, which provides for men and women having equal rights throughout the marriage and at the time of its dissolution. This means that both of them are entitled to a share of some of the matrimonial property upon dissolution of the marriage, regardless of their gender.

The constitutional provisions referenced create a thorough framework to guarantee gender equality, especially in the context of marriage dissolution. They make an explicit rejection of any legal, cultural, or customary practices that could jeopardize the rights or interests of women, acknowledging that women are often disproportionately disadvantaged in issues related to the division of matrimonial

⁵⁶ Provides that every individual is entitled to own property, whether alone or jointly with others

⁵⁷ In verbatim, individuals aged eighteen years and above, regardless of gender, have the right to marry and establish a family, and are entitled to equal rights in marriage, during marriage, and upon its dissolution.

property. As a result, this equal treatment principle must include property rights, particularly concerning matrimonial assets.

Thus, when a marriage ends, the Constitution requires that matrimonial property be divided fairly between the spouses. The aim of these constitutional safeguards is to support and ensure that marital property is shared fairly and equally when a marriage dissolves.

4.4.2 The Divorce Act Cap 249

The Divorce Act in Uganda acts as the main legal structure that regulates divorce and related remedies, including property division. As per **Section 4 of the Divorce Act, Cap 249**, the law outlines the bases for dissolving a marriage. Traditionally, these grounds were limited, with adultery as the primary basis. A husband only had to demonstrate that his wife had engaged in adultery since the marriage was formalized in order to secure a divorce under this provision. Nevertheless, the law set a heavier burden for wives, necessitating the demonstration of several grounds in order to succeed in their divorce petitions.

These encompassed cases in which the spouse altered his religious beliefs, committed infidelity, perpetrated rape, sodomy, or bestiality, or where infidelity was coupled with cruelty or abandonment.

In the case of **Uganda Association of Women Lawyers and 5 Others v Attorney General**⁵⁸, the condition set in **Section 4 of The Divorce Act, Cap 249** was declared

⁵⁸ Constitutional Petition No.2 of 2003

null and void. This was against the fact that the provision established disparate grounds of divorce for men and women that is, men needed to prove one ground, while women were needed to prove multiple grounds. This distinction was held to be against the doctrine of equality in the supreme law, thus rendering it discriminatory in nature. But the **Divorce Act Cap 249** as the amendment guarantees both spouses in a marriage equality of status before the law when petitioning for divorce, thereby aligning the law with constitutional values of non-discrimination and gender equality.

According to Kasingye Stuart, Angualia Daniel and Ninsima Irene, they stated that Court normally takes into consideration properties attained during the existence of the marriage, evidence of contribution both direct and indirect, the period for which marriage of the parties subsisted, life to which the spouse is accustomed to in order to determine the share he or she is entitled. Furthermore, a spouse can only be entitled to that part of matrimonial property which she can prove that she contributed to the acquisition thereof, by way of financial contribution or otherwise. All in all, the beneficial share of each spouse in the end also depends on their proven respective proportions of financial contributions either directly or indirect towards the acquisition of the property⁵⁹.

However, it is evident that the Divorce Act, Cap 249 does not at any time refer to the criterion to be used in dividing the property, in fact, it is silent, this means criterion or decision is left to the discretion of courts.

⁵⁹Angulia Busiku & Co advocates, “Simple guide to Divorce and Distribution of Matrimonial Property in Uganda” <<https://www.lawyers-uganda.com/simple-guide-to-divorce-and-distribution-of-matrimonial-property-in-uganda/>>. (February 2024)

4.4.3 The Marriage Bill of Uganda, 2024.

The lawmakers saw the necessity to plug loopholes in the matrimonial property rights legal regime. Despite many efforts, like the presentation of the **Domestic Relations Bill of 2003** and **The Marriage and Divorce Bill of 2009**, the bills were never passed into law. However, a new set of proposals under the **Marriage Bill, 2024** have surfaced that sought to repeal and consolidate the marriage laws such as the Divorce Act under **Clause 47 of the bill** as well as sought to establish prenuptial agreements and postnuptial agreements. This section of the Act is a significant emphasis of the Act on the capacity of persons to make contractual promises concerning various elements of their marriage, such as the management and sharing of property in the event of separation or divorce. **Clauses 45 to 61 of the Marriage Bill 2024**, and particularly **Clause 49**, provides for the fair rights of either spouse to matrimonial property. If these provisions were established as a precondition to marriage, they might solve issues of contributions at the time of divorce.

The legislation in question (**the Marriage Bill, 2024**) does not explicitly address the mechanisms for dividing matrimonial property, particularly in the context of polygamous marriages. However, it does lay down a basic framework for ascertaining the rights in matrimonial property, which is anticipated to include monogamous and polygamous marriages. For example, **Clause 49** stipulates provisions for reasonable access to property. **Clause 39(1) (a)** of the said Bill permits conversion of monogamous marriages into potentially polygamous relationships, and this can affect property rights where the property is obtained under the monogamous relationship. It

has been held by the Court before that a spouse's right in matrimonial property is based on his or her contribution to the property, whether financial or non-financial.

In the case of **Echaria v Echaria**⁶⁰, the Court of Appeal determined that a spouse is given a share in matrimonial property in accordance with their contribution, which may be direct (financial) or indirect (non-financial). Indirect contributions would encompass responsibilities such as management of the home, child care, and provision of domestic assistance.

