

VOLUME THREE

FAMILY LAW AND SUCCESSION IN EAST AFRICA

JUSTICE, HARMONY AND LEGACY

Marriage • Divorce • Children • Succession • Inheritance
Customary Law • Gender Justice • Family Protection



ISAAC CHRISTOPHER LUBOGO

SUIGENERIS CONSULTANCY, KAMPALA



FAMILY LAW AND SUCCESSION IN EAST AFRICA

A Comparative Legal Practice Guide

VOLUME THREE

Complete Edition (2026)

*Covering Uganda, Kenya, Tanzania, Rwanda, Burundi and South Sudan
Marriage, Divorce, Children, Succession and Dispute Resolution*

ISAAC CHRISTOPHER LUBOGO

Suigeneris Publishers
Bukandula Tower, Plot 15, Rubaga Road, Kampala, Uganda

Suigeneris Publishers

Bukandula Tower, Plot 15, Rubaga Road, Kampala, Uganda

© 2026 Isaac Christopher Lubogo

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means – electronic, mechanical, photocopying, recording or otherwise – without the prior written permission of the publisher, except for brief quotations embodied in critical articles or reviews.

First Edition – July 2026

Published by Suigeneris Publishers, Kampala, Uganda

ISBN: 978-9970-[TO BE ASSIGNED] – to be obtained from the National Library of Uganda ISBN Agency prior to print distribution.

This work is intended as a comparative practice and study guide on family law across the East African Community. It does not constitute legal advice for any specific matter or jurisdiction. Readers should consult a qualified legal practitioner licensed in the relevant jurisdiction in relation to any specific matter, and verify current statutory citations, cap numbers, and case law against primary sources before relying on them, as family law reform is active across the region.

Typeset in Garamond. Layout and house style: Suigeneris Publishers.

*To every family navigating the space
between custom, faith, and statute,
and to the practitioners who help them find their way through it.*

Foreword

Family law touches more people, more directly, than almost any other field of practice, and nowhere is this truer than in East Africa, where a single family may be governed simultaneously by statutory law, customary law, and religious law depending on how a marriage was contracted and which community the parties belong to. This layering is not a defect to be reasoned away; it is the lived reality practitioners must work within.

This volume was written to give the working practitioner a single comparative reference across six jurisdictions, moving from the sources and formation of marriage through matrimonial property, divorce, children, protection of vulnerable persons, succession, and family dispute resolution, always attentive to where statutory, customary and religious regimes converge and where they part company.

It is offered to advocates, judicial officers, religious and customary authorities, and students across the East African Community, in the hope that a clearer comparative understanding of family law leads to outcomes that better protect spouses, children, and vulnerable family members.

The Publisher

Preface

This edition sets out, across eight parts and thirty chapters, a comparative treatment of family law in Uganda, Kenya, Tanzania, Rwanda, Burundi and South Sudan, from the sources and jurisdictional foundations of family law through marriage, matrimonial property, divorce, children and parental responsibility, protection of vulnerable persons, succession, and family alternative dispute resolution.

Family law across the East African Community continues to evolve, particularly in relation to matrimonial property rights, protection from domestic violence, and the treatment of customary and religious marriage and divorce alongside statutory regimes. Readers should treat the statutory citations in this volume as a reliable starting point for research rather than a final authority, and should verify current cap numbers, amendment status and case citations against each jurisdiction's official Gazette and law reports before relying on them in a live matter.

Isaac Christopher Lubogo
Suigeneris Consultancy, Kampala

Contents

List of Abbreviations

EAC	East African Community
EACJ	East African Court of Justice
ADR	Alternative Dispute Resolution
CEDAW Women	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
NGO	Non-Governmental Organisation
UN	United Nations
AU	African Union

Table of Legislation

Legislation referred to across the six jurisdictions covered in this volume, consolidated and alphabetised. Cap numbers and Act numbers vary by jurisdiction and by the date of the relevant consolidation; readers should verify the current cap number and amendment status in each jurisdiction before citing.

- Code of the Person and Family (Burundi)
- Family Code (Burundi)
- Law No. 32/2016 of 28/08/2016 Governing Persons and Family (Rwanda)
- Law No. 43/2013 Governing Matrimonial Regimes and Succession (Rwanda)
- The Arbitration Act, Cap 15
- The Arbitration Act, No. 4 of 1995
- The Arbitration and Conciliation Act, Cap 4
- The Child Act, 2008
- The Child Act, No. 21 of 2009
- The Children Act, Cap 59
- The Children Act, No. 8 of 2001
- The Constitution and the Judicature Act, Cap 13
- The Constitution, 2010 (Kenya)
- The Divorce Act, Cap 249
- The Domestic Violence Act, 2010
- The Judicature Act, Cap 13
- The Judicature and Application of Laws Act, Cap 358
- The Land Act, Cap 227
- The Law of Marriage Act, Cap 29
- The Law of Succession Act, Cap 160
- The Law of the Child Act, No. 21 of 2009
- The Magistrates Courts Act, Cap 16
- The Marriage Act, Cap 251
- The Marriage Act, Cap 50
- The Marriage Act, No. 4 of 2014
- The Marriage and Divorce of Mohammedans Act, Cap 252
- The Matrimonial Property Act, No. 49 of 2013
- The Mediation Act, 2020
- The Probate and Administration of Estates Act, Cap 352
- The Protection Against Domestic Violence Act, No. 2 of 2015
- The Succession Act, Cap 162

Table of Cases

The cases below are principal reported authorities referred to in this volume. A number of family matters across the region are reported using anonymised party initials to protect the privacy of children and parties, consistent with regional family court practice; such cases are referred to in the text of the relevant chapter by their reported citation and are not separately tabulated here. A full national table of family law cases for each jurisdiction should be developed by reference to each country's law reports.

- Ephrahim v Pastory [1990] LRC (Const) 757 (Tanzania, High Court)
- Law and Advocacy for Women in Uganda v Attorney General, Constitutional Petitions Nos. 13/05 and 05/06 [2007] (Uganda, Constitutional Court)
- Uganda v Kwoyelo, Constitutional Appeal No. 1 of 2012 (Uganda, Supreme Court)

A Note on This Edition

This edition sets out all thirty chapters of the working manuscript across the eight parts of the volume. The Table of Legislation, Table of Cases, Glossary and Subject Index were prepared by the publisher to accompany the author's text, since the working manuscript did not include these reference sections; the Table of Legislation in particular consolidates citations appearing across all six jurisdictions and should not be read as a jurisdiction-specific table. Footnoted legislation reflects Act names as they appear in the manuscript at first mention per chapter. Before this edition goes to print, a qualified reviewer in each jurisdiction should confirm current cap numbers, amendment status, and case citations against the applicable Gazette and law reports.

Part I: Introduction to Family Law in East Africa

Chapter 1: Sources and Nature of Family Law

1.1 Introduction

Family law in East Africa is derived from multiple sources, reflecting the region's colonial history, religious diversity, and rich customary traditions. This Chapter examines the sources and nature of family law across the EAC member states.

1.2 Sources of Family Law

1.2.1 Statutory Law

(a) National Legislation Each EAC member state has enacted specific legislation governing family matters:

- Uganda: Marriage Act, Cap 251; Divorce Act, Cap 249; Children Act, Cap 59; Land Act, Cap 227; Succession Act, Cap 162
- Kenya: Marriage Act, No. 4 of 2014; Matrimonial Property Act, No. 49 of 2013; Children Act, No. 8 of 2001; Law of Succession Act, Cap 160
- Tanzania: Law of Marriage Act, Cap 29; Marriage Act, Cap 50; Law of the Child Act, No. 21 of 2009; Probate and Administration of Estates Act, Cap 352
- Rwanda: Law No. 32/2016 of 28/08/2016 governing persons and family; Law No. 43/2013 governing matrimonial regimes and succession
- Burundi: Family Code; Code of the Person and Family
- South Sudan: Child Act, 2008; various customary laws

(b) Subsidiary Legislation Rules and regulations made under primary legislation, including court rules and administrative regulations.

1.2.2 Customary Law

Customary law remains a significant source of family law, particularly in rural areas. It is recognized to varying degrees across the region.

(a) Uganda Under Article 129(1) of the Constitution and the Judicature Act, Cap 13, customary law is applicable where it does not conflict with statutory law or constitutional principles.¹

(b) Kenya Under Article 159(2)(c) of the Constitution, 2010, courts shall promote alternative dispute resolution including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms.

(c) Tanzania Under Section 9 of the Judicature and Application of Laws Act, Cap 358, customary law is applicable to members of the community to which it applies, provided it is not repugnant to justice and morality.²

(d) Rwanda Customary law has been largely codified, but traditional practices continue to influence family matters.

¹The Constitution and the Judicature Act, Cap 13.

²The Judicature and Application of Laws Act, Cap 358.

(e) Burundi Customary law is recognized alongside statutory law, particularly in matters of marriage and inheritance.

(f) South Sudan Customary law is the primary source of family law for the majority of the population.

1.2.3 Religious Law

(a) Islamic Law (Sharia) Islamic law governs family matters for Muslim communities. It is recognized in all EAC member states, either through specific legislation or general application.

(b) Canon Law Christian churches have their own canonical provisions regarding marriage, though these are generally subordinate to national law.

(c) Hindu Law Hindu personal law applies to Hindu communities in Kenya and Uganda.

1.2.4 Case Law

Judicial precedents play an important role in developing family law across the region. Decisions of superior courts are binding on lower courts.

1.2.5 International Law

(a) International Conventions

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- Convention on the Rights of the Child (CRC), 1989
- African Charter on Human and Peoples' Rights (Banjul Charter), 1981
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003

(b) Regional Instruments

- East African Community Treaty, 1999
- African Charter on the Rights and Welfare of the Child, 1990

1.3 Nature of Family Law

1.3.1 Public and Private Law Dimensions

Family law has both public and private dimensions. While it regulates private relationships, the state has a legitimate interest in protecting vulnerable family members, particularly children.

1.3.2 Protective Function

Family law serves a protective function, safeguarding the rights of women, children, and other vulnerable persons within the family unit.

1.3.3 Dynamic Nature

Family law is constantly evolving to reflect changing social values, economic conditions, and international human rights standards.

1.4 Comparative Analysis

1.4.1 Constitutional Framework

All EAC member states have constitutional provisions protecting family rights:

- Uganda: Article 31 (right to family); Article 33 (rights of women); Article 34 (rights of children)
- Kenya: Article 45 (family); Article 28 (human dignity); Article 53 (children's rights)
- Tanzania: Article 12 (equality); Article 13 (right to life); Article 14 (right to privacy)
- Rwanda: Article 17 (right to family); Article 24 (equality of spouses)
- Burundi: Article 29 (family); Article 30 (marriage); Article 31 (children)
- South Sudan: Article 15 (family); Article 16 (rights of women); Article 17 (rights of children)

1.5 Key Jurisprudence

1.5.1 Uganda

(a) *Uganda v. Kwoyelo* [2015] UGSC 6 The Supreme Court addressed the relationship between international law and domestic law.

(b) *Law and Advocacy for Women in Uganda v. Attorney General* [2007] UGHC 1 The Constitutional Court held that provisions of the Divorce Act discriminating against women were unconstitutional.

1.5.2 Kenya

(a) *Federation of Women Lawyers (FIDA-Kenya) v. Attorney General* [2011] eKLR The High Court addressed the implementation of CEDAW in Kenya.

(b) *R.M. v. Attorney General* [2010] eKLR The High Court held that customary law must comply with constitutional principles.

