

**A CRITICAL ANALYSIS OF THE EFFECTIVENESS OF THE SUCCESSION  
AMENDMENT ACT 2022**

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**UGANDA CHRISTIAN  
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## DECLARATION

I, ABALIWANO DAVINA GRACE, declare that this dissertation is my original work, and has not been submitted to any other institution for academic purposes. I confirm that I have followed the guidelines and requirements of the University, and this work is plagiarism-free as I understand any form of plagiarism will lead to severe academic penalties. I take full responsibility for the content and ideas presented here in except where they are gotten from the highlighted authorities. This Dissertation is submitted in partial fulfillment of the requirements for the Bachelor of Laws course. I have also acknowledged all sources used in this work.

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## APPROVAL

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## DEDICATION

I dedicate this dissertation to the Almighty God, for His guidance and wisdom during the research. To my parents, for their unwavering support and love. To all women particularly those who face challenges of not benefitting property from Succession due to the various circumstances. And specifically, those women who have been promised marriage and are trapped in cohabitation with their partners. May this work shed light on the importance of equality, justice and fairness in succession laws and may it contribute to creating a more inclusive and compassionate Society.

## ACKNOWLEDGEMENT

I would like to extend my heartfelt gratitude to the Almighty God for protecting me throughout my journeys to UCU-Mukono and back home, for providing finances to my parents to sponsor my journeys, giving me the zeal and inspiration to take on this dissertation. My parents, Dr. Mark Abaliwano and Dr. Victoria Walusansa for providing for me the financial support, love and care and prayers. Their guidance and encouragement have been invaluable throughout my dissertation journey.

My Supervisor, Mrs. Taboswa Chemonges Sarah who always spared time to look through my chapters physically and encouraging me to read and research better in addition, she has been the inspiration behind my choice of topic for this dissertation, specifically regarding succession, as she inspired me in the family law lectures.

My friends who supported me; firstly, Brother Stephanas Leslie Dogo who provided guidance and even set up for me Microsoft word 2024 and Mendeley to get me started on the dissertation and in addition, offered intellectual advice concerning my dissertation. Not to forget Alice Nakuya and Arthur Olemukan who gave me moral support as I carried out this research.

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Last but not least, the hard-working women of Uganda succeeding in male dominated fields, their resilience and determination and dedication to work, families and communities is a true inspiration.

Thank you all for your contributions to my academic journey.

## LIST OF AUTHORITIES

1. The Constitution of the Republic of Uganda (as amended)
2. The Succession Amendment Act 2022
3. The Succession Act Cap 268
4. The Administrator General Act Cap 264
5. The Administrator General Act Cap 157
6. The Judicature Act Cap 6
7. The Electronic Signatures Act Cap 98
8. Succession (Amendment) Decree, 1972

## LIST OF ABBREVIATIONS

1. AG- ATTORNEY GENERAL
2. CAP- CHAPTER (AS IN LEGAL TEXTS)
3. NBS- NATIONAL BROADCASTING SERVICES
4. UCU- UGANDA CHRISTIAN UNIVERSITY
5. CLE- CLINICAL LEGAL EDUCATION
6. ACHPR- AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS
7. CEDAW- CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION  
AGAINST WOMEN
8. UDHR- UNIVERSAL DECLARATION OF HUMAN RIGHTS

## ABSTRACT

The Succession Amendment Act 2022 marks a transformative milestone in Uganda's legal landscape aiming to rectify historical injustices with in inheritance laws. Embodying the principles of equity and justice the Act seeks to facilitate a smoother transfer of property rights and obligations among heirs, thereby promoting inclusivity and fairness in estate management. This thesis seeks to critically examine the effectiveness and practical application of the Succession Amendment Act 2022, by investigating the multifaceted challenges that impede its success including public awareness, cultural resistance and administrative inefficiencies. Through a comprehensive approach using both qualitative and quantitative approach to identify challenges of different stakeholders

The findings highlight persistent issues such as delays in estate administration, which exacerbate the distress of grieving families and impede equitable property distribution. in addition the research identifies a need for legislative revisions to enhance clarity regarding property definitions and inheritance rights particularly for cohabiting partners whose rights are not legally recognized. The dissertation offers evidence based on recommendations aimed at promoting public awareness, improving administrative processes and fostering greater alignment between statutory laws and cultural practices

In conclusion, the findings underscore the necessity of an adaptive legal framework that not only respects Uganda's rich cultural heritage but also embraces modern family dynamics. By bridging the gap between the law and societal values the Succession Amendment Act 2022 can fulfil its intended purpose.

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## CHAPTER ONE

### INTRODUCTION

#### 1.0 INTRODUCTION

The concept of succession is deeply rooted in Biblical teachings as evident in Psalm 37:29 which emphasizes the importance of leaving an inheritance for future generations. In Uganda succession laws play a vital role in ensuring the smooth transfer of property, rights from one generation to the next. The country's succession laws have undergone significant amendments with most being 2024.

Despite these regulations challenges persist in the practical application and stipulation of these laws. Concerns surrounding the potential for unequal treatment, abuse of power, limited accountability and inadequate time. This study critically examines the effectiveness of the Succession Amendment Act 2022.

#### 1.2 BACKGROUND

Succession existed in the different parts of the world without having a definitive name of **succession**. The origins of succession laws date back to ancient civilizations with various cultures and societies developing their own unique customs and ways of passing down property, wealth and power. However, grounding the origin of the succession to the English as they were Uganda's colonizers which is our focus in this research.

##### 1.2.1 HISTORICAL BACKGROUND- ENGLAND

The origins of succession of property in England, meaning how ownership of land was passed down, can be traced back to the **Norman Conquest** in 1066<sup>1</sup>. However, prominent

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<sup>1</sup> Sir Fredrick Pollok and Frederic William Maitland in Their Book "The History of English Law" - Ronda Google' [https://www.google.com/search?q=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&oq=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&gs\\_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRRg70gEIMjA4OGowajeoAgCwAgA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&oq=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&gs_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRRg70gEIMjA4OGowajeoAgCwAgA&sourceid=chrome&ie=UTF-8) accessed 9 March 2025.

legal historians Sir Fredrick Pollok and Frederic William Maitland in their Book “The History of English Law” explain immediately following the conquest land was primarily held by the King and powerful nobles. During this period, the transfer of property was governed by customary law, which was relied on established traditions and practices rather than written statutes.

But this was well established in 1066 where the Norman Conquest had occurred and introduced feudalism to England which significantly influenced succession laws. Where the King granted land to the Nobels and Vassals in exchange for loyalty and Military Service. From this those Nobels would pass down their property, wealth to their eldest son which became known as **Primogeniture**<sup>2</sup>.

During the Medieval Period, roughly from the 12<sup>th</sup> to 15<sup>th</sup> century, the English Common law began to take shape<sup>3</sup>. This era saw the emergence of the concept of “fee simple”, which represented abosulte ownership of land that could be formally transferred across generations. With the enactment and passing of the Statute of Westminster in 1275, which legally introduced the Concept of “Inheritance” and formally established the rules of succession of property for example primogeniture, Inheritance of women with the absence of Male heirs as per its Chapter two and excluded illegitimate children<sup>4</sup>.

But during the Tudor period Monarchs introduced significant changes in the 16<sup>th</sup> century in succession laws by enacting the Wills Act 1540 which allowed individuals to make wills<sup>5</sup>. A will as per the Wills Act was defined to mean a written document, signed and sealed

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<sup>2</sup> ‘Sir Fredrick Pollok and Frederic William Maitland in Their Book “The History of English Law” - Ronda Google’ <[https://www.google.com/search?q=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&oq=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&gs\\_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRRg70gEIMjA4OGowajeoAgCwAgA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&oq=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&gs_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRRg70gEIMjA4OGowajeoAgCwAgA&sourceid=chrome&ie=UTF-8)> accessed 9 March 2025.

<sup>3</sup> Sir Fredrick Pollok and Frederic William Maitland in Their Book “The History of English Law” - Ronda Google’ [https://www.google.com/search?q=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&oq=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&gs\\_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRRg70gEIMjA4OGowajeoAgCwAgA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&oq=Sir+Fredrick+Pollok+and+Frederic+William+Maitland+in+their+Book+%E2%80%9CThe+History+of+English+Law%E2%80%9D&gs_lcrp=EgZjaHJvbWUqBggAEEUYOzIGCAAQRRg70gEIMjA4OGowajeoAgCwAgA&sourceid=chrome&ie=UTF-8) accessed 9 March 2025.

<sup>4</sup> ‘Succession (Chapter 15) - Conflict of Laws’ <https://www.cambridge.org/core/books/abs/conflict-of-laws/succession/87D87D880856AF13E39E1309339787C4> accessed 8 March 2025.

<sup>5</sup> *ibid.*

by the testator who is the person making the will, disposing property after death<sup>6</sup>. The statute of use 1536 which introduced the Concept of “trusts” where property is held for the benefit of another<sup>7</sup>.

The modern era, specifically in the 17<sup>th</sup> century to the 20<sup>th</sup> century, witnessed profound transformations in England, largely influenced by the the English Civil war. These events led to significant changes in the English Monarchy and Development of Constitutional Law<sup>8</sup>. In relation to succession law the Bill of Rights 1689 which introduced protection laws granting protection to heirs by prohibiting the monarch from arbitrary disposing of property or altering the Course of succession and the Act of Settlement 1701 which did the same.

As the British Empire expanded its colonial reach in the 17<sup>th</sup> and 18<sup>th</sup> centuries, it imposed its laws on succession on its colonies this includes those in Africa specifically in Uganda which this study shall focus on.

Having a brief look at other states origins of succession to understand concept of succession and how it was perceived by different states namely America, Nigeria and Kenya.

### 1.2.2. AMERICA

The law of inheritance in America was deeply rooted in the fabric of society that played a role in shaping family dynamics and transferring wealth across generations. In America the legal frame work surrounding inheritance evolved significantly from colonial times to present day.

When the European settlers arrived in America, they brought with them customs and legal traditions including those related to inheritance<sup>9</sup>. The early Americans inheritance

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<sup>6</sup> ‘Succession (Chapter 15) - Conflict of Laws’ <https://www.cambridge.org/core/books/abs/conflict-of-laws/succession/87D87D880856AF13E39E1309339787C4> accessed 8 March 2025.

<sup>7</sup> ‘Succession (Chapter 15) - Conflict of Laws’ <https://www.cambridge.org/core/books/abs/conflict-of-laws/succession/87D87D880856AF13E39E1309339787C4> accessed 8 March 2025.

<sup>8</sup> ‘Succession (Chapter 15) - Conflict of Laws’ <https://www.cambridge.org/core/books/abs/conflict-of-laws/succession/87D87D880856AF13E39E1309339787C4> accessed 8 March 2025.

<sup>9</sup> ‘Succession (Chapter 15) - Conflict of Laws’ <https://www.cambridge.org/core/books/abs/conflict-of-laws/succession/87D87D880856AF13E39E1309339787C4> accessed 8 March 2025.

mirrored the complex corpus of the rules established in Great Britain which blended statutory and common law. The settlers understood the importance of inheritance law in maintaining social structure and stability. This, thus leading them to adopt these principles in their new colony<sup>10</sup>.

Despite the British roots, the colony began to develop distinctive characteristic within their inheritance laws. One being the merging of jurisdiction over both real and personal property into secular courts this simplified probate process compared to the dual systems in Great Britain<sup>11</sup>. This paving way for innovations like the “holographic” will allowing individuals to write their wills without a witness<sup>12</sup>.