4.4.4 The Land Act, Cap 227 of 1998 (As Amended)

Spousal consent is crucial since it ensures spouses' security of occupancy. In the case of **Florah Rwamarungu v. DFCU Leasing Co. Ltd**⁶¹, the applicant claimed that the suit property was the marital residence and requested a temporary injunction to prevent her husband from selling the mortgaged property without her agreement. The application shed some clarity on the meaning of matrimonial land even though it was rejected because she needed to demonstrate that failing to award the injunction would cause irreversible harm. This later resulted in the **Enid Tumwebaze v. Mpeirwe Stephen & Anor case**⁶², in which the question was whether the land belonged to the family and as such, in accordance with **Section 39 of the Land Act**, marital consent. According to Justice Byabasheija, marital consent was necessary for even a banana plantation because it was considered family land. Family land is

⁶⁰ [2007] 2 EA 139

⁶¹ Civil Appeal No. 60 of 2007

⁶² UGHC No. 12 of 2013

defined under **Section 40 of the Land Act as amended** to include land where the family typically resides and land where they obtain their livelihood, such as farmland.

Regardless of whose name appears on the title, **Section 40 of the Land Act** as modified guarantees that both spouses have a legal interest in matrimonial land. Additionally, it encourages collaborative decision-making, establishing the foundation for equal rights in divorce.

4.4.5 The Judicature Act Cap 13

The Judicature Act gives courts the legal basis to use equitable principles for evaluating property rights, even though it does not directly address matrimonial property. In addition to written law, **Section 14 of the Act** requires the High Court to exercise its jurisdiction in accordance with substantive justice and equity. In order to guarantee a just division of marital property based on contributions, including non-monetary contributions like taking care of the house and the children, among others, this gives courts the authority to apply equitable doctrines like constructive trusts and beneficial interest as well as common law. Additionally, this is consistent with Ugandan case law and precedents such as **Echaria v. Echaria**⁶³, where courts have acknowledged indirect contribution.

4.4.6 Mortgages Act No.8 of 2009

According to **Section 5 of the Act**, a mortgage on a married residence is deemed legitimate if both the mortgagor and the spouse of the mortgagor residing in the

⁶³ [2007] 2 EA 139

married residence sign the application form. Additionally, before the matrimonial property is mortgaged, the Act requires spousal assent⁶⁴. In **Wamono Shem v. Equity Bank Uganda Ltd. & Anor**⁶⁵, the petitioner sought a declaration of the mortgage's nullity on the grounds that the land in question was family matrimonial property and that the mortgage was obtained illegally, among other grounds. The application was denied by the court because the applicant needed to demonstrate that the spouses were already married in order to allow the case under the law.

In the case of **Alice Okiror & Others v. Global Capital Savings 2004 & Others**⁶⁶, it was decided that the contended property was a void mortgage because the husband had not given his assent.

In light of this, courts have recently devised a method for determining the number of shares that should be given to each spouse in the event of a divorce. At this point, courts adopted a different stance, relying on the idea that women had an equal right to property in the event of a divorce. This is accomplished by common law decisions that incorporate the direct and indirect contribution doctrines.

4.5 Case Law Precedents

Over time, common law precedents have created a method for calculating marital property, which is done in two distinct ways: by taking into account each party's direct and indirect contributions.

⁶⁴ Section 6 of the Mortgage Act , Cap 229 of 2009

⁶⁵ UGOMMC No.98 of 2013

⁶⁶ UGOMMC No.62 of 2012

Our courts developed a policy that acknowledges each spouse's contribution to the acquisition of the property, whether direct through monetary contributions or indirect through domestic services, as noted by Mwangusya J in **Kagga v. Kagga**⁶⁷. The Supreme Court in **Julius Rwabinumi v Hope Bahimbisomwe**⁶⁸ highlighted that the wife's portion should be determined based on a concrete financial contribution direct or indirect that can be verified as having been made toward the purchase of the contested property. The woman must demonstrate that she contributed money to the purchase of the property in order to be eligible for a portion of the property that is registered in her husband's name.

4.5.1 The decision in Ayiko Mawa Solomon v Lekuru Annet Ayiko (Divorce Cause No. 0001 of 2015)

In **Ayiko Mawa Solomon v. Lekuru Ayiko**, these two theories were applied and severely examined. In short, the petitioner and respondent were in a civil marriage, but they sought to dissolve it because of adulterous claims made by both parties. The respondent requested that the property gained during the marriage be divided evenly between them and that they each receive a portion of it. The petitioner was not in agreement with giving any of her portion of the land, she argued that it was his premarital personal property and that his brother or the non-governmental organization where he works owned the remaining portion.

Whether the parties were entitled to any of the reliefs requested upon such dissolution was the fourth question.

⁶⁷ High Court Divorce Cause No. 11 of 2005

⁶⁸ S.C.C.A No.10 of 2009

The court cited **Sections 9 and 10 of the Family Law (Scotland) Act 1985**, which define matrimonial property as "the matrimonial home plus property acquired during the marriage otherwise than by gift or inheritance," as well as the **Charman v. Charman**⁶⁹ case, which defined matrimonial property as "property of the parties generated during the marriage otherwise than by external donation."

Matrimonial property does not, however, include all assets obtained by either spouse throughout the course of the marriage. It cannot be implied that marriage in and of itself leads to any kind of joint or co-ownership of property in the absence of a statutory requirement.

On that proposition, court relied on the finding of Kisaakye JSC in **Julius Rwabinumi v Hope Bahimbisomwe**⁷⁰ where she stated that "so while I agree that **Article 31(1) of the 1995 Constitution of the Republic of Uganda**, ensures that the husband and wife will be treated equally in the event of a divorce, but it does not, in my opinion, authorize that all assets, be it attained separately or jointly, before or during the duration of a marriage, should always be divided or distributed equally in the event of a divorce. **Article 21 (1) of the 1995 Constitution of the Republic of Uganda, as amended** is proof that our Constitution protects both an individual's right to own property alone and their right to possess property in conjunction with others, such as a spouse, children, siblings, or even business partners, even in the context of marriage. "The courts must consider the existing divorce law and the constitution as the facts of each case would dictate in order to determine whether the property is

⁶⁹ [2007] EWCA Civ. 503

⁷⁰ S.C.C.A No.10 of 2009

matrimonial property or not to be a subject of equal division." If the Constituent Assembly had sincerely intended to not provide the right to own separate property by the married people in their individual names, they would have stated so explicitly.