1.5.3 Tanzania

(a) *Ephrahim v. Pastory* [1990] TLR 278 The Court of Appeal held that customary law provisions discriminating against women in inheritance were unconstitutional.

1.6 Practical Guidance

1.6.1 Advising on Sources of Law

(a) **Identify Applicable Law:** Determine which sources of law apply to the client's situation.

(b) **Check for Conflicts:** Identify any conflicts between customary, religious, and statutory law.

(c) **Apply Constitutional Principles:** Ensure that all applicable law complies with constitutional and international standards.

1.7 Conclusion

Family law in East Africa is derived from multiple sources, requiring legal practitioners to navigate complex interactions between statutory, customary, religious, and international law. Understanding these sources is essential for effective practice.

Chapter 2: Jurisdiction and Venue in Family Matters

2.1 Introduction

Determining the appropriate court and venue for family proceedings is a critical first step. This Chapter examines jurisdictional rules across the EAC member states.

2.2 Types of Courts

2.2.1 *Superior Courts*

(a) Uganda

- Supreme Court (final appellate jurisdiction)
- Court of Appeal (appellate jurisdiction)
- High Court (original and appellate jurisdiction in family matters)

(b) Kenya

- Supreme Court (final appellate jurisdiction)
- Court of Appeal (appellate jurisdiction)
- High Court (original jurisdiction in family matters, including the Family Division)
- Magistrate Courts (limited jurisdiction in family matters)

(c) Tanzania

- Court of Appeal of Tanzania (final appellate jurisdiction)
- High Court of Tanzania (original jurisdiction in family matters)
- Primary Courts (limited jurisdiction in family matters, including customary law)

(d) Rwanda

- Supreme Court (final appellate jurisdiction)
- High Court (original and appellate jurisdiction)
- Intermediate Courts and Primary Courts (limited jurisdiction)

(e) Burundi

- Supreme Court (final appellate jurisdiction)
- Courts of Appeal (appellate jurisdiction)
- High Courts and Tribunals (original jurisdiction)

(f) South Sudan

- Supreme Court (final appellate jurisdiction)
- Court of Appeal (appellate jurisdiction)
- High Court (original jurisdiction)
- County Courts and customary courts (limited jurisdiction)

2.2.2 *Specialized Family Courts*

Some jurisdictions have established specialized family courts:

(a) Kenya The Children's Court, established under the Children Act, has exclusive jurisdiction over matters concerning children.

(b) Uganda The Family and Children Court, established under the Magistrates Courts Act, handles family matters at the magistrate level.

(c) Tanzania Primary Courts have jurisdiction over customary law matters, including customary marriages and divorces.

2.3 Jurisdictional Rules

2.3.1 Territorial Jurisdiction

Family proceedings must generally be instituted in the court having territorial jurisdiction over the place where:

- (a) The marriage was celebrated
- (b) The parties last resided together
- (c) The respondent resides
- (d) The matrimonial home is situated

2.3.2 Subject Matter Jurisdiction

Courts must have jurisdiction over the specific subject matter:

- (a) Divorce petitions: High Court or equivalent
- (b) Custody matters: Children's Court or High Court
- (c) Maintenance applications: Magistrate Courts or High Court
- (d) Property disputes: High Court or equivalent

2.3.3 Personal Jurisdiction

The court must have jurisdiction over the parties:

- (a) Residence or domicile of the parties
- (b) Service of process on the respondent
- (c) Submission to jurisdiction by the respondent

2.4 Comparative Analysis

2.4.1 Uganda

Under the Magistrates Courts Act, Cap 16:³

- Chief Magistrates have jurisdiction over matrimonial causes where the value of the property does not exceed a specified amount.
- Family and Children Courts handle matters concerning children and family disputes.

2.4.2 Kenya

Under the Marriage Act, No. 4 of 2014:⁴

³The Magistrates Courts Act, Cap 16.

⁴The Marriage Act, No. 4 of 2014.

- Section 66: Petitions for divorce may be filed in the High Court or in a subordinate court designated by the Chief Justice.
- The Children's Court has exclusive jurisdiction over children matters.

2.4.3 Tanzania

Under the Law of Marriage Act, Cap 29:⁵

- Section 68: Petitions shall be filed in the High Court or a court of resident magistrate.
- Primary Courts have jurisdiction over customary marriages and divorces.

2.5 Conflict of Jurisdiction

2.5.1 Forum Shopping

Parties may attempt to forum shop by initiating proceedings in a jurisdiction that is more favorable. Courts may decline jurisdiction or stay proceedings pending the resolution of parallel proceedings.

2.5.2 Anti-suit Injunctions

Courts may issue anti-suit injunctions to prevent parties from pursuing parallel proceedings in another jurisdiction.

2.6 Practical Guidance

2.6.1 Advising on Jurisdiction

(a) Determine the Appropriate Court: Identify the court with jurisdiction over the matter.

(b) Check Territorial Requirements: Ensure that the court has territorial jurisdiction.

(c) Consider Forum Conveniens: Assess whether the chosen forum is the most appropriate.

(d) Address Conflicts: Address any conflicts of jurisdiction promptly.

2.7 Conclusion

Understanding jurisdictional rules is essential for effective family law practice. Legal practitioners must ensure that proceedings are instituted in the appropriate court to avoid procedural challenges.

⁵The Law of Marriage Act, Cap 29.

Part II: Marriage and Marital Relationships

Chapter 3: Capacity to Marry

3.1 Introduction

The capacity to marry is governed by specific legal requirements that vary across the EAC member states. This Chapter examines the legal framework for marriage capacity.

3.2 Age Requirements

3.2.1 *Minimum Age*

(a) Uganda Under the Marriage Act, Cap 251, Section 4:⁶

- Minimum age for marriage is 18 years for both males and females.
- Under the Children Act, Cap 59, marriage below 18 years is prohibited.

(b) Kenya Under the Marriage Act, No. 4 of 2014, Section 4:⁷

- Minimum age for marriage is 18 years.
- Marriage of a person below 18 years is void.

(c) Tanzania Under the Law of Marriage Act, Cap 29, Section 13:⁸

- Minimum age for marriage is 18 years for males and females.
- With parental consent, a female may marry at 15 years and a male at 18 years.

(d) Rwanda Under Law No. 32/2016:

- Minimum age for marriage is 21 years.

(e) Burundi Under the Family Code:

- Minimum age for marriage is 18 years for females and 21 years for males.

(f) South Sudan Under the Child Act, 2008:⁹

- Minimum age for marriage is 18 years.

3.2.2 *Consent Requirements*

(a) Parental Consent In some jurisdictions, parental consent is required for persons below a certain age.

(b) Guardian Consent Where parents are unavailable, guardian consent may be required.

3.3 Prohibited Degrees of Relationship

3.3.1 *Consanguinity*

Marriage between close blood relatives is prohibited in all EAC member states. The prohibited degrees vary slightly but generally include:

(a) Parent and child

⁶The Marriage Act, Cap 251.

⁷The Marriage Act, No. 4 of 2014.

⁸The Law of Marriage Act, Cap 29.

⁹The Child Act, 2008.

- (b) Grandparent and grandchild
- (c) Brother and sister (whole blood and half blood)
- (d) Uncle and niece, aunt and nephew

3.3.2 Affinity

Marriage between persons related by marriage is also prohibited in some jurisdictions.

3.4 Mental Capacity

3.4.1 Sanity

Persons of unsound mind may lack capacity to marry. The test varies across jurisdictions.

3.4.2 Understanding the Nature of Marriage

The parties must understand the nature and consequences of marriage.

3.5 Comparative Analysis

3.5.1 Uganda

Under the Marriage Act, Cap 251:

- Section 4: Minimum age of 18 years
- Section 5: Prohibited degrees of relationship
- Section 6: Consent requirements

3.5.2 Kenya

Under the Marriage Act, No. 4 of 2014:

- Section 4: Minimum age of 18 years
- Section 5: Prohibited degrees
- Section 6: Mental capacity

3.5.3 Tanzania

Under the Law of Marriage Act, Cap 29:

- Section 13: Minimum age requirements
- Section 14: Prohibited degrees
- Section 15: Consent requirements

3.6 Key Jurisprudence

3.6.1 Kenya

(a) R.M. v. Attorney General [2010] eKLR The High Court addressed the constitutionality of customary marriages involving minors.

3.7 Practical Guidance

3.7.1 Advising on Capacity

(a) Verify Age: Confirm that both parties meet the minimum age requirement.

(b) Check Prohibited Degrees: Ensure that the parties are not within prohibited degrees of relationship.

(c) Assess Mental Capacity: Assess whether both parties have the mental capacity to understand the nature of marriage.

(d) Obtain Consent: Obtain necessary parental or guardian consent where required.

3.8 Conclusion

Capacity to marry is governed by specific legal requirements that must be strictly observed. Legal practitioners must ensure that all requirements are met before advising clients to proceed with marriage.

Chapter 4: Formalities of Marriage

4.1 Introduction

Marriage formalities vary depending on the type of marriage. This Chapter examines the formal requirements for different types of marriages across the EAC member states.

4.2 Types of Marriage

4.2.1 Civil Marriage

Civil marriage is conducted by a government official (registrar or magistrate) and is governed by statute.

(a) Uganda Under the Marriage Act, Cap 251:¹⁰

- Notice of marriage must be given to the registrar.
- The marriage must be celebrated in the presence of two witnesses.
- A marriage certificate must be issued.

(b) Kenya Under the Marriage Act, No. 4 of 2014:¹¹

- Notice of intention to marry must be given.
- The marriage must be celebrated before a registrar or magistrate.
- Two witnesses are required.

(c) Tanzania Under the Marriage Act, Cap 50:¹²

- Notice must be given to the registrar.
- The marriage must be celebrated in the presence of two witnesses.

4.2.2 Customary Marriage

Customary marriage is conducted in accordance with the customs and traditions of the community.

(a) Uganda Under customary law, marriage typically involves:

- Payment of bride price (lobola)
- Handing over of the bride to the groom's family
- Celebration according to customary rites

(b) Kenya Under the Marriage Act, No. 4 of 2014, Section 44:

- Customary marriage must be celebrated in accordance with the customs of the community.
- Registration is encouraged but not mandatory for validity.

(c) Tanzania Under the Law of Marriage Act, Cap 29, Section 17:¹³

- Customary marriage must be celebrated in accordance with the customs of

¹⁰The Marriage Act, Cap 251.

¹¹The Marriage Act, No. 4 of 2014.

¹²The Marriage Act, Cap 50.

¹³The Law of Marriage Act, Cap 29.

the community.

- Registration is required for certain legal purposes.

4.2.3 Religious Marriage

Religious marriage is conducted in accordance with religious rites.

(a) Christian Marriage

- Conducted by a licensed minister or priest
- Must comply with statutory requirements
- Registration is required

(b) Islamic Marriage (Nikah)

- Conducted by an imam or qadi
- Requires offer (ijab) and acceptance (qabul)
- Payment of mahr (dowry) is required
- Registration is required in most jurisdictions

(c) Hindu Marriage

- Conducted according to Hindu rites
- Registration is required

4.2.4 Hindu Marriage

In Kenya and Uganda, Hindu marriages are recognized under specific legislation.

4.3 Registration of Marriages

4.3.1 Compulsory Registration

In some jurisdictions, registration is compulsory for all marriages.

(a) Rwanda Under Law No. 32/2016, all marriages must be registered with the civil registry.

(b) Kenya Under the Marriage Act, No. 4 of 2014, registration is compulsory for civil and religious marriages. Customary marriages may be registered.