**American settlers significantly altered the traditional rules of intestacy, which typically favored the eldest son.** This change was particularly evident in the New England colonies, which adopted a system of **equal distribution among all children**<sup>13</sup>. They recognized that concentrating land ownership solely on the eldest child could hinder settlement and limit opportunities for younger children. This shift not only underscored the American ideals of equality and fairness but also became a major objective of the emerging Republic<sup>14</sup>.

The **American Revolution** marked a turning point, with the desire of republican’s ideals which inspired law makers to promote spread of equal treatment for all children in intestate succession, abolishing preferential treatment to the oldest son, dismantling restrictive practices which limited property to a specific bloodline to mention a few<sup>15</sup>. This reflecting broader societal shifts toward individual freedoms and economic independence.

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<sup>10</sup> ‘Succession (Chapter 15) - Conflict of Laws’ <<https://www.cambridge.org/core/books/abs/conflict-of-laws/succession/87D87D880856AF13E39E1309339787C4>> accessed 8 March 2025.

<sup>11</sup> ‘American History of Inheritance Law by Adam J. Hirsch :: SSRN’ <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=982428](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=982428)> accessed 8 March 2025.

<sup>12</sup> *ibid.*

<sup>13</sup> ‘Succession (Chapter 15) - Conflict of Laws’ (n 3).

<sup>14</sup> ‘American History of Inheritance Law by Adam J. Hirsch :: SSRN’ (n 4).

<sup>15</sup> *ibid.*

The 19<sup>th</sup> century there as a rise of trusts, a legal innovation that allowed individuals to specify detailed conditions for property distribution<sup>16</sup>. While trusts originated to navigate feudal restrictions, they evolved into a means of protecting wealth and ensuring specific intentions were honored even after death.<sup>17</sup>

America in the 20<sup>th</sup> century, there inheritance laws adapted to reflect current family dynamics<sup>18</sup>. The legislation begun to address gender biases and ensure equal rights of all Heirs regardless of sex. In addition, the complexities of modern family structures including blended families and multiple marriages prompted the development of more nuanced intestacy statutes that accommodated the realities<sup>19</sup>.

### 1.2.3 NIGERIA

In Nigeria, statutory inheritance laws were governed by the Wills Act, the various Administration of Estates Laws and other relevant statutes which regulated testate succession<sup>20</sup>. However, it is important to note that intestate succession was largely governed by customary laws which differed due to the different diverse ethnic groups in Nigeria.

Customary laws often reflect traditional societal values and norms which in turn led to the variations in inheritance rights among the different communities in Nigeria<sup>21</sup>. In many cases some customs were often discriminatory against women and children born out of wedlock.

Take for example on the different inheritance variations, the Efik people whose daughters could inherit property and women were even appointed as heads of the families the only disadvantage being widows lacking rights to their deceased husband's estate unless they

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<sup>16</sup> *ibid.*

<sup>17</sup> 'The History of English Law before the Time of Edward I, 2 Vols. | Online Library of Liberty' <<https://oll.libertyfund.org/titles/maitland-the-history-of-english-law-before-the-time-of-edward-i-2-vols>> accessed 9 March 2025.

<sup>18</sup> 'Succession (Chapter 15) - Conflict of Laws' (n 3).

<sup>19</sup> 'American History of Inheritance Law by Adam J. Hirsch :: SSRN' (n 4).

<sup>20</sup> Michael Takim Otu, 'Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis' (2021) 62 *European Journal of Social Sciences* 50 <<http://www.europeanjournalofsocialsciences.com/>> accessed 8 March 2025.

<sup>21</sup> *ibid.*

had children together<sup>22</sup>. In **Ibo culture**, property succession primarily followed **primogeniture**, meaning the eldest son inherited. Daughters generally could not inherit property unless specific ceremonies were performed, and widows had limited rights to their deceased husband's estate

The Yoruba tradition had a more equitable approach in regards to inheritance of property by the children. This was so as both male and female children were allowed to inherit property and it was shared equally amongst them. However, the eldest son would typically assume management of the family estate. This practice has since then received judicial endorsement in the various rulings of the courts in Nigeria<sup>23</sup>.

The intricacies of inheritance and succession laws in Nigeria reflect the country's rich cultural diversity and ongoing struggle for equitable legal practices<sup>24</sup>. While statutory law exists to provide a framework for inheritance the reality of customary laws often leads to inequalities that disadvantage certain groups such as women and illegitimate children and sometimes men<sup>25</sup>.

#### 1.2.4 KENYA

The evolution of inheritance laws in Kenya has been significantly shaped by two major forces: its rich **cultural heritage** and the profound influences of **colonialism**. In pre-colonial Kenya, property inheritance was governed primarily by the diverse communities' well-established customary laws. These traditional practices, which operated effectively before the advent of colonial rule, often shared characteristics with certain aspects of English Common Law, such as **primogeniture** (inheritance by the eldest son). Additionally, property was frequently viewed.<sup>26</sup> Before the advent of colonial rule Kenya's diverse communities operated well established customary laws that dictated the inheritance of

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<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

<sup>26</sup> Kodiyo, K. K. (n.d.). *CUSTOMARY LAW OF SUCCESSION AND THE INFLUENCE OF COLONIALISM The case of Kenya, Uganda, and Tanzania, compared to the English La.* <https://ajk.pte.hu/sites/ajk.pte.hu/files/file/doktori-iskola/kenneth-kaunda-kodiyo/kenneth-kaunda-kodiyo-muhelyvita-tezisek.pdf>

property<sup>27</sup>. These practices had similar characteristics to the English Common Law such as primogeniture, and another being property viewed as a communal asset held by male family heads.

The **British colonization of Kenya** introduced English common law, which significantly influenced the country's administrative and legal frameworks. This ultimately led to the establishment of the **Succession Act of 1981**, a landmark piece of legislation that aimed to harmonize inheritance laws across Kenya's diverse communities<sup>28</sup>.

The 2010 Constitution of Kenya marked a significant turning point by recognizing the importance of customary laws and promoting gender equality<sup>29</sup>. Article 78 of the Constitution of Kenya provides for a requirement for the National Assembly to Enact legislation that recognizes and regulates the application of indigenous law, encouraging alignment of customary practices with constitutional principles<sup>30</sup>.

### 1.2.5. UGANDA

Firstly, the Succession Ordinance of 1906 that introduced British Models of Succession on inheritance into Uganda which later on evolved to the Succession Act Cap 268<sup>31</sup>. These models included primogeniture where the eldest son inherits the majority of the estate, testate succession, intestate succession and executorship. However, the ordinance heavily relying on customary and cultural practices, which in turn, discriminated against illegitimate children and relatives placing them in a secondary position<sup>32</sup>. This is

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<sup>27</sup> Kodiyo, K. K. (n.d.). *CUSTOMARY LAW OF SUCCESSION AND THE INFLUENCE OF COLONIALISM The case of Kenya, Uganda, and Tanzania, compared to the English La*. <https://ajk.pte.hu/sites/ajk.pte.hu/files/file/doktori-iskola/kenneth-kaunda-kodiyo/kenneth-kaunda-kodiyo-muhelyvita-tezisek.pdf>

<sup>28</sup> KELIN Kenya. (2022). *recommndation - KELIN Kenya*. <https://www.kelinkenya.org/wp-content/uploads/2022/05/LAW-OF-SUCCESSION-ACT-ANALYSISBY-KELIN.doc>

<sup>29</sup> FAO. (n.d.). *THE CONSTITUTION OF KENYA, 2010*. <https://faolex.fao.org/docs/pdf/ken127322.pdf>

<sup>30</sup> FAO. (n.d.). *THE CONSTITUTION OF KENYA, 2010*. <https://faolex.fao.org/docs/pdf/ken127322.pdf>

<sup>31</sup> Dr. Pamela Tibihikirrab, 'LATEST LAWS AND AMENDMENTS ON ESTATES AND SUCCESSION MANAGEMENT IN UGANDA A PRESENTATION BY DR. PAMELA TIBIHIKIRRA-KALYEGIRA, CHAIRPERSON, UGANDA LAW REFORM COMMISSION AT THE 25 TH ANNUAL JUDGES CONFERENCE HELD ON 5TH-8 TH FEBRUARY, 2024 AT KAMPALA SERENA CONFERENCE CENTRE' (2024).

<sup>32</sup> *ibid*.

observed as per section 87 of the then Succession Ordinance 1906 that provided for the legitimate child a prima facie inheritance to the property<sup>33</sup>. In general, the ordinance was very impracticable to the Ugandan citizens then as very many succession matters needs were not met. This Ordinance, however, retained these flaws, underscoring the urgent need to address gender inequality, vulnerability, and cultural sensitivity.

The 1972 succession amendment act came in to act as a response to the flaws of the 1906 ordinance and also an addition to the restriction to the disposal of property by will and related matters<sup>34</sup>. The new amendments brought about significant changes. These included the recognition of illegitimate and adopted children as beneficiaries, consistent with the definition of a child found in Section 3 of the amended Succession Decree 1972. Furthermore, the amendments introduced "dependent relatives" as a category of beneficiaries, acknowledged polygamous and customary marriages in succession matters (along with their legal heirs), and protected matrimonial homes from distribution.<sup>35</sup> Its short comings whereby it still favored males selecting the heir and this in turn was discriminating to the women. In addition, it terminated widow occupancy upon remarriage. This still showed the impracticability of this act for the then Ugandan Citizens.

The 2006 succession act better known as the Succession Act ap 162 was a big game changer as it repealed the 1906 ordinance. It introduced key aspects such as, equality in inheritance thus abolishing primogeniture, acknowledged widows' rights to inheritance and also illegitimate and adopted children to mention and a few through the help of various research and studies. It tried to include the aspirations of the citizens in line of succession<sup>36</sup>. However, the legislation had shortcomings, which were pointed out in ***Law and Advocacy for Women In Uganda V Attorney General***; these included the provision

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<sup>33</sup> 'Uganda: Laws of Uganda'.

<sup>34</sup> 'Succession (Amendment) Decree, 1972 • Page 1 • IHRDA SGBV Database' <<https://sgbv-ihrda.uwazi.io/entity/1wihs2fa8lp?file=1564696213137q6koydg9rzh.pdf>> accessed 22 January 2025.

<sup>35</sup> Dr. Pamela Tibihikirrab (n 19).

<sup>36</sup> *ibid.*

that a husband's will could override his wife's rights to inherit property, its failure to address vulnerable groups such as orphans and disabled individuals inheriting property, its unclear stance on property distribution, its lack of recognition for cohabiting partners in inheritance, and its limited provision of only mediation as a dispute resolution, which generally discriminated against women in terms of property distribution compared to men.<sup>37</sup>.

The 2022 succession amendment act came in to address the short comings of the previous act as members of Parliament had to sit down, to discuss the supersession Amendment Bill of 2018<sup>38</sup>.

With the launch of the Seventh Edition of the Principal Laws of Uganda, which incorporated renumbering, updated capitalization, and corrected various errors due to additions and repeals of sections, the laws governing succession in Uganda were also revised<sup>39</sup>, the laws revolving Uganda's succession were no exception.

This resulted in new legislation, including "The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263," the "Administrator General Act Cap 264," "The Estate of Missing Persons (Management) Act Cap 265," "Probates (Resealing) Act Cap 266," "Public Trustee Act Cap 267," "Succession Act Cap 268," "Trustees Act Cap 270," and "Trustees Incorporation Act Cap 271," among others.

With all these laws in place the research aims to review them and their compatibility with the practicability or applicability in Uganda.