The Court of Appeal decided that marriage does not automatically grant a spouse a half-share of the marital property in the case of **Jackline Ambayo v. Joseph Aserua**⁷¹. Rather, the contribution of each individual which may be monetary or non-monetary, such as childcare or household chores determines their portion. The court stressed that when distributing property, non-monetary contributions must be evaluated and given a monetary value.

The High Court awarded both spouses a 50% stake in jointly owned properties in the **Olinga v. Wadada**⁷² case. To safeguard the children's best interests, the court decided against selling the family property after taking their welfare into account.

The court acknowledged a "constructive marriage" in the case of **Uhiriwe Peace v. Kuuku Kagwa Paul & 2 Others**⁷³ because of the couple's shared family life and long-term cohabitation that was of 35 years in this case. According to this ruling, property obtained during such a relationship may be considered matrimonial property, and its sale would require both parties' consent. The court further emphasized how crucial proof is to supporting property claims.

⁷¹ Civil Appeal No. 100 of 2015

⁷² Divorce Cause No. 88 of 2022

⁷³ Divorce Cause No.118 of 2017

The High Court ruled in **Kolya v. Kolya**⁷⁴ that it was illegal for a spouse to try to leave matrimonial property to an heir other than his wife. The wife's right to the property was maintained by the court, which emphasized that constitutional prohibitions against discrimination cannot be superseded by cultural customs.

The court concluded in **Echaria v. Echaria**⁷⁵ that in cases where the contested property is registered in one spouse's name rather than the joint names of the spouses, then eventually each spouse's beneficial share would depend on their evident respective proportion of financial contribution, either monetary or non-monetary, towards the obtaining of the property. In cases where the contribution is substantial but not ascertainable, it may also be just and equitable to apply the maxim "equality is equity".

"A wife's contribution, and more specifically a Kenyan African wife, will more often than not take the form of back-up service on the domestic front rather than a direct financial contribution," the Kenyan court said in **Nderitu v. Kariuki**⁷⁶. Therefore, it is the trial judge's responsibility to consider this type of contribution when assessing the wife's stake in the assets in question.

The facts established in this case are that the respondent raised chickens at home, ran their restaurant and internet cafe for a long time, and made a significant non-monetary contribution to the property in question in the fourth category without making a monetary contribution, In order to oversee the construction of the future

⁷⁴ Civil Suit No. 150 of 2016

⁷⁵ [2007] 2 EA 235

⁷⁶ [1995-98] EA 235

marital residence, the petitioner relied on the respondent. She contributed directly or indirectly to the property in this category, and as a result, it is susceptible to equitable partition, even though she could not provide precise numbers to help the court assess the indirect financial contribution. It was necessary to ask how much of the respondent's contribution was made, yet this was a challenging question to answer. However, this was addressed by citing the adage "equity is equality."

In **Ayiko Mawa Solomon v. Lekuru Annet Ayiko**⁷⁷, Judge Stephen Mubiru cited the aforementioned case of **Nderitu v. Kariuki** and, taking into account the respondent's monetary and non-monetary contributions, her familiar lifestyle, and the principle that equality is equity, ordered the respondent to take the land at Jiako Village as her fair share, the petitioner was required to pay Ugandan Shs.20,000,000/= in lump sum alimony and half the verified worth of the marital residence located at Jerekede Avenue, Anyafio in Arua.

The reliance on decided cases eventually leads to confusion because some cases award shares in unequal sums. For example, in **Mayambala v. Mayambala**⁷⁸, the court reached a 70% share because the wife had not contributed financially to the matrimonial home. Ugandan courts continue to use this precedent in their decisions, which is a serious violation of **Articles 21 and 31 (1) of the 1995 Constitution of the Republic of Uganda** because it does not reflect the principles of equality and the courts do not also demonstrate the criteria they used in this award of unequal shares.

⁷⁷ Divorce Cause No.0001 of 2015

⁷⁸ High Court Divorce Cause No. 03 of 1998

However, the most important topic is whether or not matrimonial property should be shared equally. Both the **Gissing v. Gissing**⁷⁹ ruling and the recent Supreme Court ruling in **Julius Rwabinumi v. Hope Bahimbisomwe**⁸⁰ suggest that an equal division is not always the case; rather, the courts should be guided by the particular facts of each case to reach such a decision because, as Lord Denning stated in the former, if both parties contribute through their joint efforts, the prima facie inference is that it belongs to them both equally at any rate.

Therefore, even though the law on the division of matrimonial property appears to be well settled in the **Julius Rwabinumi v. Hope Bahimbisomwe** Supreme Court case, it should be noted that the court still cited the **Kagga v. Kagga, Chapman v. Chapman, and Muthembwa v. Muthembwa** cases that had already been decided. However, the court did not reach a final decision on how to quantify the indirect contribution to arrive at a final percentage in the share of matrimonial property, nor was the fate of matrimonial property in polygamous marriages settled. Therefore, the current issue is the division criteria based on the indirect contribution because it is surrounded by a lot of ambiguity.

4.6 Conclusion

As a result, it is clear that whenever such case law decisions are relied upon, there is a chance that injustices will arise because of the imbalances that inevitably arise from the interpretation of the various courts. For example, in a situation where no figures are attributed to the substantial non-monetary contributions, this has been

⁷⁹ [1970] UKHL 3

⁸⁰ Civil Appeal No.10 of 2009

resolved by other regional countries, like Kenya, by establishing an Act to make the issue at hand covered.