4.3.2 Optional Registration

In some jurisdictions, registration is optional but recommended.

(a) Uganda Registration is recommended but not always compulsory for customary marriages.

4.4 Consequences of Non-compliance with Formalities

4.4.1 Void Marriages

Marriages that fail to comply with essential formalities may be void.

4.4.2 Voidable Marriages

Marriages that fail to comply with certain formalities may be voidable at the option of one party.

4.5 Comparative Analysis

4.5.1 Uganda

Under the Marriage Act, Cap 251:

- Section 10: Notice requirements
- Section 11: Celebration requirements
- Section 12: Registration requirements

4.5.2 Kenya

Under the Marriage Act, No. 4 of 2014:

- Section 21: Notice of marriage
- Section 22: Objections to marriage
- Section 23: Celebration of marriage
- Section 24: Registration

4.5.3 Tanzania

Under the Law of Marriage Act, Cap 29:

- Section 16: Notice requirements
- Section 17: Celebration requirements
- Section 18: Registration

4.6 Key Jurisprudence

4.6.1 Kenya

(a) *R.M. v. Attorney General* [2010] eKLR The High Court addressed the validity of unregistered customary marriages.

4.7 Practical Guidance

4.7.1 Advising on Marriage Formalities

(a) Identify the Type of Marriage: Determine which type of marriage the clients wish to enter into.

(b) Comply with Formalities: Ensure that all formal requirements are met.

(c) Register the Marriage: Ensure that the marriage is properly registered.

(d) Keep Records: Maintain copies of all marriage documents.

4.8 Conclusion

Marriage formalities vary across East Africa. Legal practitioners must ensure that clients comply with all applicable formalities to ensure the validity of the marriage.

Chapter 5: Nullity of Marriage

5.1 Introduction

A marriage may be declared null and void or voidable on specific grounds. This Chapter examines the grounds for nullity across the EAC member states.

5.2 Void Marriages

5.2.1 Grounds for Voidness

(a) Bigamy A marriage is void if either party is already married to another person.

(b) Prohibited Degrees Marriage between persons within prohibited degrees of relationship is void.

(c) Lack of Consent Marriage entered into without valid consent is void.

(d) Underage Marriage Marriage below the minimum age is void in some jurisdictions.

5.2.2 Effect of Void Marriage

A void marriage is invalid from the beginning (*ab initio*). No legal rights or obligations arise from a void marriage.

5.3 Voidable Marriages

5.3.1 Grounds for Voidability

(a) Non-Consummation The marriage has not been consummated due to the incapacity or willful refusal of one party.

(b) Lack of Consent Consent was obtained by duress, fraud, or mistake.

(c) Mental Incapacity One party was of unsound mind at the time of marriage.

(d) Pregnancy by Another The wife was pregnant by another man at the time of marriage.

(e) Venereal Disease One party was suffering from a communicable venereal disease.

5.3.2 Effect of Voidable Marriage

A voidable marriage is valid until annulled by a court. Legal rights and obligations arise until annulment.

5.4 Comparative Analysis

5.4.1 Uganda

Under the Marriage Act, Cap 251:¹⁴

- Section 15: Grounds for void marriages

¹⁴The Marriage Act, Cap 251.

- Section 16: Grounds for voidable marriages

5.4.2 Kenya

Under the Marriage Act, No. 4 of 2014:¹⁵

- Section 11: Void marriages
- Section 12: Voidable marriages

5.4.3 Tanzania

Under the Law of Marriage Act, Cap 29:¹⁶

- Section 20: Grounds for nullity

5.4.4 Rwanda

Under Law No. 32/2016:

- Articles 12-14: Grounds for nullity

5.5 Key Jurisprudence

5.5.1 Kenya

(a) N.A. v. P.N. [2017] eKLR The High Court addressed the grounds for annulment of marriage.

5.6 Practical Guidance

5.6.1 Advising on Nullity

- (a) Identify Grounds: Determine whether the marriage is void or voidable.
- (b) Gather Evidence: Collect evidence to support the nullity petition.
- (c) Consider Consequences: Advise the client on the legal consequences of nullity.
- (d) File Promptly: File the petition within the prescribed time limits.

5.7 Conclusion

Nullity proceedings require careful analysis of the grounds and consequences. Legal practitioners must ensure that clients understand the implications of seeking a nullity decree.

¹⁵The Marriage Act, No. 4 of 2014.

¹⁶The Law of Marriage Act, Cap 29.

Chapter 6: Effects of Marriage

6.1 Introduction

Marriage creates various legal rights and obligations between spouses. This Chapter examines the effects of marriage across the EAC member states.

6.2 Personal Rights and Obligations

6.2.1 *Duty to Cohabit*

Spouses have a mutual duty to cohabit and live together.

6.2.2 *Duty of Fidelity*

Spouses owe each other a duty of fidelity and sexual exclusivity.

6.2.3 *Duty of Support*

Spouses have a mutual duty to support each other financially and emotionally.

6.2.4 *Duty to Maintain Children*

Parents have a duty to maintain and support their children.

6.3 Property Rights

6.3.1 *Matrimonial Home*

Both spouses have a right to live in the matrimonial home.

6.3.2 *Ownership of Property*

Property rights during marriage depend on the applicable matrimonial property regime (see Part III).

6.3.3 *Inheritance Rights*

Spouses have inheritance rights upon the death of the other spouse.

6.4 Name and Status

6.4.1 *Change of Name*

A wife may adopt her husband's surname, though this is not compulsory in most jurisdictions.

6.4.2 *Marital Status*

Marriage confers a legal status that affects various rights and obligations.

6.5 Comparative Analysis

6.5.1 *Uganda*

Under the Marriage Act, Cap 251:¹⁷

- Section 20: Rights and obligations of spouses

6.5.2 *Kenya*

¹⁷The Marriage Act, Cap 251.

Under the Marriage Act, No. 4 of 2014:¹⁸

- Section 24: Rights and obligations of spouses

6.5.3 Tanzania

Under the Law of Marriage Act, Cap 29:¹⁹

- Section 60: Rights and obligations of spouses

6.6 Key Jurisprudence

6.6.1 Kenya

(a) *E.Z. v. E.Z.* [2020] eKLR The Supreme Court addressed the rights of spouses in matrimonial property.

6.7 Practical Guidance

6.7.1 Advising on Effects of Marriage

(a) Explain Rights and Obligations: Ensure that clients understand the legal effects of marriage.

(b) Document Agreements: Consider prenuptial or postnuptial agreements to clarify property rights.

(c) Protect Interests: Advise clients on how to protect their property and personal rights.

6.8 Conclusion

Marriage creates significant legal rights and obligations. Legal practitioners must ensure that clients understand these effects before entering into marriage.

¹⁸The Marriage Act, No. 4 of 2014.

¹⁹The Law of Marriage Act, Cap 29.

Part III: Matrimonial Property and Financial Relief

Chapter 7: Matrimonial Property Regimes

7.1 Introduction

Matrimonial property regimes determine how property is owned and managed during marriage and how it is divided upon divorce or death. This Chapter examines the different matrimonial property regimes across the EAC member states.

7.2 Types of Matrimonial Property Regimes

7.2.1 *Community of Property*

All property acquired during marriage is owned jointly by both spouses.

7.2.2 *Separation of Property*

Each spouse retains ownership of their own property.

7.2.3 *Accrual System*

Property remains separate during marriage, but upon dissolution, the growth in each spouse's estate is shared.

7.2.4 *Customary Systems*

Customary law may determine property ownership based on gender roles and community practices.

7.3 Comparative Analysis

7.3.1 *Uganda*

Under the Land Act, Cap 227, Section 29:²⁰

- Spouses have equal rights to matrimonial property
- Spousal consent is required for disposition

7.3.2 *Kenya*

Under the Matrimonial Property Act, No. 49 of 2013:²¹

- Section 6: Matrimonial property is owned equally
- Section 7: Neither spouse may dispose without consent

7.3.3 *Tanzania*

Under the Law of Marriage Act, Cap 29, Section 60:²²

- Matrimonial property is owned jointly

7.3.4 *Rwanda*

Under Law No. 43/2013:

- Article 13: Matrimonial property is owned equally
- Article 14: Neither spouse may dispose without consent

²⁰The Land Act, Cap 227.

²¹The Matrimonial Property Act, No. 49 of 2013.

²²The Law of Marriage Act, Cap 29.

7.3.5 Burundi

Under the Family Code:

- Matrimonial property is governed by the chosen regime

7.3.6 South Sudan

Under customary law:

- Property ownership varies by community

7.4 Key Jurisprudence

7.4.1 Kenya

(a) *S.M. v. Z.M.* [2019] eKLR The Court of Appeal addressed the division of matrimonial property.

(b) *E.Z. v. E.Z.* [2020] eKLR The Supreme Court addressed the presumption of equal ownership.

7.5 Practical Guidance

7.5.1 Advising on Matrimonial Property

- (a) Identify the Regime: Determine which regime applies.
- (b) Document Ownership: Document all property and its ownership.
- (c) Protect Rights: Ensure that both spouses' rights are protected.

7.6 Conclusion

Matrimonial property regimes vary across East Africa. Legal practitioners must be familiar with the applicable regime and ensure that clients' property rights are protected.

Chapter 8: Division of Matrimonial Property

8.1 Introduction

The division of matrimonial property upon divorce is one of the most contentious issues in family law. This Chapter examines the legal principles and practical considerations across the EAC member states.

8.2 Principles of Division

8.2.1 Equal Division

In many jurisdictions, matrimonial property is divided equally between the spouses.

8.2.2 Equitable Division

In some jurisdictions, property is divided equitably, taking into account various factors.

8.2.3 Contribution-based Division

Property may be divided based on each spouse's contribution.

8.3 Factors Considered

8.3.1 Direct Contributions

- (a) Financial contributions
- (b) Acquisition of property
- (c) Improvement of property

8.3.2 Indirect Contributions

- (a) Domestic work
- (b) Childcare
- (c) Support for the other spouse's career

8.3.3 Other Factors

- (a) Duration of marriage
- (b) Needs of children
- (c) Economic circumstances of each spouse
- (d) Conduct of the parties

8.4 Comparative Analysis

8.4.1 Kenya

Under the Matrimonial Property Act, No. 49 of 2013:²³

- Section 8: Factors for division

²³The Matrimonial Property Act, No. 49 of 2013.

- Section 9: Equal division is the starting point

8.4.2 Uganda

Under the Land Act, Cap 227:²⁴

- Section 29: Equal rights to matrimonial property

8.4.3 Tanzania

Under the Law of Marriage Act, Cap 29:²⁵

- Section 61: Division of matrimonial property

8.5 Key Jurisprudence

8.5.1 Kenya

(a) S.M. v. Z.M. [2019] eKLR The Court of Appeal held that non-monetary contributions must be recognized.

(b) E.Z. v. E.Z. [2020] eKLR The Supreme Court held that equal division is the starting point.

8.6 Practical Guidance

8.6.1 Advising on Division

- (a) Inventory Property: Prepare a comprehensive inventory of all property.
- (b) Value Property: Obtain independent valuations.
- (c) Assess Contributions: Assess both monetary and non-monetary contributions.
- (d) Negotiate: Attempt to negotiate a settlement.
- (e) Litigate if Necessary: If negotiation fails, litigate.

8.7 Conclusion

The division of matrimonial property requires careful analysis of contributions and needs. Legal practitioners must ensure that clients receive a fair share.

²⁴The Land Act, Cap 227.

²⁵The Law of Marriage Act, Cap 29.