### 1.3 STATEMENT PROBLEM

Despite the establishment of various succession laws in Uganda, including recently revised legislation like the **Succession Amendment Act 2022**, significant challenges persist in their practical application and effectiveness. While this law aims to facilitate the smooth transfer of property rights and obligations across generations by promoting

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<sup>37</sup> Hon Mr Justice and others, 'THE REPUBLIC OF UGANDA IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA 5 CORAM' (2007).

<sup>38</sup> ntv, '(20) SUCCESSION AMENDMENT BILL: What Are the Likely Implications of Amendments? - YouTube' (2022) <<https://www.youtube.com/watch?v=6rzT1G3FrEM>> accessed 29 December 2024; NTV, 'MPs Call for Amendment of Proposed Succession Law | Monitor' (*youtube*, 2022) <<https://www.monitor.co.ug/uganda/news/national/mps-call-for-amendment-of-proposed-succession-law-1840760>> accessed 29 December 2024.

<sup>39</sup> 'Launch of The 7th Revised Edition of The Principal Laws of Uganda' <<http://www.ulrc.go.ug/launch-of-the-7th-revised-edition-of-the-principal-laws-of-uganda/>> accessed 15 February 2025.

equity and justice, some of its provisions appear to exist only on paper rather than being effectively enforced in practice.

Specific issues include unequal treatment and the potential for abuse of power by the Administrator General due to limited accountability within the current framework. Furthermore, concerns exist regarding the inadequate timeframes allocated for the administration of estates, which in turn hinder the proper settlement of property affairs. It is also important to note that the Act may not adequately consider certain customs, potentially undervaluing the property a customary heir is entitled to receive, among other overlooked considerations.

Given these challenges and the recent amendments to Uganda's succession laws, this research seeks to critically analyze the effectiveness and enforcement of the Succession Amendment Act 2022. It aims to examine whether the statute is being positively or negatively adhered to by assessing both its impacts. The study will also propose recommendations for a way forward to ensure the full and effective implementation of the Succession Amendment Act 2022's provisions.

## 1.4 OBJECTIVES

### 1.4.1 GENERAL OBJECTIVES

To critically analyze the effectiveness and practicality of the Succession Amendment Act 2022 in estate management in Uganda

### 1.4.2 SPECIFIC OBJECTIVES

1. To analyze the limitations of the Succession Amendment Act 2022 in governing Estate management.
2. To evaluate the effectiveness and practicability of the Succession Amendment Act 2022 in addressing economic, social challenges in estate management .
3. To highlight possible recommendations in the challenges or limitations of the Succession Amendment Act 2022.

## 1.5 RESEARCH QUESTIONS

1. What are the key challenges in the practical application of the Succession Amendment Act 2022 in Uganda?
2. To what extent do the provisions of the Succession Amendment Act 2022 align with the existing customs and societal practices in Uganda?
3. What are the possible recommendations to bridge the gap of the ineffectiveness?

## 1.6 SIGNIFICANCE OF THE STUDY

The study will provide valuable insights that can inform policy makers and legal practitioners about the current effectiveness and shortcomings of the succession laws in Uganda.

The study by highlighting the challenges faced by citizens revolving property transfer

The study will help in awareness on the rights on the succession laws and the different laws and their applicability governing Uganda

## 1.7 JUSTIFICATION OF THE STUDY

The research is expected to add on to the ongoing research among the stakeholders such as legal professionals, government officials and others to mention a few.

The study aims to provide evidence-based recommendations that an enhance the legal framework ensuring it adapts to the needs of society it serves.

## 1.8 METHODOLOGY

### 1.8.1 RESEARCH DESIGN

This research study shall adopt both qualitative and quantitative methods of research. The Quantitative component will involve primary and secondary data sources to collect numerical data that can quantified. Whereas, the Qualitative aspects will focus on the in-depth insights into the legislation of the Succession Act and the Administrator General

Act through interviews with key informants such as community leaders, practitioners and marginalized groups.

## 1.8.2 MODEL SPECIFICATION

This study will employ a mixed methods approach. The model will control for various factor such as demographic characteristics, socioeconomic status and cultural background.

## 1.8.3 DATA SOURCES

### 1.8.3.1 QUANTITATIVE METHODS

#### **Interviews**

In-depth interviews will be conducted with key informants, including legal representatives, community leaders, and representatives from marginalized groups. This method will yield both qualitative and quantitative insights through the use of open-ended and closed-ended questions, respectively.

#### **Sampling**

Sampling this research shall employ a combination of probability sampling and non-probability sampling methods.

**Probability Sampling:** Simple random sampling will be used to select survey participants. The sample size will be determined using appropriate statistical formulas to ensure representativeness.

**Non-Probability Sampling:** Purposive sampling will be employed to select key informants for interviews, ensuring that participants have the relevant expertise in estate management and succession.

### 1.8.3.2 QUALITATIVE METHODS

Alongside surveys, qualitative methods will include:

**Interview questionnaire:** In-depth analysis to the responses given by the respondents to the open-ended questionnaire

**Literature Review:** Comprehensive analysis of available literature, including both primary and secondary sources, on the Succession Amendment Act 2022.

#### 1.8.4 DATA PROCESSING AND ANALYSIS

Data will be processed using statistical software for quantitative analysis, while qualitative data will be analyzed through thematic and content analysis. Integration of both data types will provide a comprehensive understanding of the research questions.

#### 1.8.5 RELIABILITY AND VALIDITY

Reliability and validity are essential to ensure the accuracy and consistency of the data collection instruments.

**Validity:** The questionnaire will be designed to accurately measure the impact of the Succession Amendment Act on estate management. Validity assessments will ensure that items capture the essence of the Act's impact.

**Reliability:** Reliability will be evaluated by ensuring consistency in results across different populations and settings.

#### 1.8.6 ETHICAL CONSIDERATIONS

This research will involve the collection of sensitive information from participants regarding their experiences with the Succession laws. To ensure confidentiality and anonymity, pseudonyms will be used, and all data will be securely stored.

Informed consent will be obtained from all participants, ensuring awareness of the research's purpose, risks, and benefits. Special care will be taken to work with vulnerable populations, ensuring their rights and dignity are respected. Ethical principles such as non-maleficence, autonomy, and justice will guide the research process.

#### 1.8.7 ANTICIPATED CHALLENGES

**Accessing Participants:** Challenges in reaching marginalized groups may occur, particularly in rural areas where cultural barriers may hinder openness.

**Data Validity and Reliability:** Ensuring that data collection instruments are valid and reliable will require rigorous testing.

**Conflicting Perspectives:** Navigating diverse viewpoints among respondents will be essential to accurately represent findings.

**Cultural Sensitivity:** The researcher must remain culturally aware and sensitive throughout the process, acknowledging personal biases and assumptions

## 1.9 SCOPE OF STUDY

### 1.9.1 THEMATIC SCOPE

The research includes an in-depth analysis of the current succession laws in Uganda that is to say the Succession Act cap 268 and related statues. This is by an exploration of ow these laws address issues of equity and justice to the citizens of Uganda, also noting the implementation challenges regarding these laws.

### 1.9.2 GEOGRAPHIC SCOPE

This study will be conducted within the geographic parameters of Uganda specifically seta, by vesting five schools namely, Meritah Christian Junior School, Suba Primary school, Superstar Primary school, and Grapevine Primary school the reason why the research will be based on the schools is that they have teachers who interface with the community through parents of pupils or students which will give good ground on research

### 1.9.3 TIMESCOPE

The study will be conducted over a period of three months.

## 1.10 CONCEPTUAL FRAMEWORK

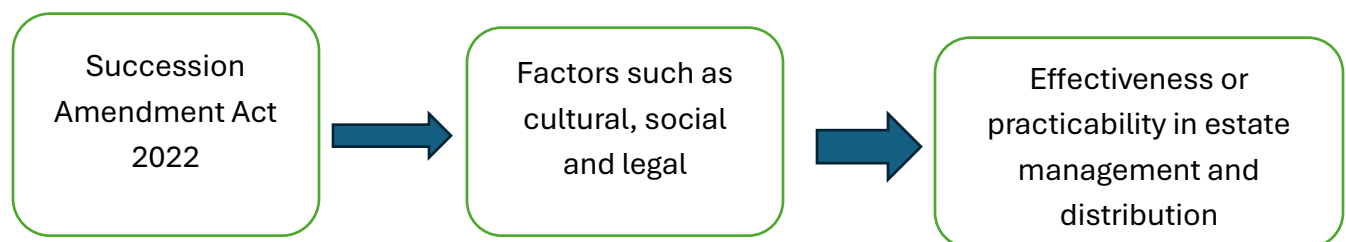


Fig.1

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.0 INTRODUCTION

The Succession Amendment Act 2022 was enacted to cater for equal rights between men and women, the protection of rights to property, provide for equal share of property for the surviving spouse and other relatives concerned, cater for welfare of minors and dependent children, modernizing legal terminology and alignment with the constitution. Despite these efforts the practical application and effectiveness of succession laws in Uganda remain a subject of concern. This literature review aims to provide a comprehensive overview as to the effectiveness of the succession laws in Uganda, and whether they are practicable in implementation in the current day society, and explore the gaps in literature. Also, looking at a comparative study with United States of America, Kenya and Scotland in their succession laws to discover the gaps and how to mitigate them.

#### 2.1 CONCEPTUAL VIEW

Pallavi Mall in his article “The Impact of inheritance and Succession Laws On the Economy” argues on the assessing the effectiveness of succession laws in an economy requiring a multifactor approach considering factors such as equity, economic impact and social implications<sup>40</sup>.

According to Pallavi, succession should ensure distribution of assets that is fair and just taking account the interest of different stakeholders including heirs, beneficiaries and dependents<sup>41</sup>. He continues to add on that an effective law should prioritize vulnerable groups of people such as women and disabled<sup>42</sup>. In relation to Uganda due the case of **Uganda Law Advocacy for Women V Attorney General** was the turning point in regards to inclusivity and equity of women in the succession of property in concept several

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<sup>40</sup> ‘The Impact of Inheritance and Succession Laws on the Economy: Significance of Inheritance and Succession – NICKLED AND DIMED’ <<https://nickledanddimed.com/2018/10/21/the-impact-of-inheritance-and-succession-laws-on-the-economy-significance-of-inheritance-and-succession/>> accessed 18 February 2025.

<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

provisions of the Succession Act Cap 162 were declared unconstitutional and discriminatory on the basis of gender, specifically sections 2, (n)(i)(iii), 14,15,26,27,29,43,44, along with rules from the schedules<sup>43</sup>. The petitioners arguing that the existing sections were out dated and inconsistent with the Constitution Article 21<sup>44</sup> and international human rights obligations. This was so as it had an aspect of cultural norms and customs that perpetuated discrimination against women, illegitimate children in their access to family wealth and inheritance rights. To address these issues, the commission put forth recommendations for amending discriminatory laws and implementing public awareness campaigns aimed at challenging the non-constitutional aspect of these cultural practices. This resulted in the subsequent Succession Amendment Act 2022 to modernize the framework but now unified to Succession Act Cap 268. This progression demonstrates Uganda's commitment to Pallavi's notion that an effective succession law must cater to vulnerable groups.

Looking at the Succession Amendment Act 2022, it has bridged the gap for gender equality in property distribution. This is so as the previously the Succession Act focused more on male property in intestate succession but the Amendment focuses and ensures both male and female intestates are treated equitably in the distribution of their estates.

As observed in the Succession Amendment Act 2022 which streamlines the distribution of property when a person dies intestate. The revisions in the Act clarify the distribution of property to surviving spouses, lineal descendants, and dependent relatives. The new percentages of Surviving Spouse 20%, Dependent relatives 4% and Lineal Descendants 75% depending on the Circumstances<sup>45</sup>. But in cases where there is no surviving spouse or dependent relatives the estate is allocated predominantly to the lineal descendants.