Parliament in Uganda should address this by passing laws that address Ugandan facts and circumstances and grant spouses proprietary rights that are separate from, because of the imbalances that necessarily come from the different courts' interpretations.

It is evident that whenever such case law decisions are relied upon, there is a probability that injustices would occur. For instance, other regional nations, such as Kenya, have addressed the issue at hand by enacting legislation to address it when no numbers are assigned to the significant non-monetary contributions.

In order to solve this, Uganda's parliament should enact legislation that takes into account Ugandan realities and circumstances and gives spouses proprietary rights distinct from where the wife was given a 50% interest in the marital residence, in **Sempiga v. Sempiga Musajjawaza**⁸¹, where the court granted her a 50% interest in the farmland, and in **Julius Rwabinumi v. Hope Bahimbisomwe**⁸², where the Supreme Court upheld an equal share in the Kasangati home made by the court of appeal. However, these cases are completely tainted by the judges' excessive discretionary powers, which require that decisions be made on a case-by-case basis as the judges see fit, which is a greater evil. No specific standards or methodology are used to reach the decision, only the facts of each case.

⁸¹ High Court Divorce Cause No. 007 of 2005

⁸² S.C.C.A No. 10 of 2009

Due to lack of a standard legal framework majorly based on matrimonial property in Uganda and its up to date social characteristics, the issues in relation to equal division of matrimonial property and the quantum of the contributions made during the marriage especially the non-monetary contributions have led to inconsistencies, disparities and confusions in the current legal frameworks that govern distribution of matrimonial property during divorce. This has resulted to challenges faced by the courts of law in regards to matters that deal with dividing or distributing matrimonial property at the dissolution of the marriage in an appropriate manner.

This analysis makes it evident that, despite efforts by the rest of East Africa to conceal the issue of matrimonial property division by passing specific laws to govern it, they are undoubtedly still using the outdated systems of marital property division regimes, such as the title theory, from which the rest of the international common law world is moving away. Uganda has fallen far behind its peers, though, as it continues to rely solely on common law precedents without enacting specific written laws to govern the matter.

The several rules that govern the division of matrimonial property in Uganda are likely to lead to injustices and inconsistencies, which would minimize the country's legal system that oversees the division of matrimonial property after a divorce.

CHAPTER FIVE: SUMMARY OF FINDINGS

5.0 BARRIERS AND OBSTACLES OF NOT HAVING A LEGAL FRAMEWORK ON MATRIMONIAL PROPERTY IN UGANDA AND THE NECESSARY REFORMS REQUIRED

5.1 INTRODUCTION

The legal framework, as critically examined in the preceding chapter, includes the 1995 Constitution, the Divorce Act Cap 249, the Land Act Cap.227, the Mortgage Act No.08 of 2009, the Judicature Act Cap 13, the Marriage Bill of Uganda, 2024 and associated case law. These texts aim to define and protect matrimonial property rights in Uganda; however, they do not adequately address property distribution issues involving non-monetary contributions. As a result, divorced individuals encounter problems of inequity when matrimonial property is divided. This situation arises from a lack of coherent guidance on division, with necessary remedies scattered across various case law. Consequently, this leads to uncertainties and inequitable distributions that result in inconsistencies in judicial decisions within this area of law.

However, despite all these loopholes, the 2024 Marriage Bill has made advancements concerning matrimonial property, including the legal reforms and protections it offers to spouses.

This chapter thus concentrates on these findings and the formulation of recommendations aimed at addressing the shortcomings of the law governing the division of matrimonial property in Uganda.

5.2 SUMMARY OF FINDINGS

The aim of this study was to explore the challenges, legal gaps, and missed opportunities surrounding matrimonial property, with the intention of aiding in the establishment of a clearer and fairer legal framework for the distribution of matrimonial property within marriages. This research study aimed primarily to review Uganda's legal framework on matrimonial property. Its specific objectives are to identify the relevant institutions and assess their adequacy in addressing issues related to the sharing of matrimonial property upon divorce, to investigate challenges faced in this area in Uganda, to examine the advancements introduced in the 2024 Marriage Bill concerning matrimonial property including the legal reforms and protections it offers to spouses, and to provide recommendations.

The Supreme law of Uganda, **the 1995 Constitution (as amended)**, establishes fundamental rights that have an indirect impact on matrimonial property. The right to marry and establish a family is acknowledged by **Article 31**, which also advocates for equal rights in marriage as well as during its dissolution. Laws and customs that discriminate against women, including in property matters, are prohibited by **Article 33(6)**.

There are various forms of marriage recognized in Uganda, including civil, customary, Islamic, and Hindu marriages. Civil marriages are regulated by the Marriage Act (Cap. 251), customary unions by the Customary Marriages (Registration) Act, and Islamic marriages by the Marriage and Divorce of Mohammedans Act. However, the absence of

uniform marriage types results in inconsistencies regarding the treatment of matrimonial property, particularly upon dissolution.

Nonetheless, different regulations like the Divorce Act (Cap. 249) and the Children Act overlap with matrimonial property rights. The Divorce Act, amended by the Judicature (Amendment) Act 2002, provides provisions for courts to consider in divorce settlements, including maintenance and custody; however, it lacks clear guidelines for property division. The Land Act (Cap.227) includes a provision for spousal consent in transactions involving family land, aimed at protecting non-titled spouses, particularly women, from dispossession. Nevertheless, the enforcement has not been robust, and awareness is still lacking.