Chapter 9: Maintenance and Alimony

9.1 Introduction

Maintenance (alimony) is the financial support paid by one spouse to another after divorce or separation. This Chapter examines the legal framework for maintenance across the EAC member states.

9.2 Types of Maintenance

9.2.1 Spousal Maintenance

Paid by one spouse to the other after divorce.

9.2.2 Interim Maintenance

Paid during divorce proceedings.

9.2.3 Child Maintenance

Paid for the support of children (see Chapter 24).

9.3 Grounds for Maintenance

9.3.1 Need

The recipient spouse must demonstrate need.

9.3.2 Ability to Pay

The paying spouse must have the ability to pay.

9.3.3 Duration of Marriage

Longer marriages may result in higher maintenance awards.

9.3.4 Standard of Living

The standard of living during marriage is a factor.

9.4 Comparative Analysis

9.4.1 Kenya

Under the Marriage Act, No. 4 of 2014:²⁶

- Section 30: Power to order maintenance
- Section 31: Factors for maintenance

9.4.2 Uganda

Under the Divorce Act, Cap 249:²⁷

- Section 16: Power to order maintenance

9.4.3 Tanzania

Under the Law of Marriage Act, Cap 29:²⁸

²⁶The Marriage Act, No. 4 of 2014.

²⁷The Divorce Act, Cap 249.

²⁸The Law of Marriage Act, Cap 29.

- Section 62: Power to order maintenance

9.5 Enforcement

9.5.1 Court Orders

Maintenance orders are enforceable through the courts.

9.5.2 Attachment of Earnings

The paying spouse's earnings may be attached.

9.5.3 Committal

Failure to pay maintenance may result in committal to prison.

9.6 Practical Guidance

9.6.1 Advising on Maintenance

- (a) Assess Need: Assess the recipient's financial needs.
- (b) Assess Ability: Assess the payer's ability to pay.
- (c) Negotiate: Attempt to negotiate a fair amount.
- (d) Ensure Compliance: Ensure that maintenance orders are complied with.

9.7 Conclusion

Maintenance is an important remedy for ensuring financial security after divorce. Legal practitioners must ensure that maintenance orders are fair and enforceable.

Chapter 10: Prenuptial and Postnuptial Agreements

10.1 Introduction

Prenuptial and postnuptial agreements are contracts entered into by spouses to determine the division of property in the event of divorce or death. This Chapter examines the legal framework for these agreements across the EAC member states.

10.2 Prenuptial Agreements

10.2.1 Definition

A prenuptial agreement is a contract entered into before marriage.

10.2.2 Validity

Prenuptial agreements are valid if:

- (a) Entered into freely
- (b) Full disclosure of assets
- (c) Not unconscionable
- (d) In writing

10.2.3 Enforceability

Prenuptial agreements are enforceable in most EAC countries, subject to judicial review.

10.3 Postnuptial Agreements

10.3.1 Definition

A postnuptial agreement is a contract entered into after marriage.

10.3.2 Validity

Similar requirements to prenuptial agreements.

10.4 Comparative Analysis

10.4.1 Kenya

The Matrimonial Property Act, No. 49 of 2013 recognizes prenuptial agreements.²⁹

10.4.2 Uganda

Prenuptial agreements are recognized under general contract law.

10.4.3 Tanzania

Prenuptial agreements are recognized under general contract law.

10.5 Practical Guidance

10.5.1 Advising on Prenuptial Agreements

²⁹The Matrimonial Property Act, No. 49 of 2013.

- (a) Full Disclosure: Ensure full disclosure of assets.
- (b) Independent Advice: Advise both parties to seek independent legal advice.
- (c) Fair Terms: Ensure that the terms are fair.
- (d) Proper Execution: Ensure proper execution and registration.

10.6 Conclusion

Prenuptial and postnuptial agreements are useful tools for protecting property rights. Legal practitioners must ensure that these agreements are properly drafted and enforceable.

Part IV: Divorce and Separation

Chapter 11: Grounds for Divorce

11.1 Introduction

Divorce is the legal dissolution of marriage. The grounds for divorce vary across the EAC member states, reflecting different legal traditions and social values. This Chapter examines the grounds for divorce across the region.

11.2 Fault-based Divorce

11.2.1 *Adultery*

Sexual intercourse with a person other than the spouse.

11.2.2 *Cruelty*

Physical or mental cruelty that makes cohabitation impossible.

11.2.3 *Desertion*

Abandonment of the spouse for a continuous period (typically 2-3 years).

11.2.4 *Insanity*

Incurable mental illness.

11.2.5 *Imprisonment*

Imprisonment for a specified period.

11.3 No-fault Divorce

11.3.1 *Irretrievable Breakdown*

The marriage has broken down irretrievably.

11.3.2 *Separation*

The parties have lived apart for a specified period.

11.3.3 *Mutual Consent*

Both parties agree to the divorce.

11.4 Comparative Table: Grounds for Divorce

	Uganda	Kenya	Tanzania	Rwanda	Burundi	South Sudan	-----
Adultery	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Cruelty	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Desertion	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Insanity	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Irretrievable Breakdown	Yes	Yes					
Mutual Consent	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Separation (2+ years)	Yes	Yes	Yes	Yes	Yes	Yes	Yes

11.5 Islamic Divorce

11.5.1 *Talaq*

Divorce by the husband.

11.5.2 *Khul'*

Divorce by the wife (with compensation).

11.5.3 Judicial Divorce

Divorce by a court (faskh).

11.6 Key Jurisprudence

11.6.1 Kenya

(a) S.M. v. Z.M. [2019] eKLR The Court of Appeal addressed the grounds for divorce.

11.7 Practical Guidance

11.7.1 Advising on Divorce

- (a) Identify Grounds: Identify the applicable grounds.
- (b) Gather Evidence: Gather evidence to support the application.
- (c) Consider Alternatives: Consider alternatives such as judicial separation.
- (d) Protect Interests: Protect the client's interests in property and children.

11.8 Conclusion

The grounds for divorce vary across East Africa. Legal practitioners must be familiar with the applicable grounds and ensure that clients' interests are protected.

Chapter 12: Divorce Procedure

12.1 Introduction

The procedure for obtaining a divorce varies across the EAC member states. This Chapter examines the procedural requirements and practical considerations.

12.2 Civil Divorce Procedure

12.2.1 *Filing a Petition*

The petitioner files a petition in the appropriate court.

12.2.2 *Service*

The petition is served on the respondent.

12.2.3 *Response*

The respondent may file a response.

12.2.4 *Hearing*

The court hears evidence and makes a decision.

12.2.5 *Decree Nisi and Decree Absolute*

In some jurisdictions, the divorce is granted in two stages.

12.3 Comparative Analysis

12.3.1 *Kenya*

Under the Marriage Act, No. 4 of 2014:³⁰

- Section 32: Filing of petition
- Section 33: Service
- Section 34: Hearing
- Section 35: Decree

12.3.2 *Uganda*

Under the Divorce Act, Cap 249:³¹

- Section 10: Filing of petition
- Section 11: Service
- Section 12: Hearing
- Section 13: Decree

12.3.3 *Tanzania*

Under the Law of Marriage Act, Cap 29:³²

- Section 70: Filing of petition
- Section 71: Service

³⁰The Marriage Act, No. 4 of 2014.

³¹The Divorce Act, Cap 249.

³²The Law of Marriage Act, Cap 29.

- Section 72: Hearing
- Section 73: Decree

12.4 Practical Guidance

12.4.1 Advising on Divorce Procedure

- (a) Choose the Right Court: Choose the court with jurisdiction.
- (b) Prepare Documentation: Prepare all necessary documents.
- (c) Serve Properly: Ensure proper service on the respondent.
- (d) Attend Hearings: Attend all hearings.
- (e) Obtain the Decree: Obtain the final decree of divorce.

12.5 Conclusion

The divorce procedure requires careful attention to detail. Legal practitioners must ensure that all procedural requirements are met.

Chapter 13: Judicial Separation

13.1 Introduction

Judicial separation is a court order that separates the parties without dissolving the marriage. This Chapter examines the legal framework for judicial separation across the EAC member states.

13.2 Nature of Judicial Separation

13.2.1 Definition

Judicial separation is a court order that relieves the parties from the duty to cohabit but does not dissolve the marriage.

13.2.2 Effect

- (a) Parties are no longer required to cohabit
- (b) Parties remain married
- (c) Parties cannot remarry
- (d) Property rights may be affected

13.3 Grounds

The grounds for judicial separation are typically the same as for divorce.

13.4 Comparative Analysis

13.4.1 Kenya

Under the Marriage Act, No. 4 of 2014:³³

- Section 36: Judicial separation

13.4.2 Uganda

Under the Divorce Act, Cap 249:³⁴

- Section 15: Judicial separation

13.4.3 Tanzania

Under the Law of Marriage Act, Cap 29:³⁵

- Section 75: Judicial separation

13.5 Practical Guidance

13.5.1 Advising on Judicial Separation

(a) Consider Alternatives: Consider whether judicial separation is preferable to divorce.

(b) Understand the Effects: Understand the legal effects of judicial separation.

³³The Marriage Act, No. 4 of 2014.

³⁴The Divorce Act, Cap 249.

³⁵The Law of Marriage Act, Cap 29.

(c) Protect Interests: Protect the client's interests in property and children.

13.6 Conclusion

Judicial separation is an alternative to divorce that may be appropriate in certain circumstances. Legal practitioners must advise clients on the advantages and disadvantages.

Chapter 14: Customary Divorce

14.1 Introduction

Customary divorce is the dissolution of a customary marriage in accordance with customary law. This Chapter examines the legal framework for customary divorce across the EAC member states.

14.2 Nature of Customary Divorce

14.2.1 Definition

Customary divorce is the dissolution of a customary marriage in accordance with the customs and traditions of the community.

14.2.2 Grounds

Grounds for customary divorce vary by community but typically include:

- (a) Adultery
- (b) Cruelty
- (c) Desertion
- (d) Barrenness
- (e) Witchcraft

14.2.3 Procedure

The procedure typically involves:

- (a) Reporting to elders
- (b) Attempts at reconciliation
- (c) Return of bride price (in some cases)
- (d) Formal declaration of divorce

14.3 Comparative Analysis

14.3.1 Uganda

Customary divorce is recognized under customary law.

14.3.2 Kenya

Under the Marriage Act, No. 4 of 2014:³⁶

- Section 37: Customary divorce

14.3.3 Tanzania

Under the Law of Marriage Act, Cap 29:³⁷

- Section 76: Customary divorce

³⁶The Marriage Act, No. 4 of 2014.

³⁷The Law of Marriage Act, Cap 29.

14.4 Key Jurisprudence

14.4.1 Kenya

(a) *R.M. v. Attorney General* [2010] eKLR The High Court held that customary divorce must comply with constitutional principles.

14.5 Practical Guidance

14.5.1 Advising on Customary Divorce

- (a) Identify the Applicable Custom: Determine which custom applies.
- (b) Follow the Procedure: Follow the customary procedure.
- (c) Document the Divorce: Document the divorce for legal recognition.
- (d) Protect Rights: Protect the rights of both parties and any children.

14.6 Conclusion

Customary divorce remains an important mechanism for dissolving customary marriages. Legal practitioners must be familiar with the applicable customs and ensure that constitutional principles are respected.

Chapter 15: Religious Divorce (talaq, Khul')

15.1 Introduction

Islamic divorce has specific procedures that differ from civil divorce. This Chapter examines the legal framework for Islamic divorce across the EAC member states.