Pallavi in his findings states that for succession laws to be effective in an economy there must be an additional economic factor or impact of the laws<sup>46</sup>. He states that inheritance and succession laws can either promote or hinder economic growth for example laws that

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<sup>43</sup> Justice and others (n 25).

<sup>44</sup> The Constitution of the Republic of Uganda(as amended)

<sup>45</sup> Section 27 of the Succession Amendment Act 2022

<sup>46</sup> NICKLEED AND DIMED journal 'The Impact of Inheritance and Succession Laws on the Economy: Significance of Inheritance and Succession –' (n 28).

allow the concentration of wealth a lead to economic inequality while laws that promote the distribution of wealth can help reduce poverty and inequality.

Applying this in our Uganda and current succession laws, we see there is a promotion or there is a strive to promote equality amongst all genders and different **issues** disregarding the fact whether they are legitimate or illegitimate, everyone shall have a portion of property entitled to them as observed by the Succession (Amendment) Act 2022 that repealed the word Legitimate as it is very discriminatory<sup>47</sup>. This in turn or in the long runs develops economic or gives an economic impact in a positive way as the succession laws sponsor acquiring of property without inequalities as all groups of individuals with different backgrounds will have a chance of acquiring property which is in line with Pallavi's findings<sup>48</sup>.

Uganda's recent legal reforms in succession, particularly the Succession (Amendment) Act 2022, represent a commendable move towards social equity and economic empowerment. The deliberate removal of discriminatory terms like "legitimate" and the explicit push for gender neutrality in property distribution underscore a commitment to justice that extends beyond mere legal formality.

The Aspect of protection of ones rights to property, is further expounded by the Succession Amendment Act 2022, which provides crucial protections for the **residential holdings of intestates**<sup>49</sup>. In that the personal representatives of the deceased must hold these properties in trust for the surviving spouse and lineal descendants, thereby safeguarding against eviction and ensuring that residential hooding is not regarded as part of the estate for available for distribution in the Long run promoting economic development as people have access to property.

In addition, the Amendment of 2022, introduces stricter penalties for individuals who mismanage an estate including imprisonment and financial restitution to beneficiaries

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<sup>47</sup> Section 1 of the Succession Amendment Act 2022

<sup>48</sup> *ibid.*

<sup>49</sup> Section 13 of the Succession Amendment Act 2022

for any loss or damage caused<sup>50</sup>. Further ensuring responsible management of estates particularly in cases involving the vulnerable groups such as minors and dependents.

However, there is a slight inconsistency or hindrance with the economic impact in regards to the distribution of property. This is so common in the aspect of intestate succession where a person dies without leaving a valid will. In Uganda, the administrator General is responsible for administering estates of deceased persons who die intestate meaning without a will. The functions of the Administrator General is to oversee the estate administration of the deceased person as per the Administrators General Act Cap 264<sup>51</sup>. The same Act specifies that death must be reported to the Administrator General who may then apply for letters of administration<sup>52</sup>. This process is however, lengthy as it delays the access of property by the entitled persons and becomes burdensome to the surviving spouse, children, to mention a few if any who might be in need of the financial support and this having a negative impact in the economy which is a deflection from what Pallavi's findings were that the economic impact of succession laws can assess the effectiveness of the laws.

Lastly Pallavi argues that succession laws should be adaptable to the changing demographic contexts of society<sup>53</sup>. This means that laws of succession must change and be adaptable to the current on-going norms and practices in Uganda in order to cater and remain relevant and effective. In this digital era technology is growing faster and more accessible, in relation to succession and the transfer of property there now exist Electronic wills. An Electronic will (e-will) is a digitally created document that outlines how a person's assets are to be distributed after their death<sup>54</sup>. These digital wills are increasingly becoming a popular alternative to traditional paper wills, with their primary distinction being their creation, signing, and storage on online platforms rather than on paper<sup>55</sup>. This in turn reflects the changing preferences in the younger generations which

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<sup>50</sup> Section 234 of the Succession Amendment Act 2022

<sup>51</sup> Section 3 of the Administrator General Act Cap 264

<sup>52</sup> Section 4 of the Administrator General Act Cap 264

<sup>53</sup> *ibid.*

<sup>54</sup> 'The Pros And Cons Of Electronic Wills' <<https://www.forbes.com/sites/christinefletcher/2019/10/25/the-pros-and-cons-of-electronic-wills/>> accessed 18 February 2025.

<sup>55</sup> 'Pros and Cons of Creating Electronic Wills | Law District' accessed 18 February 2025.

is 72.3%<sup>56</sup>. that prefer convince. Other advantages of such include; increased accessibility, easy to update, cost effectiveness to mention but a few.

In relation to Uganda, in 2024 had over 13million internet users in January 2024 and the internet rate stood 27% of the total population<sup>57</sup>. This indicates that the digital era in Uganda is growing and as people explore it widely legal scholars should explore electronic wills to help the digital population. However, the laws regulating the Electronic wills are scanty looking at the Electronics Signatures Act and the Succession Act there is no correlation between the two. As per Section the Electronic Signatures Act states that an Electronic signature is an electronic symbol or process attached to or logically associated with a contract<sup>58</sup>. This means the act solely applies to contrast which does not necessarily cover wills. There is need for enactment of legislation to govern the electronic wills to put Uganda in a very good position digitally and make the it applicable and effective in today's digitally growing Uganda.

In addition to the social factor to determine the effectiveness of succession laws as per Pallavi, Uganda society today has seen significant rise in cohabitation in the recent years with increasing number of couples choosing to live together without a formal marriage as per Marion Apio's Article on Cohabitation<sup>59</sup>. As Highlighted in the demography and Health Survey (UDHS) 2016 approximately 27% of women and 15% of men aged 15 to 49% were cohabiting making a notable increase in the previous years<sup>60</sup>. This trend is particularly pronounced among younger individuals with 33% of women and 20% of men engaged in cohabitation and it is very prevalent in urban areas<sup>61</sup>.

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<sup>56</sup> 'UGANDA INCORPORATES YOUTH VOICES IN NATIONAL PLANNING PROCESSES - Restless Development' <<https://restlessdevelopment.org/2024/08/uganda-incorporates-youth-voices-in-national-planning-processes/>> accessed 18 February 2025.

<sup>57</sup> 'Digital 2024: Uganda — Datar portal – Global Digital Insights' accessed 18 February 2025.

<sup>58</sup> Section 1 of the Electronic Signatures Act

<sup>59</sup> 'Cohabitation in Uganda: Understanding the Legal Implications and Protecting Yourself' <<https://nilepost.co.ug/lifestyle/166123/cohabitation-in-uganda-understanding-the-legal-implications-and-protecting-yourself>> accessed 19 February 2025.

<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

Cohabitation (De facto unions) in Uganda presents unique challenges regarding property due to lack of legal recognition for such relationships<sup>62</sup>. Unlike married couples who benefit from protective laws governing property rights. Article 26 of the Constitution of Uganda states that individuals have a right to property but this right is complicated for cohabiting couples<sup>63</sup>. The succession laws might be a hindrance in the implementation as with the growing number of cohabiting people they are not protected by the succession laws yet it is meant for the people in Uganda thus departing from Pallavi's findings that for a succession Law to be effective there should be a collusion of the social factors. There should be an enactment or provision in the succession laws to cater for the rising cohabitants for the law to be effective.

On a positive note, the Succession Amendment Act in regards to the Legal Terminology and inclusiveness, it has made significant revisions to the language used in legal documents now using modern inclusive terms. Such as repealing the Terms legitimate, illegitimate. Thereby, repealing such phrases considered derogatory and have been replaced with more respectful alternatives<sup>64</sup>. This shows the shift from the archaic provisions to fit a modern day to day terms of society this promoting dignity for individuals. This also shows the Amendment of 2022 is socially adaptable as by disregarding such terms it shows its adaptability to an inclusivity and sensitive Modern Uganda.

**Rafael Domingo** in this Article on "The Law on Succession" which is about the law of succession in Rome is characterized by its complexity reflecting traditions and changing social norms. From his article he highlighted how the Romans added value to the writing and making of will in their society. Rafael cites Cato Elder who lamented living a day without making a will indicating a cultural imperative to ensure proper succession.

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<sup>62</sup> 'Kleeva Associated Advocates - Understanding Cohabitation and Property Rights'

<<https://kleevalp.com/blog/understanding-cohabitation-and-property-rights>> accessed 19 February 2025.

<sup>63</sup> *ibid.*

<sup>64</sup> Section 5 of the Succession Amendment Act 2022

Pointing out that with the development of succession leads to the economic development of a society. This is so because property, responsibilities pass down from generation to generation with ease and no delay enabling the economy to vigorously thrive all because of the entering of making wills.

In Uganda today, progress has been made through the Succession Act Cap 268, which defines key terms used in will-making, such as "child," "deceased," and "estate"<sup>65</sup>. Furthermore, the Act's Fourth Schedule provides a statutory will form, and the Fifth Schedule includes various forms, making it easier for people to understand and draft a will.<sup>66</sup> In this we observe the equality of both genders in estate succession and the protection of people's Rights with property as there are provisions for percentages each individual is entitled to by the Succession Amendment At 2022.

The gap comes in when people don't specifically know what type of property to put in a will as per the interpretation section 2 of the Succession Act Cap 268 does not specifically define property. Developing the notion that people need property to make a will which is not the case thus Ugandans feeling discouraged to make wills as they assume they not have property. This differs from Rafael's findings that an economy should emphasize to its citizens about the importance of making wills.

It is important to note that the persistent practiced customs in Uganda play a big role in order for the laws enacted too practicable. Custom as defined is a habitual course of conduct observed uniformly and voluntarily by a community as per Law, University of Kashmir journal on " Custom as a source of Law"<sup>67</sup>.

Customs have long been a foundational source of law across societies shaping and guiding the behavior before establishment of formal legal code<sup>68</sup>. Statutory laws that ignore the customary practices may alienate communities and fail to resonate with societal values thus making the law impracticable.

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<sup>65</sup> Section 2 of the Succession Act Cap 268

<sup>66</sup> Section 2 of the Succession Act Cap 268

<sup>67</sup> Law, University of Kashmir journal on "Custom as a source of Law"

<sup>68</sup> Law, University of Kashmir journal on "Custom as a source of Law"

It is important to note that customary customs or traditions take precedent most especially in rural areas more so those relating to land<sup>69</sup>. But in relation to the Succession Amendment Act 2022, provides for the distribution of inheritance where in all instances the customary Heir will always receive 1% this shows the undervaluing of the role the customary heir is to take<sup>70</sup>. As in certain cultures they play a big role and as per the University of Kashmir 's journal on Customs as a source of law, the statutory law must correlate with the existing customs which in this case the correlation is a bit inadequate therefore, emerging a gap as the statutory law of the 1% undermines the existing role the customary heir has and has been having before the enactment of this act<sup>71</sup> .

It is important to note that there are a variety of ethnic tribes in Uganda, and with that large number of different groups which have different customs in regards to succession, there is a common similar factor of the Customary Heir taking somewhat of a greater percentage than the mere 1% provided by the Succession Amendment Act 2022<sup>72</sup>. This therefore, leads to some form of discourse as the people will not just abandon traditions in the name of said law that is as it is with in their Constitutional right to practice their cultures.