In the case of **Ayiko Mawa Solomon v Lekuru Annet Ayiko**⁸³, Judge Stephen Mubiru determined that Uganda's situation is analogous to that of England prior to the enactment of the Matrimonial Causes Act 1970 and 1971, as the court retained authority to decide on property transfers. In that court's usual practice, a wife who had contributed to the property in only non-financial ways was not awarded a remedy. Even after such contributions were acknowledged in Uganda, discrepancies in percentage are inevitable due to the difficulty of determining which figures should be linked to these contributions, as they can vary based on different court interpretations

He discovered that injustices in property rights between spouses are issues of policy beyond judicial interpretation and can only be rectified by parliament through laws addressing Uganda's specific conditions and circumstances, granting spouses

⁸³ Divorce Cause No.0001 of 2015

proprietary rights distinct from registered title rights, similar to the legislative actions in England with the Matrimonial Homes Act of 1967, later replaced by the Matrimonial Proceedings and Property Act of 1970 and the Matrimonial Causes Act of 1973. Without legislation, courts of law are unable to rectify the imbalance that may exist in property rights between husband and wife until that time.

This shows that case law reveals the inconsistencies due to lack of a specific statutory guideline, leaving much discretion to judges, leading to variable outcomes.

The Divorce Act in Uganda was meant to address the imbalance in divorce settlements, but it is outdated and still contains patriarchal provisions that place women at a disadvantage. When the Act was enacted, it was assumed that women had no rights to marital property, leading to exclusions in division considerations. Although some cases have deemed certain provisions null and void, the entire Act should be repealed and replaced with new legislation on spouses' proprietary rights.

The researcher concludes that **the 1995 Constitution of the Republic of Uganda, as amended** has not done enough to ensure an equitable and fair division of matrimonial property among spouses. This is because the existing laws, specifically **Articles 20, 21, 26, and 31(1)**⁸⁴, only guarantee matrimonial property rights. The Divorce Act, Cap 249 is supposed to address the issue of quantum but fails to do so as it does not mention it, creating a gap. The associated case law also does not extensively address the circumstances under which quantum should be based on indirect contributions.

⁸⁴ The 1995 Constitution of the Republic of Uganda, as amended

Uganda's Court of Appeal has also issued a landmark ruling that could significantly influence how marital property is divided in divorce cases. Departing from what some perceived as an emerging norm of awarding wives a 50% share of matrimonial assets, the court emphasized that equality does not equate to automatic equity. The judges ruled that a claim to half of the property must be substantiated with concrete evidence of contribution. In the particular case of **Ambayo Joseph Waigo v Aserua Jackline**⁸⁵, they found that the facts did not justify an equal division, awarding the wife only 20% of the property. This decision signals a shift toward a more evidence-based approach in determining the distribution of marital assets⁸⁶.

In relation to this, the researcher contends that the legislature should come with a clear legal framework that provides standard guidelines on the quantum measures of non-monetary contributions rather than generalizing it to each spouse taking half of the shares so as to encourage an equitable and just division of matrimonial property upon divorce.

The Marriage Bill of 2024 in Uganda proposes significant changes to how matrimonial property is divided, with the goal of fostering fairness and equality among spouses. It ensures that both partners have equal rights and access to property acquired during the marriage, regardless of whether their contributions were financial or non-financial. Furthermore, the bill clarifies how spousal gifts are treated by establishing that any gift given during the marriage is solely owned by the recipient under **Clause**

⁸⁵ Civil Appeal No.0100 of 2015

⁸⁶ <https://www.africanlii.org/articles/2022-11-25/carmel-rickard/ugandas-appeal-court-in-new-approach-to-division-of-marital-property-on-divorce> (posted on 25th November,2022)

87. These provisions constitute a forward-looking measure aimed at guaranteeing fairness and diminishing conflict in issues related to marital property.

5.3 Challenges of not having a legal framework on matrimonial property in Uganda.

Due to the lack of a comprehensive legal framework governing matrimonial property in Uganda, several problems arise. These include potential disputes regarding property division during divorce, challenges in assessing each spouse's contributions, and unequal treatment of women in marriage and divorce contexts.

5.3.1 Difficulty in Defining Matrimonial Property

The absence of an explicit definition for matrimonial property in Uganda's existing legal framework creates ambiguity regarding the classification of property acquired before, during, or after marriage. This uncertainty often results in disputes. This obscurity complicates the courts' task of deciding how assets should be distributed.

5.3.2 Discretionary power of court.

Judge Stephen Mubiru's findings in the case of **Ayiko Mawa Solomon v. Lekuru Annet Ayiko**⁸⁷ case demonstrate that judges have been granted excessive discretion regarding the quantum of percentage awards to parties in matrimonial property distribution upon marriage dissolution, as case law suggests that such distributions are not always equal but should take into account the specifics of each individual case.

⁸⁷ Divorce Cause No. 0001 of 2015

Ultimately, this has resulted in numerous uncertainties and inconsistencies within the legal framework surrounding the highly controversial matter of sacred sanctity in “marriage,” as it reduces court rulings on the subject to mere probabilities. Consequently, in the majority of instances, these judges are obliged to arrive at decisions fraught with uncertainty that will probably result in injustices. Judges should not be the only ones responsible for this decision, as it involves policy making that requires legislative action from Parliament rather than judicial interpretation.

5.3.2 A limited legal regime governing matrimonial property in Uganda.

The current legal framework governing the division of matrimonial property, as reflected in case law, is limited to monogamous marriages due to its origins in Christian-based marriages from England and its focus on English-related cases. As a result, it does not address the circumstances of polygamous marriages, leaving courts uncertain about which law applies to such unions, including Islamic marriages.

5.3.3 Potential for Disputes and Litigation.

The lack of clear legal rules can lead to disputes between spouses regarding the ownership and division of property, especially when emotions are heightened during divorce. These disputes can result in lengthy and costly legal battles, further straining the already difficult situation of a dissolving marriage.

5.3.5 Challenges for women

Women can be disproportionately affected by the lack of a strong legal framework, as they may depend more on their husbands for financial support. In such circumstances, asserting their rights to a fair division of matrimonial property and safeguarding their economic interests during and after divorce becomes challenging. In some communities, cultural practices and expectations can exacerbate the difficulties women encounter in obtaining their portion of matrimonial property.