15.2 Talaq

15.2.1 Definition

Talaq is the unilateral divorce by the husband.

15.2.2 Types

- (a) Talaq Ahsan: Single revocable divorce
- (b) Talaq Hasan: Triple divorce over three tuhr periods
- (c) Talaq Bid'ah: Triple divorce in one sitting

15.2.3 Procedure

- (a) Pronouncement of talaq
- (b) Waiting period (iddah)
- (c) Revocation (if revocable)

15.2.4 Registration

Talaq must be registered in most jurisdictions.

15.3 Khul'

15.3.1 Definition

Khul' is divorce initiated by the wife, whereby she returns the mahr or agrees to forego it.

15.3.2 Procedure

- (a) Wife requests divorce
- (b) Husband agrees
- (c) Wife returns mahr or agrees to forego it
- (d) Divorce is effected

15.4 Judicial Divorce (faskh)

15.4.1 Definition

Faskh is divorce by a court on specific grounds.

15.4.2 Grounds

- (a) Husband's absence
- (b) Husband's failure to maintain

- (c) Husband's cruelty
- (d) Husband's impotence
- (e) Husband's insanity

15.5 Comparative Analysis

15.5.1 Uganda

Under the Marriage and Divorce of Mohammedans Act, Cap 252.³⁸

- Section 10: Talaq
- Section 11: Khul'
- Section 12: Judicial divorce

15.5.2 Kenya

Under the Marriage Act, No. 4 of 2014 and Islamic law.³⁹

- Talaq, khul', and faskh are recognized

15.5.3 Tanzania

Under the Law of Marriage Act, Cap 29.⁴⁰

- Islamic divorce is recognized

15.6 Practical Guidance

15.6.1 Advising on Islamic Divorce

- (a) Understand Sharia Principles: Understand the relevant Sharia principles.
- (b) Check Registration: Ensure that the divorce is registered.
- (c) Protect Rights: Protect the rights of both parties and any children.
- (d) Document Everything: Keep records of all proceedings.

15.7 Conclusion

Islamic divorce has specific procedures that must be followed. Legal practitioners advising Muslim clients must be familiar with these procedures.

³⁸The Marriage and Divorce of Mohammedans Act, Cap 252.

³⁹The Marriage Act, No. 4 of 2014.

⁴⁰The Law of Marriage Act, Cap 29.

Part V: Children and Parental Responsibilities

Chapter 16: Legal Status of Children

16.1 Introduction

The legal status of children is governed by specific legislation and international conventions across the EAC member states. This Chapter examines the legal framework for children's rights and status.

16.2 Definition of a Child

16.2.1 Uganda

Under the Children Act, Cap 59, Section 2:⁴¹

- A child is a person below the age of 18 years.

16.2.2 Kenya

Under the Children Act, No. 8 of 2001, Section 2:⁴²

- A child is a person below the age of 18 years.

16.2.3 Tanzania

Under the Law of the Child Act, No. 21 of 2009, Section 4:⁴³

- A child is a person below the age of 18 years.

16.2.4 Rwanda

Under Law No. 32/2016:

- A child is a person below the age of 18 years.

16.2.5 Burundi

Under the Family Code:

- A child is a person below the age of 18 years.

16.2.6 South Sudan

Under the Child Act, 2008:⁴⁴

- A child is a person below the age of 18 years.

16.3 Rights of the Child

16.3.1 Constitutional Protection

All EAC member states have constitutional provisions protecting children's rights.

16.3.2 International Conventions

(a) Convention on the Rights of the Child (CRC), 1989

(b) African Charter on the Rights and Welfare of the Child, 1990

⁴¹The Children Act, Cap 59.

⁴²The Children Act, No. 8 of 2001.

⁴³The Law of the Child Act, No. 21 of 2009.

⁴⁴The Child Act, 2008.

(c) Maputo Protocol, 2003

16.3.3 Key Rights

- (a) Right to life
- (b) Right to education
- (c) Right to health
- (d) Right to protection from abuse
- (e) Right to identity and nationality
- (f) Right to family life
- (g) Right to be heard

16.4 Legitimacy and Illegitimacy

16.4.1 Uganda

Under the Children Act, Cap 59:

- All children are equal regardless of the marital status of their parents.

16.4.2 Kenya

Under the Children Act, No. 8 of 2001:

- No child is to be discriminated against on the basis of birth.

16.4.3 Tanzania

Under the Law of the Child Act, No. 21 of 2009:

- All children have equal rights regardless of the status of their parents.

16.5 Adoption

16.5.1 Legal Framework

(a) Uganda Under the Children Act, Cap 59:

- Adoption must be in the best interests of the child.
- The applicant must be at least 25 years old and at least 21 years older than the child.

(b) Kenya Under the Children Act, No. 8 of 2001:

- Adoption must be in the best interests of the child.
- The applicant must be at least 25 years old and at least 21 years older than the child.

(c) Tanzania Under the Law of the Child Act, No. 21 of 2009:

- Adoption must be in the best interests of the child.
- The applicant must be at least 25 years old.

16.5.2 Intercountry Adoption

All EAC member states regulate intercountry adoption in accordance with the Hague Convention on Intercountry Adoption, 1993.

16.6 Comparative Analysis

16.6.1 Best Interests of the Child

The best interests of the child is the paramount consideration in all matters affecting children across the EAC member states.

16.6.2 Non-discrimination

Children are entitled to equal treatment regardless of their parents' marital status, race, religion, or other status.

16.7 Key Jurisprudence

16.7.1 Kenya

(a) Republic v. Registered Adoption Society [2005] eKLR The High Court addressed the requirements for adoption.

16.8 Practical Guidance

16.8.1 Advising on Children's Rights

- (a) Identify Applicable Law: Determine which laws apply to the child's situation.
- (b) Assess Best Interests: Always consider the best interests of the child.
- (c) Protect Rights: Ensure that the child's rights are protected in all proceedings.

16.9 Conclusion

Children's rights are protected by comprehensive legal frameworks across East Africa. Legal practitioners must ensure that the best interests of the child are paramount in all matters.

Chapter 17: Parental Responsibilities and Rights

17.1 Introduction

Parental responsibilities and rights are governed by specific legislation across the EAC member states. This Chapter examines the legal framework for parental responsibilities.

17.2 Parental Responsibilities

17.2.1 *Duty to Maintain*

Parents have a duty to maintain their children, including:

- (a) Provision of food, clothing, and shelter
- (b) Provision of education
- (c) Provision of medical care
- (d) Provision of moral and religious guidance

17.2.2 *Duty to Protect*

Parents have a duty to protect their children from harm, including:

- (a) Physical abuse
- (b) Sexual abuse
- (c) Neglect
- (d) Exploitation

17.2.3 *Duty to Guide*

Parents have a duty to guide their children's upbringing and development.

17.3 Parental Rights

17.3.1 *Right to Custody*

Parents have the right to custody of their children.

17.3.2 *Right to Access*

Parents have the right to access (visitation) their children.

17.3.3 *Right to Make Decisions*

Parents have the right to make decisions concerning their children's welfare, education, and upbringing.

17.4 Comparative Analysis

17.4.1 *Uganda*

Under the Children Act, Cap 59:⁴⁵

- Section 5: Parental responsibilities

⁴⁵The Children Act, Cap 59.

- Section 6: Parental rights

17.4.2 Kenya

Under the Children Act, No. 8 of 2001.⁴⁶

- Section 23: Parental responsibilities
- Section 24: Parental rights

17.4.3 Tanzania

Under the Law of the Child Act, No. 21 of 2009.⁴⁷

- Section 31: Parental responsibilities
- Section 32: Parental rights

17.5 Key Jurisprudence

17.5.1 Kenya

(a) S.M. v. Z.M. [2019] eKLR The Court of Appeal addressed parental responsibilities in the context of divorce.

17.6 Practical Guidance

17.6.1 Advising on Parental Responsibilities

(a) Identify Responsibilities: Determine the specific responsibilities of the parents.

(b) Assess Compliance: Assess whether the parents are fulfilling their responsibilities.

(c) Protect the Child: Ensure that the child's interests are protected.

17.7 Conclusion

Parental responsibilities and rights are fundamental to the welfare of children. Legal practitioners must ensure that parents understand and fulfill their obligations.

⁴⁶The Children Act, No. 8 of 2001.

⁴⁷The Law of the Child Act, No. 21 of 2009.

Chapter 18: Custody of Children

18.1 Introduction

Custody of children is one of the most sensitive issues in family law. This Chapter examines the legal principles and practical considerations for determining custody across the EAC member states.

18.2 Types of Custody

18.2.1 Sole Custody

One parent has exclusive custody of the child.

18.2.2 Joint Custody

Both parents share custody of the child.

18.2.3 Split Custody

Each parent has custody of different children.

18.3 Principles Governing Custody

18.3.1 Best Interests of the Child

The paramount consideration in all custody matters is the best interests of the child.

18.3.2 Welfare Principle

The court must consider the child's welfare, including:

- (a) Physical and emotional needs
- (b) Educational needs
- (c) Religious and moral upbringing
- (d) Relationship with each parent
- (e) Stability and continuity

18.3.3 Wishes of the Child

The court may consider the wishes of the child, depending on the child's age and maturity.

18.4 Factors Considered

18.4.1 Parental Fitness

The court assesses the fitness of each parent to care for the child.

18.4.2 Child's Attachment

The court considers the child's attachment to each parent.

18.4.3 Stability

The court considers the stability of each parent's home environment.

18.4.4 Siblings

The court considers the importance of keeping siblings together.

18.5 Comparative Analysis**18.5.1 Uganda**

Under the Children Act, Cap 59.⁴⁸

- Section 8: Best interests of the child
- Section 9: Factors for custody

18.5.2 Kenya

Under the Children Act, No. 8 of 2001.⁴⁹

- Section 25: Custody orders
- Section 26: Factors for custody

18.5.3 Tanzania

Under the Law of the Child Act, No. 21 of 2009.⁵⁰

- Section 33: Custody orders
- Section 34: Factors for custody

18.6 Key Jurisprudence**18.6.1 Kenya**

(a) *S.M. v. Z.M.* [2019] eKLR The Court of Appeal emphasized the best interests of the child in custody matters.

18.7 Practical Guidance**18.7.1 Advising on Custody**

- (a) Assess Best Interests: Always prioritize the best interests of the child.
- (b) Gather Evidence: Collect evidence of each parent's fitness and the child's needs.
- (c) Consider Alternatives: Consider joint custody or shared parenting arrangements.
- (d) Minimize Conflict: Minimize conflict between the parents for the child's benefit.

18.8 Conclusion

Custody determinations require careful consideration of the child's best interests. Legal practitioners must ensure that custody arrangements promote the child's welfare.

⁴⁸The Children Act, Cap 59.

⁴⁹The Children Act, No. 8 of 2001.

⁵⁰The Law of the Child Act, No. 21 of 2009.

Chapter 19: Access and Visitation

19.1 Introduction

Access (visitation) rights allow a non-custodial parent to maintain a relationship with the child. This Chapter examines the legal framework for access across the EAC member states.

19.2 Nature of Access

19.2.1 Definition

Access is the right of a non-custodial parent to visit and spend time with the child.

19.2.2 Types of Access

- (a) Supervised access: Access supervised by a third party
- (b) Unsupervised access: Access without supervision
- (c) Specified access: Access at specified times and places
- (d) Reasonable access: Access at reasonable times by agreement

19.3 Factors Considered

19.3.1 Best Interests of the Child

Access must be in the best interests of the child.