Uganda's enactment of the Succession 2022 Amendment Act has not quite been effective as this by illiteracy levels. Legal information is often disseminated in written form whether statutes regulations or legal notices. This immediately excludes illiterates' individuals who are unable to access this information directly<sup>73</sup>. A report from the 2018 report by Ugandan Bureau of Statistics indicated that the literacy rates improved although a significant portion of the population remains illiterate. This means that a substantial number of Ugandans are unable to independently access and understand the legal framework Governing Succession including the Succession Amendment Act 2022 thus left with no remedy<sup>74</sup>.

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<sup>69</sup> Law, University of Kashmir journal on "Custom as a source of Law"

<sup>70</sup> Section 14 of the Succession Amendment Act 2022

<sup>71</sup> Law, University of Kashmir journal on "Custom as a source of Law"

<sup>72</sup> Section 14 of the Succession Amendment Act 2022

<sup>73</sup> The Illiterate Persons Act

<sup>74</sup> Statistical Report from the Uganda Bureau of Statistics

## 2.2 COMPARATIVE ANALYSIS

This review will look at experiences in regards to estate management and succession of different international Jurisdictions to observe valuable insights on how they administer some of the gaps the Succession Amendment Act 2022, may possess and from there recommendations can rise.

### 2.2.1 UNITED STATES OF AMERICA

In the **United States**, there has been a more liberal approach to succession laws, adapting to the growing variables within its demographics. As the number of cohabiting couples increased, various amendments and legal provisions were introduced to provide relief for this group regarding estate and succession matters<sup>75</sup>.

A significant difference was observed between the legal rights of married and unmarried individuals. Unmarried couples, unlike their married counterparts, do not automatically acquire shared property rights. Instead, assets obtained during a cohabitation relationship typically remain separate, with each partner retaining individual ownership of their respective properties.<sup>76</sup>

One of the effective ways put in place for cohabiting couples to establish clear property rights is through the cohabitation agreement. This is a legal document which outlines the ownership of assets and responsibilities during the relationship and provides plan for division upon separation<sup>77</sup>.

Joint ownership provisions exist that entitle cohabiting couples to their share of property, as both partners have legal rights to it. This can include homes, vehicles, and other significant assets. In cases of joint tenancy, the surviving partner may automatically

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<sup>75</sup> ‘Cohabitation Agreements: Estate Planning for Unmarried Partners’ <<https://lhestatelaw.com/blog/cohabitation-agreements-estate-planning-unmarried-partners/>> accessed 22 March 2025.

<sup>76</sup> ‘Cohabitation Property Rights for Unmarried Couples - FindLaw’ <<https://www.findlaw.com/family/living-together/cohabitation-property-rights-for-unmarried-couples.html>> accessed 22 March 2025.

<sup>77</sup> ‘Cohabitation Agreements: Estate Planning for Unmarried Partners’ (n 44).

inherit the property after the other's death, thereby bypassing the need for letters of probate.

The landmark case in America was *Marvin V Marvin*<sup>78</sup> that serves as a crucial reference point for cohabiting couples as in this instance, Michelle Triola Marvin promised to support her after six years of cohabitation, although the court did not award her the full amount of relief sought, it allowed her to proceed with the claim basing on an implied contract<sup>79</sup>. The court's decision in this case underscored that any legal documentation outlining joint ownership or agreements to share assets can also provide remedies in the event of separation<sup>80</sup>.

In relation to the Succession Amendment Act 2022 we see a gap here as they do not provide for persons or partners or cohabiting couples who share joint tenancy to inherit the property of the partner. This can be a possible remedy to the cohabiting partners whose numbers are increasing regarding those whom shared joint tenancy of property with the intestate an inherit the deceased portion of property there by bypassing struggles of undergoing to apply for letters of administration or probate.

In Uganda, there are currently no laws or provisions specifically for cohabitation agreements to provide relief to cohabiting partners in cases of separation or death. The Succession Amendment Act 2022, despite its progressive strides, falls short in this aspect by not providing protection for the property of cohabiting partners. This oversight is particularly significant given that the enactment of the law did not account for the growing demographic of cohabiting couples in Uganda..

To remedy this, there should be spread awareness of agreements of cohabitation or joint tenancy agreements on property shared between cohabitation. Given the benefit of no distinct definition of property many Ugandans that fall under cohabitees can opt for this

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<sup>78</sup> **Marvin v. Marvin**, 18 Cal.3d 660, 557 P.2d 106, 134 Cal.Rptr. 815 (1976)

<sup>79</sup> *ibid*; 'Marvin v. Marvin | Case Brief for Law Students | Casebriefs'

<<https://www.casebriefs.com/blog/law/family-law/family-law-keyed-to-weisberg/alternative-families/marvin-v-marvin/>> accessed 22 April 2025.

<sup>80</sup> **Marvin v. Marvin**, 18 Cal.3d 660, 557 P.2d 106, 134 Cal.Rptr. 815 (1976)

and seek recourse through these agreements as they are some forms of contracts. Therefore, in that way entitling one to the property.

In addition, in some states in the US unmarried couples register as domestic partners enjoying similar rights and obligations as married couples<sup>81</sup>. For instance, in California domestic partnerships provide legal frameworks that recognize shared properties and responsibilities, including rights to inheritance and shared debts.

In regards to the duration of the estate management the durations vary ranging from nine to 24 months depending on factors such as size and complexity of the estate in the sense that if the estate is large with numerous assets or complicated financial portfolios require more time<sup>82</sup>.

Regarding the Succession Amendment Act 2022 and the Administrator General Act, the current law stipulates a fixed two-year period for an administrator to settle a given estate, regardless of its size. This timeframe is often impracticable depending on the circumstances. For instance, some individuals in Uganda may own very large and complex estates, for which a two-year period is simply insufficient for effective property distribution. Therefore, there is a clear need for **reforms or amendments** to either account for the different sizes of deceased estates or to provide longer timelines for the administration of estates by the Administrator General, thereby ensuring proper property distribution.

### 2.2.2 KENYA

The Kenyan succession laws are similar to that of Uganda do not recognize cohabiting partners, however, there are solutions proposed by University of Strathmore on to this to alter for the growing demographic of cohabiters in regards to property rights.

There are proposals as to the Kenyan Government should integrate the doctrine of presumption of marriage as similar in certain practices of the UK. This doctrine allows

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<sup>81</sup> 'Marvin v. Marvin | Case Brief for Law Students | Casebriefs' (n 47).

<sup>82</sup> 'Cohabitation Agreements: Estate Planning for Unmarried Partners' (n 44).

cohabitantes to assert rights and contributions made to the partnership<sup>83</sup>. Such recognition is very crucial more so where one partner has contributed significantly to household expenses, property acquisition or other financial aspects in the relationship.

Regarding cohabitation, **Kenya's succession laws** have proposed the implementation of a minimum cohabitation period. This proposal is similar to the ruling in **Negus v. Bahouse**, which requires partners to have cohabited for a specified duration before they can make a claim on a deceased partner's estate<sup>84</sup>.

In relation to Uganda, and the Succession Amendment Act 2022, in light of cohabitation period some ministers had suggested a presumption of marriage if one has cohabited for long without marriage. However, this was quashed by the coming of the proposed Marriage bill which if enacted will criminalize cohabitation.

### 2.2.3 SCOTTLAND

Taking a liberal approach to the different dynamics in succession, Scotland further enacted the Family Law Act 2006 which provides a framework for equitable distribution of property among cohabiting partners upon separation. This act acknowledges both direct financial contributions and non-financial contributions such as home making and childcare when determining property rights<sup>85</sup>.

In addition, also providing for the cohabitation agreements that solidify the rights of cohabitantes to right to protection and to property<sup>86</sup>. These agreements allow partners to outline their intentions regarding property and finances in the event of separation or death. Therefore, seeing the role of advocates or lawyers to raft the cohabiting agreements that specify how property can be divided.

The evolving nature of family structures globally has prompted legal systems to adapt and recognize relationships outside of traditional marriage. Scotland, with its progressive

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<sup>83</sup> Eugene Cotran, 'Marriage, Divorce and Succession Laws in Kenya: Is Integration or Unification Possible?' (1996) 40 Journal of African Law 194 <<https://www.cambridge.org/core/journals/journal-of-african-law/article/abs/marriage-divorce-and-succession-laws-in-kenya-is-integration-or-unification-possible/83D54E0712D4CD9C3C8AAA19612644CB>> accessed 8 February 2025.

<sup>84</sup> The case of **Negus v Bahouse [2007] EWHC 2628 (Ch)**

<sup>85</sup> Family Law Act 2006- Scotland

<sup>86</sup> Family Law Act 2006- Scotland

approach, offers valuable insights for Uganda, particularly in the realm of succession and estate management. The enactment of the Family Law Act 2006 in Scotland provides a framework for the equitable distribution of property among cohabiting partners upon separation, acknowledging both financial and non-financial contributions<sup>87</sup>. This recognition of cohabitation and its implications for property rights presents a compelling case study for Uganda, where succession laws are still largely centered around the marital family.

In Scotland, cohabitation is defined as a couple living together as if they were married or in a civil partnership. The Family Law Act 2006 grants cohabitants certain rights, especially upon the termination of the relationship<sup>88</sup>. When determining property rights, the Act considers not only direct financial contributions but also non-financial contributions such as homemaking and childcare. This inclusive approach ensures that both partners are fairly compensated for their roles in the relationship, regardless of their financial input.

In summary, yes, Scotland does recognize certain inheritance rights for cohabiting partners upon the death of their partner, though these rights are **not automatic** and are more circumscribed than those afforded to married spouses or civil partners. A surviving cohabitant does not automatically inherit in the absence of a will. Instead, if a cohabitant dies intestate (without a valid will), the surviving cohabitant can make a discretionary application to the court<sup>89</sup>. The court will consider various factors, such as the estate's size, any benefits already received by the survivor, and the nature and duration of the cohabitation, to decide if an award should be made, and if so, its amount which cannot exceed what a spouse or civil partner would receive. A critical aspect is the strict six-month time limit from the date of death for lodging such a claim. It is crucial to note that if the deceased cohabitant left a valid will that does not include the survivor, the cohabitant generally has no right to claim under this provision. Furthermore, any claims by cohabitants are usually subordinate to the prior and legal rights of a surviving spouse

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<sup>87</sup> Family Law Act 2006

<sup>88</sup> Family Law Act 2006

<sup>89</sup> Section 29 of the Family Law Act 2006

or civil partner, if one exists, making a will an essential tool for cohabiting couples to ensure their partner is provided for.

This approach offers a stark contrast to Uganda's current legal framework, which primarily recognizes the rights of spouses and lineal descendants in matters of succession. While the Succession Amendment Act 2022 has made some strides in addressing gender inequalities and protecting the rights of surviving spouses, it largely neglects the rights of cohabiting partners. In Uganda, cohabitation is increasingly common, particularly in urban areas, where many couples choose to live together without formalizing their relationships through marriage. The absence of legal recognition for these relationships creates significant vulnerabilities, especially in matters of inheritance and property ownership.

By adopting these reforms, Uganda can align its legal framework with the realities of contemporary relationships and ensure that the rights of all individuals, regardless of their marital status, are protected in matters of succession and estate management. This would not only promote social justice but also provide greater legal certainty and reduce the potential for disputes and conflicts.

## CHAPTER 3

### LEGAL FRAMEWORK

#### 3.0 INTRODUCTION

The legal framework chapter establishes the laws, regulations and legal principles that govern succession in Uganda. This provides the necessary context for understanding the specific legislation being analyzed which is the Succession Amendment Act 2022. By outlining the existing legal framework, the chapter provides a benchmark against which the effectiveness and impact of Succession Amendment Act 2022 can be evaluated. This will help determine whether the act aligns with or contradicts existing laws, customs and principles.