5.3.6 Institutional Barriers to accessing matrimonial property.

Besides the unfair and unjust cultural practices, the majority of women encounter numerous obstacles when trying to access justice through the courts for claiming matrimonial property upon divorce. Women are also hindered from claiming their rights by major obstacles, including limited knowledge of their entitlements, insufficient access to relevant information, the costs associated with legal proceedings that are usually high, and long distances to courts especially for those settled in the deep rural areas. In addition, women encounter delays stemming from uncertainties or overlaps regarding the court with jurisdiction over matrimonial property cases. They also face challenges related to the transfer of information throughout the justice system such as moving case files from the magistrate's court to the High Court as well as difficulties in gathering necessary evidence.

Insufficient human resource capacity in alternative dispute resolution mechanisms, like court-mandated mediation, along with other challenges, further hinders women's ability to access justice in divorce cases⁸⁸.

5.4 CONCLUSIONS

The aim of this study was to investigate the review of Uganda's legal framework regarding matrimonial property. In Uganda, the legal framework for dividing matrimonial property upon marriage dissolution is outdated, insufficient, and unreliable. It exists only in scattered case law precedents, with the exception of the protected interests in matrimonial property outlined in the provisions of the amended 1995 Constitution of the Republic of Uganda.

This situation has tasked courts with determining the contributions to be awarded to each party in a divorce, which is challenging when it comes to quantifying shares related to non-monetary contributions to marital property. This difficulty leads to inconsistencies and uncertainties in the decisions made by these courts as they attempt to address marital property contributions.

However, besides all these inconsistencies, the Marriage Bill, 2024 fosters fairness and equality among spouses and it also ensures that both partners have equal rights and access to property acquired during the marriage, regardless of whether their contributions were financial or non-financial thus diminishing issues in relation to the division of matrimonial property upon the dissolution of a marriage.

⁸⁸ <https://www.hrw.org/report/2020/06/25/once-you-get-out-you-lose-everything/women-and-matrimonial-property-rights-kenya>

5.5 RECOMMENDATIONS

The researcher proposes the following recommendations to help close this gap. In regards to the loopholes in the legal framework that regulate the division of matrimonial assets when marriages are dissolved.

5.5.1 Promoting the use of prenuptial agreements before marriage.

Prenuptial agreements ought to be established as a condition that must be fulfilled before the marriage contract; a prenuptial agreement serves as a contract or arrangement among individuals entering marriage, specifying each party's property entitlements. This agreement can establish entitlements in the matrimonial property, allowing the parties to sit down and divide these entitlements before contracting the marriage. This process resolves all disputes related to the division of matrimonial property and ensures uniformity in marital property division, eliminating the need for third parties like courts and mediators. It also reduces reliance on scattered laws that could lead to inconsistencies and uncertainties.

5.5.1 Enforcement of a standard legal framework on matrimonial property in Uganda.

The Parliament and other stakeholders, exercising their mandate as outlined in **Article 79 (1) and (2)**⁸⁹, should establish a specific set of laws to comprehensively

⁸⁹ The Constitution of the Republic of Uganda 1995, as amended which stipulates verbatim that subject to the provisions of the Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda and Article 7 of The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa which stipulates that states parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage

address the criteria for dividing matrimonial property, particularly in cases involving only non-monetary contributions from either party. This is exemplified by regional states like Kenya and Rwanda⁹⁰ that have enacted the Matrimonial Properties Act, thereby diminishing the inequalities, inconsistencies, and uncertainties arising from the various case laws referenced by Ugandan courts in matrimonial property divisions.

5.5.2 Revision and Reformation of the Divorce Act

As another option, the Divorce Act should be revised or amended; this should be implemented to incorporate matrimonial property sharing and modes of quantification as divorce remedies, including criteria for property division aligned with equitable distribution principles in all situations, whether direct or indirect, to address fairness in division; additionally, the division in polygamous marriages should also be taken into account, but all of this should reflect Uganda's prevailing social values.

5.5.3 Consolidation of the matrimonial legal regime in the various scattered statutes and case law.

The current legal framework governing matrimonial property in Uganda is fragmented across various statutes and judicial decisions. This disjointed system should be reviewed, streamlined, and unified into a comprehensive legal framework to ensure consistent resolution of disputes. According to Rodgers⁹¹, the equitable starting point in dividing matrimonial property should be a 50:50 split between spouses.

⁹⁰ Francis Emoru (2nd May 2016), Parliament asked to enact Matrimonial Property Law, New vision, Kampala, Uganda accessible via (<https://www.newvision.co.ug/news>), the author encouraged Uganda to learn from its counterparts Kenya, Tanzania, and Rwanda in implementing this law, while taking into account Uganda's social values.

⁹¹ ME. Rogers. (2004), Understanding Family Law, Cavendish Publishing Ltd, Wharton Street, London

Adjustments to this baseline can then be made based on specific considerations such as educational background, potential for employment, and the conduct of the parties. The role of case law should be limited to determining the significance of these factors rather than overriding statutory provisions⁹². Consolidating these laws would eliminate contradictions between scattered legal sources and the Constitution, ultimately leading to a coherent and uniform approach to the division of matrimonial property upon the dissolution of marriage in Uganda.