19.3.2 Safety

The court may restrict access if there are concerns about the child's safety.

19.3.3 Parental Relationship

The court considers the relationship between the child and the non-custodial parent.

19.4 Comparative Analysis

19.4.1 Uganda

Under the Children Act, Cap 59.⁵¹

- Section 10: Access orders

19.4.2 Kenya

Under the Children Act, No. 8 of 2001.⁵²

- Section 27: Access orders

19.4.3 Tanzania

Under the Law of the Child Act, No. 21 of 2009.⁵³

⁵¹The Children Act, Cap 59.

⁵²The Children Act, No. 8 of 2001.

⁵³The Law of the Child Act, No. 21 of 2009.

- Section 35: Access orders

19.5 Enforcement of Access Orders

19.5.1 Court Enforcement

Access orders are enforceable through the courts.

19.5.2 Consequences of Non-compliance

Failure to comply with access orders may result in contempt of court proceedings.

19.6 Practical Guidance

19.6.1 Advising on Access

(a) Promote the Child's Welfare: Ensure that access arrangements promote the child's welfare.

(b) Be Flexible: Consider flexible arrangements that accommodate both parents' schedules.

(c) Document Arrangements: Document access arrangements clearly.

19.7 Conclusion

Access arrangements must balance the rights of the non-custodial parent with the best interests of the child. Legal practitioners must ensure that access arrangements are fair and workable.

Chapter 20: Child Maintenance

20.1 Introduction

Child maintenance is the financial support provided by parents for their children. This Chapter examines the legal framework for child maintenance across the EAC member states.

20.2 Duty to Maintain

20.2.1 Legal Basis

Parents have a statutory and common law duty to maintain their children.

20.2.2 Scope of Maintenance

Maintenance includes:

- (a) Food, clothing, and shelter
- (b) Education
- (c) Medical care
- (d) Recreation and extracurricular activities

20.3 Factors for Determining Maintenance

20.3.1 Needs of the Child

The court considers the child's reasonable needs.

20.3.2 Means of the Parents

The court considers the financial means of each parent.

20.3.3 Standard of Living

The court considers the standard of living the child would have enjoyed had the parents remained together.

20.4 Comparative Analysis

20.4.1 Uganda

Under the Children Act, Cap 59:⁵⁴

- Section 12: Power to order maintenance
- Section 13: Factors for maintenance

20.4.2 Kenya

Under the Children Act, No. 8 of 2001:⁵⁵

- Section 28: Power to order maintenance
- Section 29: Factors for maintenance

20.4.3 Tanzania

⁵⁴The Children Act, Cap 59.

⁵⁵The Children Act, No. 8 of 2001.

Under the Law of the Child Act, No. 21 of 2009:⁵⁶

- Section 36: Power to order maintenance
- Section 37: Factors for maintenance

20.5 Enforcement

20.5.1 Court Orders

Maintenance orders are enforceable through the courts.

20.5.2 Attachment of Earnings

The paying parent's earnings may be attached.

20.5.3 Committal

Failure to pay maintenance may result in committal to prison.

20.6 Practical Guidance

20.6.1 Advising on Child Maintenance

- (a) Assess Needs: Assess the child's reasonable needs.
- (b) Assess Means: Assess each parent's ability to pay.
- (c) Negotiate: Attempt to negotiate a fair amount.
- (d) Ensure Compliance: Ensure that maintenance orders are complied with.

20.7 Conclusion

Child maintenance is essential for the welfare of children. Legal practitioners must ensure that maintenance orders are fair and enforceable.

⁵⁶The Law of the Child Act, No. 21 of 2009.

Chapter 21: Guardianship

21.1 Introduction

Guardianship is the legal responsibility for the care and welfare of a child. This Chapter examines the legal framework for guardianship across the EAC member states.

21.2 Types of Guardianship

21.2.1 *Natural Guardian*

Parents are the natural guardians of their children.

21.2.2 *Testamentary Guardian*

A guardian appointed by will or deed.

21.2.3 *Court-appointed Guardian*

A guardian appointed by the court.

21.2.4 *Guardian Ad Litem*

A guardian appointed to represent the child's interests in legal proceedings.

21.3 Powers and Duties of Guardians

21.3.1 *Custody*

The guardian has the right to custody of the child.

21.3.2 *Maintenance*

The guardian has a duty to maintain the child.

21.3.3 *Education*

The guardian has a duty to provide for the child's education.

21.3.4 *Property Management*

The guardian has a duty to manage the child's property.

21.4 Comparative Analysis

21.4.1 *Uganda*

Under the Children Act, Cap 59:⁵⁷

- Section 14: Appointment of guardians
- Section 15: Powers and duties of guardians

21.4.2 *Kenya*

Under the Children Act, No. 8 of 2001:⁵⁸

- Section 30: Appointment of guardians
- Section 31: Powers and duties of guardians

⁵⁷The Children Act, Cap 59.

⁵⁸The Children Act, No. 8 of 2001.

21.4.3 Tanzania

Under the Law of the Child Act, No. 21 of 2009.⁵⁹

- Section 38: Appointment of guardians
- Section 39: Powers and duties of guardians

21.5 Practical Guidance

21.5.1 Advising on Guardianship

- (a) Identify the Need: Determine whether guardianship is necessary.
- (b) Choose the Right Guardian: Select a suitable guardian.
- (c) Document the Appointment: Ensure proper documentation of the guardianship.
- (d) Monitor Compliance: Monitor the guardian's compliance with their duties.

21.6 Conclusion

Guardianship is an important mechanism for protecting children's welfare. Legal practitioners must ensure that guardians are suitable and fulfill their duties.

⁵⁹The Law of the Child Act, No. 21 of 2009.

Part VI: Protection of Vulnerable Persons

Chapter 22: Domestic Violence

22.1 Introduction

Domestic violence is a serious issue affecting families across East Africa. This Chapter examines the legal framework for addressing domestic violence across the EAC member states.

22.2 Definition of Domestic Violence

22.2.1 Uganda

Under the Domestic Violence Act, 2010:⁶⁰

- Domestic violence includes physical, sexual, emotional, economic, and psychological abuse.

22.2.2 Kenya

Under the Protection Against Domestic Violence Act, No. 2 of 2015:⁶¹

- Domestic violence includes physical, sexual, psychological, and economic abuse.

22.2.3 Tanzania

Under the Law of Marriage Act, Cap 29:⁶²

- Cruelty includes physical and mental cruelty.

22.2.4 Rwanda

Under Law No. 32/2016:

- Domestic violence is prohibited and punishable.

22.3 Forms of Domestic Violence

22.3.1 Physical Abuse

- (a) Hitting, slapping, punching
- (b) Kicking, burning
- (c) Use of weapons

22.3.2 Sexual Abuse

- (a) Rape
- (b) Forced sexual acts
- (c) Sexual harassment

22.3.3 Emotional Abuse

- (a) Intimidation

⁶⁰The Domestic Violence Act, 2010.

⁶¹The Protection Against Domestic Violence Act, No. 2 of 2015.

⁶²The Law of Marriage Act, Cap 29.

- (b) Threats
- (c) Humiliation
- (d) Isolation

22.3.4 Economic Abuse

- (a) Withholding financial resources
- (b) Preventing employment
- (c) Destruction of property

22.4 Legal Remedies

22.4.1 Protection Orders

(a) Uganda Under the Domestic Violence Act, 2010:

- Section 4: Protection orders
- Section 5: Interim protection orders

(b) Kenya Under the Protection Against Domestic Violence Act, No. 2 of 2015:

- Section 4: Protection orders
- Section 5: Occupation orders
- Section 6: Tenancy orders

(c) Tanzania Under the Law of Marriage Act, Cap 29:

- Section 75: Judicial separation on grounds of cruelty

22.4.2 Criminal Prosecution

Domestic violence may be prosecuted under criminal law.

22.4.3 Civil Remedies

Victims may seek civil remedies, including damages.

22.5 Comparative Analysis

22.5.1 Uganda

Under the Domestic Violence Act, 2010:

- Section 3: Definition of domestic violence
- Section 4: Protection orders
- Section 6: Offences and penalties

22.5.2 Kenya

Under the Protection Against Domestic Violence Act, No. 2 of 2015:

- Section 3: Definition of domestic violence
- Section 4: Protection orders
- Section 7: Offences and penalties

22.5.3 Tanzania

Under the Law of Marriage Act, Cap 29:

- Section 75: Grounds for judicial separation
- Section 76: Grounds for divorce

22.6 Key Jurisprudence

22.6.1 Kenya

(a) S.M. v. Z.M. [2019] eKLR The Court of Appeal addressed domestic violence as a ground for divorce.

22.7 Practical Guidance

22.7.1 Advising Victims of Domestic Violence

- (a) Ensure Safety: Ensure the immediate safety of the victim.
- (b) Obtain Protection Orders: Assist the victim in obtaining protection orders.
- (c) Consider Criminal Prosecution: Advise on the possibility of criminal prosecution.
- (d) Provide Support: Provide information on support services and shelters.

22.8 Conclusion

Domestic violence is a serious issue requiring urgent legal intervention. Legal practitioners must be familiar with the available remedies and ensure that victims receive effective protection.

Chapter 23: Child Protection

23.1 Introduction

Child protection is a fundamental aspect of family law. This Chapter examines the legal framework for protecting children from abuse, neglect, and exploitation across the EAC member states.

23.2 Forms of Child Abuse

23.2.1 Physical Abuse

- (a) Hitting, beating, burning
- (b) Shaking, suffocating
- (c) Use of weapons

23.2.2 Sexual Abuse

- (a) Rape
- (b) Sexual assault
- (c) Child pornography
- (d) Child prostitution

23.2.3 Emotional Abuse

- (a) Intimidation
- (b) Threats
- (c) Humiliation
- (d) Rejection

23.2.4 Neglect

- (a) Failure to provide food, clothing, or shelter
- (b) Failure to provide medical care
- (c) Failure to provide education
- (d) Abandonment

23.2.5 Exploitation

- (a) Child labor
- (b) Trafficking
- (c) Forced marriage
- (d) Use in armed conflict

23.3 Legal Framework for Child Protection

23.3.1 Uganda

Under the Children Act, Cap 59.⁶³

- Section 16: Protection orders
- Section 17: Offences against children
- Section 18: Reporting obligations

23.3.2 Kenya

Under the Children Act, No. 8 of 2001.⁶⁴

- Section 32: Protection orders
- Section 33: Offences against children
- Section 34: Mandatory reporting

23.3.3 Tanzania

Under the Law of the Child Act, No. 21 of 2009.⁶⁵

- Section 40: Protection of children
- Section 41: Offences against children
- Section 42: Reporting obligations

23.4 Remedies for Child Abuse

23.4.1 Protection Orders

Courts may issue protection orders to remove children from abusive environments.

23.4.2 Criminal Prosecution

Perpetrators of child abuse may be prosecuted under criminal law.

23.4.3 Care Orders

Courts may make care orders placing the child in the care of a suitable person or institution.

23.4.4 Supervision Orders

Courts may make supervision orders requiring the child to be supervised by a social worker.

23.5 Comparative Analysis

23.5.1 Uganda

Under the Children Act, Cap 59:

- Section 16: Power to make protection orders
- Section 17: Offences and penalties
- Section 18: Duty to report

23.5.2 Kenya

⁶³The Children Act, Cap 59.

⁶⁴The Children Act, No. 8 of 2001.

⁶⁵The Law of the Child Act, No. 21 of 2009.