#### 3.1 INTERNATIONAL LEGAL FRAMEWORKS

##### 3.1.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The UDHR does not explicitly outline the right to property through Succession or the right to Succession, we get to see this articulation through the fundamental rights that is to say the right to property as per its preamble. The right to own property<sup>90</sup> is profound and has impact on succession. As succession in its essence is the transmission of property rights , obligations from a deceased person to their heirs or beneficiaries. It is a mechanism by which ownership across generations as no one shall be arbitral deprived of his property as a person who in regards to disposition of property through wills has the right to do so.

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<sup>90</sup> Article 17 of the Universal declaration of Human Rights

The UDHR also proclaims that all are equal before the law and are entitled without any discrimination to equal protection of that law<sup>91</sup>. This also includes the right to social security<sup>92</sup> which can be interpreted as encompassing degree of protection for surviving family members who may depend on inherited property for wellbeing.

### 3.1.2 THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The CEDAW is a landmark international treaty adopted by the United Nations General Assembly in 1979. It is often referred to as the international Bill of rights for women as it sets out obligations for states to eliminate gender-based discrimination and promote equality between men and women<sup>93</sup>.

The CEDAW recognizes women's equality before the law and ensures their rights to contract, administer property and participate in legal matters on an equal basis with men<sup>94</sup>. This provision encourages legal systems to remove barriers that prevent women from acquiring and managing property.

The CEDAW also guarantees women's equal rights in all matters related to marriage and family including inheritance and succession<sup>95</sup>. It mandates states to abolish discriminatory practices that deny women their rightful share of the property after death of a spouse or family member.

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<sup>91</sup> Article 7 of the Universal Declaration of Human Rights

<sup>92</sup> Article 22 of the Universal Declaration of Human Rights

<sup>93</sup> The Preamble of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)

<sup>94</sup> Article 15 of the CEDAW

<sup>95</sup> Article 16 of the CEDAW

## 3.2 REGIONAL INTERNATIONAL LAWS

### 3.2.1 AFRICA CHARTER ON HUMAN AND PEOPLE'S RIGHTS

The ACHPR adopted in 1981 is a key human right instrument that seeks to promote and protect a wide range of rights and freedoms on the African continent. The ACHPR states that property shall be guaranteed<sup>96</sup>. This provision establishes the Fundamental right to own property shielding individuals from arbitrary deprivation. It also ensures that individuals can accumulate and hold property.

As the ACHPR which guarantees the enjoyment of the rights and freedoms without discrimination of any kind<sup>97</sup> is particularly relevant. In the area of succession, this prohibits discriminatory practices that may prevent certain individuals or groups from inheriting property for instance through certain customs.

The ACHPR also ensures equality before the law<sup>98</sup> and equal protection of the law reinforcing the principle of nondiscrimination in succession matters. There is also the aspect of the right to protection of family<sup>99</sup> which also has implications regarding succession. As it recognizes family as the Central Unit of society and succession laws often play a vital role in maintaining the family stability by providing a framework for orderly transfer of property and assets upon death of a family member.

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<sup>96</sup> Article 14 of the African Charter on Human and People's Rights(ACHPR)

<sup>97</sup> Article 2 of the ACHPR

<sup>98</sup> Article 3 of the ACHPR

<sup>99</sup> Article 18 of the ACHPR

### 3.2.2 THE MAPUTO PROTOCOL

The Protocol to the African Charter on Human and People's rights on the rights of women in Africa commonly known as the Maputo Protocol as adopted in 2003 by the African Union establishing legal framework eliminating discrimination against women and protecting their fundamental rights.

The Maputo Protocol addresses the right to sustainable development<sup>100</sup> as it emphasizes women's access to property and productive resources ensuring equal opportunities. This in doing so secures the economic rights and helps women achieve financial stability and independence.

The Protocol protects widows from being disposed of their husband's property upon death<sup>101</sup>. In so doing so it guarantees women have the same inheritance rights as men<sup>102</sup> ensuring fair distribution among heirs.

### 3.3 NATIONAL LAWS.

#### 3.3.1 CONSTITUTION OF THE REPUBLIC OF UGANDA

The Constitution of Uganda is the Supreme law of the land<sup>103</sup> and its principles underpin all other legislation including those related to succession anything inconsistent shall be deemed void<sup>104</sup>. The Constitution Provides for freedom from discrimination, prohibiting discriminatory parties based on sex, race and any other factors<sup>105</sup>.

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<sup>100</sup> Article 19 of the Maputo Protocol

<sup>101</sup> Article 20 of the Maputo Protocol

<sup>102</sup> Article 21 of the Maputo Protocol

<sup>103</sup> Article 2 of the Constitution Of the Republic of Uganda

<sup>104</sup> Article 2 of the Constitution of the Republic of Uganda

<sup>105</sup> Article 20 of the Constitution of the Republic of Uganda

Furthermore, the Constitution requires that the state take affirmative action to address imbalances affecting marginalized groups<sup>106</sup> and stressing the importance of social justice and economic development<sup>107</sup>.

The Constitution further provides for the right to practice culture and traditions<sup>108</sup> and it empowers Parliament to the right to make laws and also play a crucial role in shaping the legal landscape of Succession in Uganda<sup>109</sup>.

### 3.3.2 THE SUCCESSION AMENDMENT ACT 2022

This Act represents a transformative effort as a response to the case of Uganda Law Advocacy for Women V Attorney General. This is through refining definitions key of which eliminating legitimate and illegitimate children<sup>110</sup> and expanding the definitions of Daughter and Son to include adopted children. The Succession Amendment Act 2022 also incorporates gender neutral language<sup>111</sup>. There is also the provision for domicile for both child whom acquires the domicile of the parents<sup>112</sup> whereas, spouses acquire domicile of spouse is acquired upon marriage<sup>113</sup>.

A significant change introduced in the Succession Amendment Act 2022 was the introduction of the of the property distribution percentages to the various entitled

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<sup>106</sup> Article 32 of the Constitution of the Republic Of Uganda

<sup>107</sup> Article 14 of the Constitution of the Republic of Uganda

<sup>108</sup> Article 27 of the Constitution of the Republic of Uganda

<sup>109</sup> Article 79 of the Constitution of the Republic of Uganda

<sup>110</sup> Section 2 of the Succession Amendment Act 2022

<sup>111</sup> Section 5 of the Succession Amendment Act 2022

<sup>112</sup> Section 13 of the Succession Amendment Act 2022

<sup>113</sup> Section 14 Of the Succession Amendment Act 2022

persons including, spouse, lineal descendants, dependent relatives and customary heirs<sup>114</sup> depending on the circumstances.

The Act further provides that surviving spouses and the lineal descendants are not allowed to account for the value of the residential holding and a surviving spouse separated by the time the person became deceased cannot claim from the estate<sup>115</sup>.

Further the Amendment addresses issues such as revocation of grants and penalties<sup>116</sup>.

There are also provisions for making of wills and gifts in the contemplation of death<sup>117</sup>, time limits for probate<sup>118</sup> and administering estates<sup>119</sup> and punishments for false statements<sup>120</sup>.

### 3.3.3 ADMINISTRATOR GENERAL ACT CAP 264

This Act recently amended in 2021, as it provides for the appointment of the Administrator General by the Minister which along with deputy assistants to oversee estate administration<sup>121</sup>. That those intending to acquire the letters of Administration must first report the death of the deceased to the Administrator General<sup>122</sup>. The Administrator General Act provides for the Revocation of grant of letters of

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<sup>114</sup> Section 27 of the Succession Amendment Act 2022

<sup>115</sup> Section 29 and 30 of the Succession Amendment Act 2022

<sup>116</sup> Section 234 of the Succession Amendment Act 2022

<sup>117</sup> Section 179 of the Succession Amendment Act 2022

<sup>118</sup> Section 244 of the Succession Amendment Act 2022

<sup>119</sup> Section 258 and 259 of the Succession Amendment Act 2022

<sup>120</sup> Section 249 of the Succession Amendment Act 2022

<sup>121</sup> Section 2 of the Administrator General Act Cap 157

<sup>122</sup> Section 4 of the Administrator General Act Cap 157

administration given to the Administrator General by the court if another person is deemed more suitable to manage the estate<sup>123</sup>

The act also prohibits the unauthorized persons from interfering with the property of a deceased individual and anyone found intermeddling would face the legal consequences<sup>124</sup>

### 3.3.4 JUDICATURE ACT CAP 6

The Judges in Uganda are enjoined to administer law in accordance with the Judicature Act which provides that subject to the constitution the Jurisdiction of the High court Shall be exercised in conformity with written law including any law in fore immediately before the commencement of the act<sup>125</sup>; and subject to any written law and in so far as the written law does not extend or apply in conformity with the common law doctrines of equity and any established custom or usage.... from this we see both Customary and international Law Customs can be applied in the Courts of Law in Uganda. The international law traditionally distinguishes between public and private spheres and influences national laws including those that govern inheritance.

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<sup>123</sup> Section 7 of the Administrator General Act Cap 157

<sup>124</sup> Section 11 off the Administrator General Act Cap 157

<sup>125</sup> Section 14 of the Judicature Act

## CHAPTER 4

### DATA ANALYSIS AND FINDINGS

#### 4.1 INTRODUCTION

This chapter presents a comprehensive analysis of the research findings obtained from the data collected focusing on the Effectiveness and practicality of the Succession Amendment Act 2022 in estate management of Uganda. The analysis is structured to address the research objectives and questions systematically. Both qualitative and quantitative data derived from the various methods are presented as per the methodology. The findings are interpreted to provide a clear understanding of the challenges ,impacts on potential improvements rated to the implementation of the Act. Tables and figures shall be used to summarize the quantitative data while qualitative data shall be presented with illustrative quotes.

#### 4.3 QUESTIONNAIRE

1. Have you heard of the Succession Amendment Act 2022?
2. Do you believe the Current succession Laws in Uganda have promoted equality between men and women?
3. Are you aware of the specific percentages assigned to the various persons in the Succession Amendment Act 2022?
4. Have you recently from 2022 experienced delays in the Administration of Estates following death of a loved one?
5. Do you think the Cultural traditions override or over take the existing law?
6. Do you think the provision of 1% of the Customary Heir to the intestate estate is enforceable and fair?

7. Have you encountered issues with accountability of the Administrator General, Executors, Administration when they are distributing Property?
8. At what age do you think is appropriate to make a will?
9. Do you know how to make a will and its requirements?
10. Have you heard of electronic wills?
11. Do you believe people who are not married but are cohabiting should have right to inherit property?

#### 4.4. QUANTITATIVE FINDINGS

This section presents the findings from quantitative component of research derived from conducting a survey among four schools that is to say Meritah Christian Primary school, Grapevine Primary school, Suubi Primary school and Superstar Primary school, including the Counsel of Mukono Chief Magistrates Court using methods of survey, questionnaire to mention a few.

##### 4.4.1. AWARENESS OF SUCCESSION AMENDMENT ACT 2022

Awareness of the Succession Amendment Act 2022 varied across the surveyed schools. At Meritah Christian primary school regarding awareness of succession amendment act. Indirectly, accountability issues were mentioned by 1 out of 24 teachers and this reflected 4.2% awareness. In Regards to Grapevine primary school regarding the awareness of the Succession Amendment Act approximately 3 out of 10 teachers which equates to 30% were aware of the Act.

Suubi Primary school on the awareness of the Succession Amendment Act 6 out of 20 were aware approximately 30%. Whereas, Superstar Primary school 3 out of 8 of the teachers

approximately 37.5% were aware of the Act. The counsel at the Chief Magistrates Court of Mukono were all aware of the Succession Amendment Act 2022 out of 4.