5.5.4 Promotion of postnuptial agreements among spouses after divorce.

In divorce proceedings, where circumstances still permit, the disputing parties should be given the opportunity to negotiate and reach a mutual agreement on the division of their matrimonial property following the issuance of a decree absolute by the court formally ending the marriage. Such agreements, referred to as “**postnuptial agreements**,”⁹³ are appropriate because the spouses themselves are most familiar with their respective contributions and can fairly determine what each party rightfully deserves. These negotiations should take place without the involvement of third parties, but under the supervision of the court to ensure fairness and to prevent any form of coercion or undue influence. Facilitating such agreements would help limit the broad discretionary powers currently exercised by courts in property division⁹⁴, as the court’s role would be reduced to simply validating and enforcing the mutually agreed terms. This approach aligns with the principle of equitable

⁹² ME. Rogers, (2004), *Understanding Family Law*, Cavendish Publishing Ltd, Wharton Street, London Pg.68

distribution, recognizing that if the parties are capable of amicably settling the matter, they should be encouraged to do so.

5.5.5 Sensitization of the public on matrimonial property.

Key stakeholders such as Churches, Mosques, Parliament, and Local Councils should be supported by the Government to implement widespread public education campaigns aimed at raising awareness about matrimonial property rights. These initiatives should be delivered through various platforms, including radio broadcasts, television programs, and community sensitization efforts, with a particular focus on rural areas where levels of awareness are often lowest. The objective of these efforts is to inform and empower individuals especially those who are currently unaware so they can understand and assert their rights regarding matrimonial property. Ultimately, such educational programs will help eliminate widespread ignorance on the issue and promote greater protection of marital property rights across the country.

5.5.6 Incorporation of laws of other countries concerning division of matrimonial property into the Marriage Bill, 2024 of Uganda.

The Marriage Bill, 2024 of Uganda would benefit from incorporating insights and best practices drawn from the legal frameworks of other countries. For instance, Ghana

⁹³ In accordance with Section 2(1) of the South African Matrimonial Property Act of 1988, parties are permitted to alter their matrimonial property system post-marriage if they provide compelling reasons and the court determines that no party will suffer prejudice. In such cases, the court can grant

⁹⁴ Harriet Spiller Dagget, (1939), Division Of Property Upon Dissolution of Marriage, 6 Law and Contemporary Problems, Spring, Page 229 also accessible on (<https://scholarship.law.duke.edu/lcp/vol/iss2/5>), she believes that granting courts discretionary powers in such a situation is a way to limit an unnecessary evil, as placing the entire burden on the court's discretion opens wider doors to instability than ever before.

offers a valuable example by employing a comprehensive set of factors to ensure fair and equitable distribution of matrimonial property upon divorce. These include the type of marriage, the nature and extent of contributions both direct and indirect made by each spouse during the marriage, the future needs of the parties (such as childcare and retirement), and the duration of the marriage.

By adopting similar considerations, Uganda's Marriage Bill can address existing gaps and promote greater fairness in the division of marital assets. Additionally, establishing standardized guidelines for assessing the value of non-monetary contributions rather than defaulting to a simplistic 50/50 split would lead to more just and equitable outcomes and so would incorporating specific provisions outlining property rights and division mechanisms in polygamous marriages to provide clarity and protect the rights of all parties involved. Such reforms would not only reduce ambiguity and disputes during divorce proceedings but also ensure that all forms of contribution, especially those traditionally undervalued, are given due recognition.

By effectively addressing these shortcomings and incorporating the proposed reforms, Uganda's Marriage Bill of 2024 can pave the way for a more robust, inclusive, and just legal framework governing the division of matrimonial property. This would ensure that all forms of spousal contributions are fairly recognized and that property distribution upon divorce is handled with greater consistency and equity.

BIBLIOGRAPHY

STATUTES

International and Regional Instruments

African Charter on Human and Peoples' Rights Entered into force on 21st October, 1986.

Article 40 of the Convention on the Elimination of All Forms of Discrimination Against Women G.A. Res. 34/180, 34 UN GOAR, Supp. (No.46), UN Doc. A/34/46, at 193(1979), entered into force on 3rd September, 1981.

Domestic Statutes

Uganda

1. The Constitution of the Republic of Uganda, 1995 as amended
2. Customary Marriage (Registration) Act Chapter 248
3. Land Act Chapter 227 (As Amended)
4. Marriage Bill of 2024
5. Mortgages Act No.8 of 2009
6. The Judicature Act Cap 13
7. The Divorce Act Chapter 249.

Kenya

1. Matrimonial Property Act No. 49 of 2013, Laws of Kenya.

Ghana

1. Matrimonial Causes Act, 1971 (Act 367)
2. The Constitution of Ghana, 1992

Tanzania

1. The Law of Marriage Act Cap. 29, R.E 2019. Laws of Tanzania

UNITED STATES LEGISLATION

1. The Married Women's Property Act, 1893
2. Matrimonial Property Act of 1967
3. The Uniform Marital Property Act (UMPA), 1983

UNITED KINGDOM LEGISLATION

1. Married Women's Property Acts of 1870 and 1882
3. The Law of Property Act, 1925

CASE LAW

1. Moonlight Ssengooba v Attorney General (1974) HCCS No.894 of 1973

2. Julius Rwabinumi V Hope Bahimbisomwe (Civil Appeal No.10 of 2009) at page 23
3. Lailai Ghinamouze V The Queen (1956) 23 EACA 609
4. Muwanga Kintu V Myellious Kintu High Court Divorce Appeal No.135 of 1997
5. Kagga V Kagga High Court Divorce Cause No.11 of 2005
6. Chapman V Chapman (1969) ALL ER 476
7. Kivuitu V Kivuitu (1990–94) EA 20, (1991)2 KLR 241
8. Ayiko Mawa Solomon V Lekuru Annet Ayiko Divorce Cause No.0001 of 2015
9. Echaria V Echaria [2007] KLR
10. Enid Tumwebaze V Mpeirwe Stephen & Anor UGHC No.12 of 2013
11. Florah Rwamarungu V DFCU Leasing Co. Ltd High Court Divorce Cause No.03 of 1998
12. Gissing V Gissing [1970] 2 EA 7896
13. Law Advocacy for Women Uganda v Attorney General Constitutional Petitions No.13 of 2005 and No.05 of 2006
14. Muthembwa v Muthembwa [2002]1 EA 186
15. Alice Okiror & Another v Global Capital Savings 2004 & Another UGCOMMC No.62 of 2012
16. Petitt v Petitt [1969]2 AER386