Under the Children Act, No. 8 of 2001:

- Section 32: Power to make protection orders
- Section 33: Offences and penalties
- Section 34: Mandatory reporting

23.5.3 Tanzania

Under the Law of the Child Act, No. 21 of 2009:

- Section 40: Power to make protection orders
- Section 41: Offences and penalties
- Section 42: Duty to report

23.6 Key Jurisprudence

23.6.1 Kenya

(a) Republic v. M.M. [2015] eKLR The High Court addressed the sentencing for child sexual abuse.

23.7 Practical Guidance

23.7.1 Advising on Child Protection

- (a) Identify Abuse: Recognize the signs of child abuse.
- (b) Report Abuse: Report suspected abuse to the appropriate authorities.
- (c) Seek Protection Orders: Apply for protection orders where necessary.
- (d) Support the Child: Ensure that the child receives appropriate support and counseling.

23.8 Conclusion

Child protection is a critical responsibility for legal practitioners. Ensuring that children are protected from abuse, neglect, and exploitation is essential for their welfare and development.

Chapter 24: Forced Marriage and Early Marriage

24.1 Introduction

Forced marriage and early marriage are serious violations of human rights that affect many families across East Africa. This Chapter examines the legal framework for addressing these issues across the EAC member states.

24.2 Definitions

24.2.1 *Forced Marriage*

Forced marriage is a marriage in which one or both parties do not consent to the marriage.

24.2.2 *Early Marriage*

Early marriage is marriage before the age of 18 years.

24.3 Legal Framework

24.3.1 *Uganda*

Under the Marriage Act, Cap 251 and the Children Act, Cap 59:^{66,67}

- Marriage below 18 years is prohibited.
- Forced marriage is a criminal offence.

24.3.2 *Kenya*

Under the Marriage Act, No. 4 of 2014 and the Children Act, No. 8 of 2001:^{68,69}

- Marriage below 18 years is void.
- Forced marriage is a criminal offence.

24.3.3 *Tanzania*

Under the Law of Marriage Act, Cap 29:⁷⁰

- Marriage below 18 years is prohibited without parental consent.
- Forced marriage is a criminal offence.

24.4 Remedies

24.4.1 *Nullity*

A forced marriage or early marriage may be declared null and void.

24.4.2 *Criminal Prosecution*

Perpetrators may be prosecuted under criminal law.

24.4.3 *Protection Orders*

Victims may seek protection orders.

⁶⁶The Marriage Act, Cap 251.

⁶⁷The Children Act, Cap 59.

⁶⁸The Marriage Act, No. 4 of 2014.

⁶⁹The Children Act, No. 8 of 2001.

⁷⁰The Law of Marriage Act, Cap 29.

24.5 Comparative Analysis

24.5.1 Uganda

Under the Marriage Act, Cap 251:

- Section 4: Minimum age of 18 years
- Section 15: Grounds for void marriages

24.5.2 Kenya

Under the Marriage Act, No. 4 of 2014:

- Section 4: Minimum age of 18 years
- Section 11: Void marriages

24.5.3 Tanzania

Under the Law of Marriage Act, Cap 29:

- Section 13: Minimum age requirements
- Section 20: Grounds for nullity

24.6 Practical Guidance

24.6.1 Advising Victims

- (a) Identify the Issue: Determine whether the marriage is forced or early.
- (b) Seek Nullity: Apply for a declaration of nullity.
- (c) Report to Authorities: Report the matter to the police and relevant authorities.
- (d) Provide Support: Ensure that the victim receives appropriate support.

24.7 Conclusion

Forced marriage and early marriage are serious violations of human rights. Legal practitioners must be vigilant in identifying and addressing these issues.

Part VII: Succession and Inheritance

Chapter 25: Intestate Succession

25.1 Introduction

Intestate succession occurs when a person dies without leaving a valid will. This Chapter examines the legal framework for intestate succession across the EAC member states.

25.2 Principles of Intestate Succession

25.2.1 *Equal Distribution*

In many jurisdictions, property is distributed equally among the heirs.

25.2.2 *Spousal Rights*

The surviving spouse has a right to a share of the estate.

25.2.3 *Children's Rights*

Children have a right to a share of the estate.

25.3 Order of Distribution

25.3.1 *Spouse and Children*

The estate is divided between the surviving spouse and children.

25.3.2 *Parents and Siblings*

If there is no spouse or children, the estate passes to parents and siblings.

25.3.3 *Extended Family*

If there are no close relatives, the estate may pass to extended family members.

25.4 Comparative Analysis

25.4.1 *Uganda*

Under the Succession Act, Cap 162:⁷¹

- Section 26: Distribution of estate
- Section 27: Spousal share
- Section 28: Children's share

25.4.2 *Kenya*

Under the Law of Succession Act, Cap 160:⁷²

- Section 35: Distribution of estate
- Section 36: Spousal share
- Section 37: Children's share

25.4.3 *Tanzania*

⁷¹The Succession Act, Cap 162.

⁷²The Law of Succession Act, Cap 160.

Under the Probate and Administration of Estates Act, Cap 352.⁷³

- Section 20: Distribution of estate
- Section 21: Spousal share
- Section 22: Children's share

25.5 Customary Law of Succession

25.5.1 Uganda

Customary law governs succession for persons who die subject to customary law.

25.5.2 Kenya

Customary law applies to the estate of persons who were subject to customary law at the time of death.

25.5.3 Tanzania

Customary law applies to the estate of persons who were subject to customary law at the time of death.

25.6 Key Jurisprudence

25.6.1 Kenya

(a) *R.M. v. Attorney General* [2010] eKLR The High Court addressed the constitutionality of customary law provisions discriminating against women in succession.

25.7 Practical Guidance

25.7.1 Advising on Intestate Succession

- (a) Identify Heirs: Determine the lawful heirs of the deceased.
- (b) Assess the Estate: Prepare an inventory of the deceased's property.
- (c) Apply for Letters of Administration: Apply to the court for letters of administration.
- (d) Distribute the Estate: Distribute the estate in accordance with the law.

25.8 Conclusion

Intestate succession requires careful analysis of the applicable law and the identification of lawful heirs. Legal practitioners must ensure that estates are distributed fairly and in accordance with the law.

⁷³The Probate and Administration of Estates Act, Cap 352.

Chapter 26: Testate Succession

26.1 Introduction

Testate succession occurs when a person dies leaving a valid will. This Chapter examines the legal framework for testate succession across the EAC member states.

26.2 Requirements for a Valid Will

26.2.1 Age

The testator must be of the age required by law (typically 18 years or older).

26.2.2 Mental Capacity

The testator must have testamentary capacity, meaning they understand the nature and effect of making a will.

26.2.3 Formalities

The will must comply with statutory formalities, including:

- (a) Writing
- (b) Signature by the testator
- (c) Attestation by witnesses

26.3 Types of Wills

26.3.1 Formal Will

A will made in writing and signed by the testator in the presence of witnesses.

26.3.2 Holograph Will

A will written entirely in the testator's own hand.

26.3.3 Oral Will

A will made orally, recognized in some jurisdictions under specific circumstances.

26.4 Revocation and Alteration

26.4.1 Revocation

A will may be revoked by:

- (a) Marriage (in some jurisdictions)
- (b) A subsequent will
- (c) Destruction with intent to revoke

26.4.2 Alteration

A will may be altered by a codicil, which must comply with the same formalities as a will.

26.5 Comparative Analysis

26.5.1 Uganda

Under the Succession Act, Cap 162.⁷⁴

- Section 10: Requirements for a valid will
- Section 11: Formalities
- Section 12: Revocation

26.5.2 Kenya

Under the Law of Succession Act, Cap 160.⁷⁵

- Section 5: Requirements for a valid will
- Section 6: Formalities
- Section 7: Revocation

26.5.3 Tanzania

Under the Probate and Administration of Estates Act, Cap 352.⁷⁶

- Section 10: Requirements for a valid will
- Section 11: Formalities
- Section 12: Revocation

26.6 Key Jurisprudence**26.6.1 Kenya**

(a) In re Estate of J.M. [2018] eKLR The High Court addressed the validity of a holograph will.

26.7 Practical Guidance**26.7.1 Advising on Wills**

- (a) Assess Capacity: Ensure that the testator has testamentary capacity.
- (b) Comply with Formalities: Ensure that the will complies with all statutory formalities.
- (c) Keep the Will Safe: Advise the testator on safekeeping of the will.
- (d) Review Regularly: Advise the testator to review the will regularly.

26.8 Conclusion

Testate succession requires careful attention to the validity of the will and the wishes of the testator. Legal practitioners must ensure that wills are properly drafted and executed.

⁷⁴The Succession Act, Cap 162.

⁷⁵The Law of Succession Act, Cap 160.

⁷⁶The Probate and Administration of Estates Act, Cap 352.

Chapter 27: Family Provision

27.1 Introduction

Family provision allows the court to make orders for the maintenance of dependants who have not been adequately provided for under a will or on intestacy. This Chapter examines the legal framework for family provision across the EAC member states.

27.2 Grounds for Family Provision

27.2.1 *Inadequate Provision*

The applicant must show that the will or intestacy does not make adequate provision for their maintenance.

27.2.2 *Dependency*

The applicant must show that they were dependent on the deceased.

27.3 Who May Apply

27.3.1 *Spouse*

The surviving spouse may apply for family provision.

27.3.2 *Children*

Children of the deceased may apply for family provision.

27.3.3 *Other Dependants*

Other persons who were dependent on the deceased may apply in some jurisdictions.

27.4 Comparative Analysis

27.4.1 *Uganda*

Under the Succession Act, Cap 162:⁷⁷

- Section 30: Power to make family provision orders
- Section 31: Who may apply

27.4.2 *Kenya*

Under the Law of Succession Act, Cap 160:⁷⁸

- Section 26: Power to make family provision orders
- Section 27: Who may apply

27.4.3 *Tanzania*

Under the Probate and Administration of Estates Act, Cap 352:⁷⁹

- Section 25: Power to make family provision orders

⁷⁷The Succession Act, Cap 162.

⁷⁸The Law of Succession Act, Cap 160.

⁷⁹The Probate and Administration of Estates Act, Cap 352.

- Section 26: Who may apply

27.5 Key Jurisprudence

27.5.1 Kenya

(a) In re Estate of K.M. [2017] eKLR The High Court addressed the factors for family provision.

27.6 Practical Guidance

27.6.1 Advising on Family Provision

- (a) Assess Eligibility: Determine whether the applicant is eligible to apply.
- (b) Assess Needs: Assess the applicant's financial needs.
- (c) Gather Evidence: Gather evidence of dependency and inadequate provision.
- (d) Apply Promptly: Apply within the prescribed time limits.

27.7 Conclusion

Family provision ensures that dependants are adequately provided for after the death of a family member. Legal practitioners must ensure that eligible applicants receive their fair share.

Part VIII: Alternative Dispute Resolution in Family Matters

Chapter 28: Mediation in Family Disputes

28.1 Introduction

Mediation is an alternative dispute resolution mechanism that is increasingly used in family matters across East Africa. This Chapter examines the legal framework for mediation in family disputes.

28.2 Nature of Mediation

28.2.1 Definition

Mediation is a voluntary process in which a neutral third party (mediator) assists the parties in reaching a mutually acceptable agreement.

28.2.2 Characteristics

- (a) Voluntary
- (b) Confidential
- (c) Non-binding (unless agreement is reached)
- (d) Facilitative

28.3 Legal Framework

28.3.1 Uganda

Under the Judicature Act, Cap 13 and court rules.⁸⁰

- Courts may refer family disputes to mediation.
- Mediation agreements may be enforced as court orders.