#### 4.4.2 PERCEPTION OF EQUALITY BETWEEN MEN AND WOMEN

Merita Christian primary school 19 out of 24 teachers approximately 79.2% believed that the current Succession laws do not promote equality. In Grapevine primary school approximately 5 out of 6 that is to say 83.3% believed that current laws do not promote equality. In Suubi Primary school 15 out of 20 believed the current succession laws do not promote equality between the genders.

Superstar primary school 5 out of 8 approximately 62.5% believed that the current succession laws promote gender equality. The Counsels at the Chief Magistrate Court of Mukono 2 were in the position that the current succession laws do not promote equality between men and women while the other two were on the affirmative

#### 4.4.3 AWARENESS OF THE SPECIFIC PERCENTAGES ASSIGNED IN THE SUCCESSION AMENDMENT ACT 2022

In Merita primary school 1 out of 24 teachers are aware of the specific percentages assigned to the beneficiaries. In Grapevine primary school 1 out of 10 of the teachers were aware of the specific percentages assigned to the beneficiaries. The Counsel at the Chief Magistrate court of Mukono all the 4 were aware of the specific percentages of assigned to the different beneficiaries. Suubi Primary school regarding the awareness of the percentages 7 out of 20 were aware. Whereas, in Superstar primary school no one was aware of the specific percentages.

#### 4.4.4 EXPERIENCES OF DELAYS IN THE ADMINISTRATION OF ESTATES.

At Grapevine primary school 7 out of ten experienced this, similarly, at Suubi Primary school 12 out of 20 experienced. At Superstar primary school 5 out of 8 teachers experienced delays. The Chief Magistrates Court Counsels all experienced such delay. As for Merita Primary school 10 of the 24 experienced such delays.

#### 4.4.6 THE INFLUENCE OF CULTURAL TRADITIONS ON SUCCESSION LAWS

All the lawyers from the Chief Magistrate Court of Mukono were in belief that the traditions override the existing succession laws. This view was shared jointly with all teachers from Suubi, Merita, Grapevine and Superstar primary schools.

#### 4.4.7 PROVISION FOR THE CUSTOMARY HEIR

All lawyers at the Mukono Chief Magistrate Court were in Agreement that the provision is fair and enforceable. As for Merita Primary school 19 out of 24 of the teachers agreed the provision was unfair, whereas, Grapevine Primary school 5 out of 10 of the teachers believed that the provision was unfair. At Suubi Primary school 17 out of 20 were in belief that the provision was unfair, as for Superstar Primary school 7 out of 8 believed the provision for the customary heir is unfair.

#### 4.4.8 KNOWLEDGE OF MAKING A WILL.

The lawyers at Mukono Chief Magistrate Court all had knowledge on how to make a will, whereas, majority of the teachers from all the primary schools lacked knowledge on how to make a will approximately 80%.

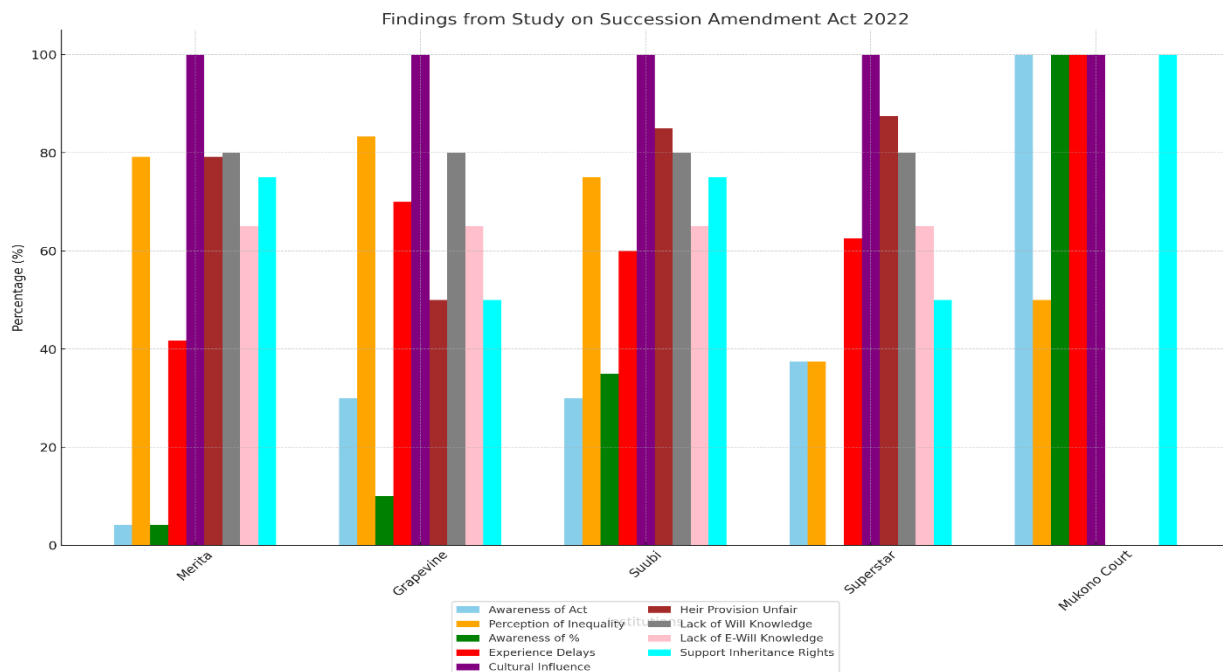
#### 4.4.9. AWARENESS OF ELECTRONIC WILLS

The Lawyers of Mukono Chief Magistrate Court had knowledge of the electronic wills. As the teachers across all schools had no knowledge of the Electronic wills approximately 65%.

#### 4.4.10 INHERITANCE RIGHTS FOR UNMARRIED PARTNERS OR COHABITING PARTNERS.

At Merita Christian primary school, 18 out of 24 approximately 75% were in support of unmarried couples' inheritance rights to estates, in Grapevine Primary school, 5 out of 10 were in agreement to the inheritance right. Whereas a strong 75% were in support of the inheritance right. At Superstar, approximately 50% of the teachers supported this inheritance rights. The Mukono Chief Magistrate Court Counsels were all in agreement.

#### 4.4.1 DIAGRAM DEMONSTRATING THE QUANTITATIVE FINDINGS



## 4.5 QUALITATIVE ANALYSIS

The Qualitative Data was acquired through use of sampling and questionnaire and interview method asking it in open ended questions. Taking note, the counsel's are from the Chief Magistrate court of Mukono and their names were not given to protect their **confidentiality** and **privacy**.

### 4.5.1 AWARENESS OF THE SUCCESSION AMENDMENT ACT 2022

In regards to the awareness of Succession Amendment Act 2022, Counsel Jacob from Mukono Chief Magistrate Court stated that he became aware of the Succession Amendment Act 2022 as parliament passed the Succession Amendment Bill of 2018. The teachers demonstrate varying levels of awareness. As observed by one Teacher Margert from Super Star Primary school who became aware of the Succession Amendment Act through the news on NBS whereas one Mr. Musoke who became aware of it through social media platforms like tiktok on a following of Legal streetwise, or the law Journal and through YouTube channels.

While some are generally aware of the Act, their knowledge was mostly sourced from social media and newspapers. This highlights the potential gap in the dissemination of legal information through official channels which can disproportionately affect the people with limited access to formal legal resources including those with low literacy levels.

#### 4.5.2 THE PERCEPTION OF EQUALITY IN SUCCESSION LAWS BETWEEN MEN AND WOMEN

Counsel Habiba of Mukono Chief Magistrate Court states this is on a case-to-case basis as some cases the laws may favor the women whereas others, the law may not be effective. The teachers' perspectives on gender equality are diverse. Some teachers believe that the laws promote equality. As Ms. Aamito from Grapevine primary school stated that in her recent experience enduring the distribution of property during her mother's time, she was not allowed to inherit properties but however when they recently took the case to court the court in 2023 acknowledged that she has a right to property and also a right to inherit property as it is provided by the law.

While others outline instances where women are denied inheritance rights. As seen in Ms. Nabimba from Superstar Primary school who state "for my family women are not allowed to inherit property as everything is worked for by the man and once the man dies everything goes to his brother including the wife as we are seen as mere property" she added on and said ".....maybe in your world men and women are the same but in reality, we can never be the same"

This aligns with the concerns raised in the Uganda Law Advocacy for Women V Attorney General which highlighted how cultural norms often perpetuate discrimination against women even in the face of legal reforms.

#### 4.5.3 THE KNOWLEDGE OF THE SPECIFIC PERCENTAGES ASSIGNED TO BENEFICIARIES

Counsel David from Mukono Chief Magistrates Court stated that every serious lawyer is obviously aware of these percentages as an advocate a good lawyer is one who knows the

law. Mr. Opio from Suubi Primary school who stated “I cannot leave a woman to inherit my property if she has not beard for me any children.....that is utter nonsense”. From this we observe there is a great gap of ignorance and by virtue of Uganda Law Advocacy for Women V Attorney General in order to ensure that individuals are fully informed of their rights and obligations under the law.

#### 4.5.4 DELAYS IN ADMINISTRATION OF ESTATES BY THE ADMINISTRATOR GENERAL, ADMINISTRATORS OR EXECUTORS.

Counsel Jacob states that there is indefinite delay as people come at different times to claim a piece of the estate and this can go up to a year as more people keep showing up. Similarly, Counsel David added to this by stating that also in those family meetings it is hard to agree whom shall be the next executor or administrator of the deceased estate. “...the Administrator General office should do something about this as they are lacking in that department” says Counsel Habiba.

The teachers also reported delays in estate administration due to issues such as multiple claims on land. As seen Mr. Wampamba of Merita Christian Primary school stated that he experienced a problem when his father died as different people is late father owed debts to came and kicked them off the land and it happened recently in mid-January of 2024 and it was difficult to institute a law suit or arrest them as the police seemed to be on their side.

Another was Hajjat Namakula who stated that once her husband had died his relatives that is to say his brother and mother of the ate came and kicked her out of the house with the children and she was left homeless as she did not know where to Go. She further

mentioned “I went to the police who informed me that they do not handle family matters”

This reflects the practical challenges in implementing the succession laws where disputes and complexities can hinder the efficient transfer of property.

#### 4.5.5 CUSTOMARY PROVISION FOR 1% TO THE CUSTOMARY HEIR AND WHETHER CUSTOMS OVERRIDE EXISTING SUCCESSION LAWS.

The counsels from Mukono Chief Magistrate Court generally agreed that this provision was very fair. Counsel David, for instance, stated that the customary heir's role is simply to "maintain the traditional role the deceased played." This view was supported by Counsel Habiba, who noted that even a beneficiary could still serve as the customary heir, thus deeming the provision equitable.

However, Mr. Olemukan from Superstar presented a dissenting view, arguing that in Teso Culture, this provision would not suffice. He explained that traditional practices often dictate that customary heirs effectively take possession of properties. Therefore, restricting them to just 1% of the estate, despite what the law provides, could lead to significant abuse and internal clan wrangles, as it would be challenging to inform them they are only entitled to such a small fraction after already having managed or taken up the properties.

Another response from Ms. Nambalirwa from Grapevine Primary school stated that in the Kiganda culture there is a “**omusika**” who carries out the traditional roles of the deceased and the law cannot just provide 1% to this person as it is too little to the traditional role they played.

This suggests a potential conflict between statutory law and customary practices; however, this created a tension that undermines the effectiveness of legal reforms if they are not aligned with societal values as the laws are there however, they are not being affected or implemented.