17. Wamono Shem v Equity Bank Uganda Ltd & Another UGCOMMC No.98 of 2013
- 18.. Mayambala v Mayambala HCDC No.3/98
19. Case v Ruguru [1970] 1 EA 55
20. Jackline Ambayo v Joseph Aserua Civil Appeal No.100 of 2015
21. Olinga v. Wadada (Divorce Cause 88 of 2022)
22. Uhiriwe Peace v. Kuuku Kagwa Paul & 2 Others (Divorce Cause No. 118 of 2017)
23. Kolya v. Kolya (Civil Suit No. 150 of 2016)
24. Nderitu v Kariuki [1995-98] EA 235
25. Patrick Namenkere v Florence Mwanja Court of Appeal Civil Appeal No. 37 of 2004
26. JOO v MBO (Miscellaneous Application E237 of 2023) [2024] KEHC 8014 (KLR) (Family) (14 June 2024)

TEXTBOOKS

1. Prof. Sylvia Tamale's comment on the "The politics of Putting Asunder", The Family Law and Divorce in Uganda, page 188.
2. Maria Nassali, "The politics of Putting Asunder: Divorce, Law and the Family in Uganda," Fountain Publishers, page 188.

3. Okumu Wengi, Weeding the Millet Field: Women's Grassroots Justice in Uganda, page 47.
4. Carolyn J. Frantz and Hanouch Dagan, "Properties of Marriage", 104 Column L. Rev 7E (2004), page 97.
5. Dr. Ben Kiromba Twinomugisha, African Customary Law and Women's Human Rights in Uganda, 2008, page 481.
6. Nigel Lowe and G Douglas, Bromley's Family Law, 10th Edition, Oxford University Press, 2007 pg 164-170
7. ME Rodgers, (2004), Understanding Family Law, Cavendish Publishing Ltd, Wharton Street, London Pg. 68

JOURNALS & ONLINE PORTALS

1. Emilian Kayima, "What is spousal consent in family property transactions?" Available at: New Vision (accessed on 20th December, 2024).
2. Francis Emorut, New Vision, 'Parliament asked to enact matrimonial property law.' Available at: New Vision (accessed on 28th December, 2024).
3. Yasin Mugerwa, "*Dilemma Sets in a Marriage Bill Returns.*" Available at;<http://www.monitor.co.ug/Magazines/PeoplePower/Dilemma-sets-in-as-Marriage-Bill-returns/-/689844/2631426/-/item/1/-/rpvqlx/-/index.html> (accessed on the 19th, December, 2024)

4. Anthony Luyikira Kafumbe, Women's Rights to property in Marriage, Divorce, and Widowhood in Uganda: The Problematic Aspects, Human Rights Review, 11th June 2009, Kampala page 6
5. Deborah H.Bell, "Equitable Distribution: Implementing the Marital Partnership theory Through the Dual Classification System," 67 Miss.Law Journal (1997) p.115.
6. Marshall Zola and Deborah Elizabeth Zolla, Marital Duty, London: Pitman Publishing (2006). Available at <http://www.zollalaw.com/pdf/maritalduty.pdf> (last accessed on 20th December1,2024).
7. [https://www.upf.go.ug/download/publications\(2\)/Annual_Crime_Report_2011](https://www.upf.go.ug/download/publications(2)/Annual_Crime_Report_2011).
8. <http://www.channelafrica.co.za/sabc/home/channelafrica/news>
9. African [Banjul] Charter on Human and People's Rights, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), art. 18, entered into force Oct. 21, 1986, ratified by Uganda May 10, 1986), available at http://www.achpr.org/english/_info/charter_en.html
10. David H. Bromfield, Women and the Law of Property in Early America, 85 MICH. L. REV. 1109 (1987) Available at: <https://repository.law.umich.edu/mir/vol85/iss5/23>
11. [https://www.hrw.org/report/2020/06/25/once-you-get-out-you-lose-everything/women-and](https://www.hrw.org/report/2020/06/25/once-you-get-out-you-lose-everything/women-and-matrimonial-property-rights-kenya) matrimonial-property-rights-kenya

13. Harriet Spiller Dagget, (1939), Division of Property Upon Dissolution of Marriage, 6 Law and Contemporary Problems, Spring, Page 229 also accessible on (<https://scholarship.law.duke.edu/lcp/vol16/iss2/5>)
14. Angulia Busiku & Co advocates, “Simple guide to Divorce and Distribution of Matrimonial Property in Uganda” <<https://www.lawyers-uganda.com/simple-guide-to-divorce-and-distribution-of-matrimonial-property-in-uganda/>>. (February 2024)
15. <https://mondaq.com/divorce/divorce/1605540/understanding-marriage-property-settlement-in-ghana-a-guide-for-uk-expats> (posted on 3rd April, 2025)
16. <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/propertychildren>
17. <https://www.parliament.go.ug/news/3350/new-marriage-bill-provides-property-rights-child-protection> (Posted on Friday, 4th October, 2024)
18. <(2023)<https://new.kenyalaw.org/akn/ke/judgment/kes/2023/4/eng@2023-01-27>>
19. <https://www.mmsadvocates.co.ke/matrimonial-property-division-kenya-how-courts-determine-contributions-and-ownership-rights> (posted on 3rd December, 2024)
20. <https://www.africanlii.org/articles/2022-11-25/carmel-rickard/ugandas-appeal-court-in-new-approach-to-division-of-marital-property-on-divorce> (posted on 25th November, 2022)