#### 4.5.6 ACCOUNTABILITY ISSUES BY THE ADMINISTRATOR GENERAL, EXECUTOR OR ADMINISTRATOR

Counsel Jacob highlighted that **delays in estate distribution** are often caused by corrupt administrators and executors, leading to processes that can stretch for **up to eight years**. Counsel Habib, on the other hand, argued that **accountability issues** arise because some deceased individuals leave behind extensive properties, often with complex attachments, making proper accountability difficult within the limited two-year administration period.

However, surprisingly few teachers reported direct experience with accountability issues concerning Administrator Generals, executors, and administrators. For example, Ms. Nakato (not her real name) observed that the will of her father, with her uncle acting as executor, remains unresolved to this day.

Such instances underscore the critical importance of **robust oversight and transparency in estate administration**, a factor that Pallavi Mall identifies as crucial for ensuring the fair and just distribution of assets.

#### 4.5.7 KNOWLEDGE ON ELECTRONIC WILLS

Counsel David stated that Majority of Ugandans are illiterate to start talking about Electronic wills can be in cumbersome to people. Concerning the awareness of electronic

wills was limited especially among the lower primary teachers. This indicated a need to bridge the digital divide and educate people about modern estate planning tools which Pallavi argues are necessary to adapt succession laws to changing demographics.

#### 4.5.8 KNOWLEDGE OF HOW TO MAKE A WILL

Counsel Habiba stated most Ugandans do not want to make wills as some think that when one makes a will there is contemplation of death. As seen by a one Teacher Judith of Subi Primary school who states “ isn’t a message written on paper on who will get the land in expectation of death...” as in addition many believed that one had to be 50 years and above in order to make a will getting from Teacher Brian response “.....I thought wills are from people who are 50 years plus sine they have property and us below we do not yet have property....” This brings in the concept of what is property it needs to be clearly defined as per the Succession Amendment Act 2022.

#### 4.5.9 WHETHER COHABITING PARTNERS HAD A RIGHT TO INHERITANCE OF PROPERTY UPON DEATH

Counsel David stated that if the cohabiting partner contributed to the estate, they have a right to inherit, there are even joint tenancy agreements that can see this effect. Concerning the marital status of teachers, whether married or cohabiting partners have inheritance rights. This reflected the complexities surrounding the non-traditional relationships and need for legal frameworks to address these evolving social structures.

As a one Ms. Napio stated that she is “mama wa bana” meaning baby mama in Luganda and she was promised marriage once she had delivered for the man children and added it is not fair for her not to inherit property in case of death of the father of her children as

years are spent doing wifely duties even purchasing land together for her not to inherit property.

As seconded By Ms. Bwankia said “....it is quite unfair for mothers of children to not inherit property or some form of property after the death of the father of the children regardless this would not be respecting in fact undermined g the roles mothers play in the nation and in the family regardless of whether married or not. Infract majority of Ugandans do not come from marital backgrounds for the law to deny cohabiting partners rights it’s like denying a nation rights to property.

This is as highlighted in Marion Apio’s article and the Uganda Demographic and health survey 2016 the growing number of Cohabiting people.

Majority of the teachers believed that the unmarried partner teachers ought to have inheritance rights. This view aligned with the growing recognition of cohabitation as a common societal norm in Uganda and also highlighted the gap between this reality and current legal framework.

## CHAPTER FIVE

### RECOMMENDATIONS AND CONCLUSION

#### 5.0 INTRODUCTION

The Succession Amendment Act 2022 aims to transform the Landscape of estate management in Uganda by addressing the long-standing issues related to the distribution of property and promoting equality among Heirs. This study critically analyzes the effectiveness of the Act and partial application in a socio-cultural context characterized by diverse customs and norms. The findings reveal significant insights regarding public awareness, the alignment of statutory and customary practices and the challenges faced in estate administration.

#### 5.1 GENERAL SUMMARY OF FINDINGS

The analysis of the data collected indicates the following key findings from both the quantitative and qualitative findings

5.1.1 Awareness of the Succession Amendment Act 2022 the overall level of awareness of the Act among Ugandans is low with many respondents unare of the specific provision except for the Counsels as including the percentages assigned to the various beneficiaries.

5.1.2 In regards to **perception of equality there is a mixed perception regarding the effectiveness of the current succession laws** in promoting gender equality, many respondents especially the female respondents believe that the laws still perpetuate inequalities.

- 5.1.3 Concerning **the level of awareness of the Act**, among Ugandans is low with many respondents unaware of specific provisions including the percentages assigned to various beneficiaries.
- 5.1.4 **Cultural practices significantly influence the succession** laws which leads many people to perceive customary laws as overriding statutory laws. Respondents highlighted cultural norms that favor male heirs and undermine women's rights in inheritance matters.
- 5.1.5 In the area of delays in **administration of estates and accountability of the Administrator General, Executor and Administrator**, a significant number of participants reported experiencing delays in the administration of estates which were attributed to the complexities involved in handling multiple claims and disputes.
- 5.1.6 In regards to the **cohabitation rights**, there is notable support among respondents for recognizing inheritance rights for cohabiting partners. This reflects the growing awareness of modern family structures and the legal gaps that exist in addressing the rights of such individuals.

## 5.2 RECOMMENDATIONS

In order to enhance the effectiveness of the Succession Amendment Act 2022 and address the identified challenges, the following recommendations are proposed:

### 5.2.1 INCREASED PUBLIC AWARENESS CAMPAIGNS

This is crucial to increase public awareness of the Succession Amendment At 2022 through targeted campaigns. This can be through utilizing community outreach programs by the Law Society by going directly to communities especially in rural areas through partnering

with local councils, religious institutions and community-based organizations to hold interactive sessions using relatable scenarios from some our tases to explain the Succession Amendment Act 2022 provisions.

There can also be digital engagement in media as leveraging the increasing penetration of mobile phones and internet access targeted digital campaigns can disseminate information through social media, radio streaming and podcasts talking about topics like “Cohabiting Partners should have rights to inherit property”. These platforms an also host question and answer sessions with legal experts especially in symposiums hosted in the different universities.

Also, through collaboration with local and traditional leaders including religious leaders. This would have significant influence as there would be engaging them about the Succession Amendment Act 2022 to disseminate information effectively and build trust with the communities about the new law.

There could be translations of the new provisions of the Succession Amendment Act 2022 into local languages dominant in the region through brochures, posters and radio dramas as it would ensure that language barriers do not impede access to crucial information.

### 5.2.2 ENCOURAGING PRO BONO SERVICES BY THE LEGAL PRACTITONERS

The Uganda Law Society could establish stricter pro bono schemes for young advocates to enable the individuals who cannot access or afford legal services to access them. This could involve creating a roster of pro bono advocates and referral mechanisms. Furthermore, recognizing and incentivizing pro bono contributions can encourage more legal practitioners to participate. This can be through public recognition that is to say

acknowledging lawyers who dedicate a significant number of pro bono hours through awards.

Through continuing the Clinical Legal Education program (CLE) this in both undergraduate level, Law Development Centre Level and awarding CLE credits for pro bono work recognizing it as a form of professional development and contribution to sensitizing the society focusing on topics like “The practicability of the Current Succession laws of Uganda” and spread awareness of the new laws.

### 5.2.3 DIGITAL INTEGRATION IN ESTATE MANAGEMENT.

There should be digital integration in estate management this will modernize the Succession System. As per the new laws that is to say the Electronic Signatures Act and Evidence Act that recognize the Electronic wills. There should be support from the Law Society together with the responsible Parliamentary Ministries to work hand in hand and encourage electronic will writing.

There should also be set up online inquiries systems through developing user-friendly platforms where the public can access information about the new Succession laws, estate administration processes and submit queries. This can enhance transparency and accessibility for the public.

### 5.2.4 ENSURING EFFICIENT AND ACCOUNTABLE ESTATE ADMINISTRATION

From our findings we note that there is a serious issue in regards to accountability of the respective persons assigned to administer the estate of the deceased due to delay in claiming of property, gathering of relatives to mention but a few. The office of the Administrator General must implement or enforce stricter policies when applicants are

applying for letters of administration or letters of probate for example strictly respecting deadlines provided by the act and publishing notices further into radio systems to avoid later on claims to the property. This will ensure proper the Administrator General office efficiently manages estates.

### 5.2.5 EDUCATION ON WILL MAKING TO THE PUBLIC.

This can be through Clinical Legal Education (CLE) movements or sensitization programs whose main objective is to encourage will making or Teach society members how to make wills as it is a proactive way to avoid the complexities and potential disputes associated with intestate and testate succession.

This can also be through workshops and seminars in community centers especially in rural or sub-rural areas, through targeting both older and younger generations in schools can instill the importance of estate planning

### 5.2.6 MAKING LEGISLATIVE REVISIONS

There should be clear definitions of property and inheritance rights that is to say the ambiguity in defining property as this can guide people on what to put in the wills or what property is to be distributed. There should also be legal recognition of cohabiting partner rights to inherit property through recognition of joint tenancy agreements or any contribution made by the cohabiting partner before the other partner became deceased to entitle them to benefit from estate distribution. There can also be through establishing a minimum cohabitation period under which people can benefit from the rights to inherit property or if the inheritance rights are to be extended to cohabiting partners to prevent opportunistic claims to property.

### 5.2.7 BRIDGING THE GAP BETWEEN STATUTE LAW AND TRADITIONAL PRACTICES.

Uganda is rich in cultural diversity means that customary laws on succession are deeply ingrained in many communities or tribes. And the effect of ignoring this a lead to conflict and hinder the acceptance of statutory law. To mitigate this there should be engagement with the various community or cultural leaders that goes beyond mere information sharing but having genuine dialogues to understand the ore principles of the customary succession practices and identifying potential areas of synergy or conflict with the Succession Amendment Act.

### 5.3 CONCLUSION

The critical analysis of the Succession Amendment Act 2022 reveals both progress and challenges in the landscape of the inheritance law in Uganda. As highlighted in the thesis, the Act aims to promote equality between both genders, protect rights to property of all heirs and entitled persons and modernize legal terminology to align with contemporary societal norms. However, the effectiveness of the Succession Amendment Act is hindered by various factors such as low public awareness, illiteracy, cultural resistance and systematic administrative inefficiencies.

The findings indicate that there is a significant gap in awareness regarding the provisions of the Succession Amendment Act 2022, with many citizens remaining unaware of their rights and the specifics of property distribution. The lack of knowledge not only limits individuals' ability to assert their rights but also perpetuates the existing inequalities especially for women and the marginalized groups. The cultural practices prevalent in Uganda often supersede statutory laws leading to the disconnect between legal provisions

and societal realities. Discriminatory customs continue to influence inheritance with traditional norms favoring the male heirs and undermining the rights of women and illegitimate children.

In addition, the administrative processes surrounding estate management present substantial challenges producing delays and accountability issues that can exacerbate the distress of bereaved families. The role of the Administrator General is crucial yet ineffective within its system can lead to prolonged disputes and inequitable distributions of estates.

To address these challenges the thesis offers several recommendations aimed at enhancing the effectiveness of the Succession Amendment Act 2022. These include increasing public awareness through targeted campaigns and community engagement, encouraging pro bono legal services to support the disadvantaged individuals , integrating digital solutions for estate management and ensuring efficient and accountable administration of estates to mention but a few.

Ultimacy, the Succession Amendment Act 2022 lies in its ability to adapt to Uganda's diverse cultural landscape while promoting fairness and justice in the management of estates. By bridging the gap between statutory laws and customary parties and by fostering an informed and engaged citizenry, Uganda can pave way for more equitable system of inheritance that serves all its people.

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