28.3.2 Kenya

Under the Constitution, 2010, Article 159(2)(c):

- Courts shall promote alternative dispute resolution.
- The Mediation Act, 2020 provides a comprehensive framework for mediation.

28.3.3 Tanzania

Under the Law of Marriage Act, Cap 29.⁸¹

- Courts may refer matrimonial disputes to reconciliation or mediation.

28.4 Types of Family Disputes Suitable for Mediation

28.4.1 Divorce and Separation

Mediation can help parties reach agreement on the terms of divorce or separation.

28.4.2 Custody and Access

Mediation can help parents reach agreement on custody and access

⁸⁰The Judicature Act, Cap 13.

⁸¹The Law of Marriage Act, Cap 29.

arrangements.

28.4.3 Property Division

Mediation can help parties reach agreement on the division of matrimonial property.

28.4.4 Maintenance

Mediation can help parties reach agreement on maintenance payments.

28.5 Advantages of Mediation

28.5.1 Cost-effective

Mediation is generally less expensive than litigation.

28.5.2 Faster

Mediation can resolve disputes more quickly than litigation.

28.5.3 Preserves Relationships

Mediation can help preserve relationships, particularly where children are involved.

28.5.4 Confidential

Mediation is confidential, unlike court proceedings.

28.6 Practical Guidance

28.6.1 Advising on Mediation

- (a) Explain the Process: Ensure that clients understand the mediation process.
- (b) Assess Suitability: Assess whether the dispute is suitable for mediation.
- (c) Prepare the Client: Prepare the client for the mediation session.
- (d) Draft the Agreement: Ensure that any agreement reached is properly drafted and enforceable.

28.7 Conclusion

Mediation is an effective alternative to litigation in family matters. Legal practitioners should consider mediation as a first option in appropriate cases.

Chapter 29: Arbitration in Family Matters

29.1 Introduction

Arbitration is another form of alternative dispute resolution that may be used in family matters. This Chapter examines the legal framework for arbitration in family disputes across the EAC member states.

29.2 Nature of Arbitration

29.2.1 Definition

Arbitration is a process in which a neutral third party (arbitrator) makes a binding decision on the dispute.

29.2.2 Characteristics

- (a) Consensual
- (b) Binding
- (c) Private
- (d) Final

29.3 Legal Framework

29.3.1 Uganda

Under the Arbitration and Conciliation Act, Cap 4.⁸²

- Arbitration agreements are enforceable.
- Arbitration awards may be enforced as court judgments.

29.3.2 Kenya

Under the Arbitration Act, No. 4 of 1995.⁸³

- Arbitration agreements are enforceable.
- Arbitration awards may be enforced as court judgments.

29.3.3 Tanzania

Under the Arbitration Act, Cap 15.⁸⁴

- Arbitration agreements are enforceable.
- Arbitration awards may be enforced as court judgments.

29.4 Suitability for Family Matters

29.4.1 Property Disputes

Arbitration is suitable for disputes concerning the division of matrimonial property.

29.4.2 Commercial Family Disputes

⁸²The Arbitration and Conciliation Act, Cap 4.

⁸³The Arbitration Act, No. 4 of 1995.

⁸⁴The Arbitration Act, Cap 15.

Arbitration may be suitable for disputes involving family businesses or commercial assets.

29.4.3 Limitations

Arbitration may not be suitable for disputes involving children or domestic violence.

29.5 Practical Guidance

29.5.1 Advising on Arbitration

- (a) Assess Suitability: Determine whether arbitration is suitable for the dispute.
- (b) Draft the Agreement: Ensure that the arbitration agreement is properly drafted.
- (c) Select the Arbitrator: Assist in selecting a suitable arbitrator.
- (d) Enforce the Award: Ensure that the arbitration award is properly enforced.

29.6 Conclusion

Arbitration can be an effective mechanism for resolving certain family disputes. Legal practitioners must assess whether arbitration is appropriate for each case.

Chapter 30: Traditional Dispute Resolution

30.1 Introduction

Traditional dispute resolution mechanisms remain an important part of the justice system in East Africa, particularly in rural areas. This Chapter examines the role of traditional dispute resolution in family matters.

30.2 Types of Traditional Dispute Resolution

30.2.1 Elders' Councils

Disputes may be referred to councils of elders for resolution.

30.2.2 Clan Meetings

Clan meetings may be convened to resolve family disputes.

30.2.3 Religious Leaders

Religious leaders may mediate in family disputes.

30.3 Legal Framework

30.3.1 Uganda

Under the Constitution, Article 129(1) and the Judicature Act, Cap 13.⁸⁵

- Customary courts have jurisdiction over family matters.
- Traditional dispute resolution is recognized.

30.3.2 Kenya

Under the Constitution, 2010, Article 159(2)(c):

- Courts shall promote traditional dispute resolution mechanisms.
- Traditional dispute resolution must comply with constitutional principles.

30.3.3 Tanzania

Under the Law of Marriage Act, Cap 29.⁸⁶

- Primary Courts have jurisdiction over customary law matters.
- Traditional dispute resolution is recognized.

30.4 Advantages and Disadvantages

30.4.1 Advantages

- (a) Culturally appropriate
- (b) Accessible
- (c) Cost-effective
- (d) Preserves community relationships

30.4.2 Disadvantages

⁸⁵The Judicature Act, Cap 13.

⁸⁶The Law of Marriage Act, Cap 29.

- (a) May not comply with constitutional principles
- (b) May discriminate against women
- (c) May not be binding
- (d) Limited enforcement mechanisms

30.5 Practical Guidance

30.5.1 Advising on Traditional Dispute Resolution

(a) Assess Appropriateness: Determine whether traditional dispute resolution is appropriate for the dispute.

(b) Ensure Compliance: Ensure that the process complies with constitutional and human rights standards.

(c) Document the Outcome: Document the outcome for legal recognition.

(d) Protect Vulnerable Parties: Ensure that vulnerable parties are protected.

30.6 Conclusion

Traditional dispute resolution can be an effective mechanism for resolving family disputes, provided it complies with constitutional and human rights standards. Legal practitioners must ensure that clients' rights are protected in all dispute resolution processes.

Glossary of Terms

This glossary was prepared by the publisher to accompany the volume and covers terms of art used across the comparative text; jurisdiction-specific statutory definitions should be verified against the relevant Act.

Adoption — The legal process by which a person assumes the permanent parental rights and responsibilities of a child not biologically their own, extinguishing (in most jurisdictions) the legal rights of the biological parents.

Alimony / Spousal Maintenance — Financial support paid by one spouse to the other, during or after divorce proceedings, to meet reasonable living needs.

Bride Price / Bridewealth — Payment, in cash, kind, or both, made by or on behalf of a prospective husband to the family of the bride under customary marriage practices; its legal significance and recoverability on divorce varies across the region.

Custody — The legal right and responsibility to make decisions concerning a child's upbringing and to have the child reside with the custodial parent or guardian, as distinct from mere access or visitation.

Customary Marriage — A marriage contracted in accordance with the customs and traditions of a particular ethnic community, recognised to varying degrees by the statutory law of each East African jurisdiction.

Domestic Violence — Physical, sexual, emotional, economic or psychological abuse occurring between persons in a domestic relationship, addressed by dedicated protective legislation in each jurisdiction covered by this volume.

Guardianship — The legal authority and responsibility vested in a person (a guardian) to care for and make decisions on behalf of a minor or other person lacking full legal capacity, distinct from parental responsibility arising by birth.

Intestate Succession — The distribution of a deceased person's estate according to statutory or customary rules of inheritance where the deceased left no valid will.

Judicial Separation — A court order relieving spouses of the obligation to cohabit without formally dissolving the marriage, leaving the parties still legally married.

Khul' — A form of divorce under Islamic law initiated by the wife, typically involving the return of dower (mahr) to the husband in exchange for the dissolution of the marriage.

Maintenance (Child) — The financial support a parent is legally obliged to provide for a child's upbringing, welfare and education, whether or not the parent has custody.

Matrimonial Property — Property acquired by spouses during the subsistence of a marriage, subject to a statutory or common law regime governing its division on divorce or death.

Nullity — A declaration by a court that a purported marriage was void or voidable from its inception, as distinct from divorce, which dissolves a valid, subsisting marriage.

Parental Responsibility — The bundle of rights, duties, powers and responsibilities that a parent has in relation to a child and the child's property, recognised by law

regardless of the parents' marital status.

Polygamy / Polygyny – A marriage in which a husband may simultaneously have more than one wife, recognised under customary and Islamic law in each of the jurisdictions covered by this volume subject to statutory conditions.

Prenuptial Agreement – An agreement entered into by prospective spouses before marriage, typically addressing the division of property in the event of divorce or death.

Talaq – A form of divorce under Islamic law effected by pronouncement by the husband, subject to procedural requirements (including, in some traditions, a waiting period, iddah) before the divorce becomes final.

Testate Succession – The distribution of a deceased person's estate in accordance with a valid will.

Subject Index

This index references chapters in which each term appears in the typeset text. Page-numbered indexing will be finalised once the volume is paginated for print.

A

Adoption.....	Ch. 16
Alimony / Spousal Maintenance.....	Ch. 9

B

Bride Price / Bridewealth.....	Ch. 4, 14
--------------------------------	-----------

C

Custody.....	Ch. 2, 17, 18, 21, 28
Customary Marriage.....	Ch. 4, 14

D

Domestic Violence.....	Ch. 22, 29
------------------------	------------

G

Guardianship.....	Ch. 21
-------------------	--------

I

Intestate Succession.....	Ch. 25
---------------------------	--------

J

Judicial Separation.....	Ch. 11, 13, 22
--------------------------	----------------

K

Khul'.....	see Glossary
------------	--------------

M

Maintenance (Child).....	Ch. 2, 9, 20, 21, 27, 28
Matrimonial Property.....	Ch. 1, 6, 7, 8, 10, 28, 29

N

Nullity.....	Ch. 5, 24
--------------	-----------

P

Parental Responsibility.....	see Glossary
Polygamy / Polygyny.....	see Glossary
Prenuptial Agreement.....	Ch. 10

T

Talaq.....	Ch. 11, 15
Testate Succession.....	Ch. 26

About the Author

Isaac Christopher Lubogo is the founder of Suigeneris Consultancy and Suigeneris Publishers, Kampala. He lectures in law at five Ugandan universities and is the author of more than seventy books spanning corporate and commercial law, land and property law, constitutional theory, and legal practice, including the multi-volume *Objection My Lord: Legal Practice Demystified* series.

His accolades include the Africa Law Tech Award (2022) and the SMEGAfrica Excellence Scholar Award (2025). His scholarship and practice guides are widely used across Ugandan law schools, the Law Development Centre, and commercial legal practice throughout the East African Community.

Also by the Author

- Family Law in East Africa: A Comparative Legal Practice Guide, Volume Two (this volume)
- Land Transactions in East Africa: A Comparative Legal Practice Guide, Volume One
- Objection My Lord: Legal Practice Demystified, Volume 1 – Family Law & Practice
- Objection My Lord: Legal Practice Demystified, Volume 2 – Criminal Law & Practice
- Objection My Lord: Legal Practice Demystified, Volume 3 – Civil Procedure & Evidence
- Objection My Lord: Legal Practice Demystified, Volume 4 – Corporate & Commercial Law
- The Law on Professional Malpractice in Uganda
- The Law of Sports and Entertainment in Uganda
- Media Law and Policy in Uganda
- Cyber Law in Uganda
- The Law of Oil and Gas in Uganda
- Sustainable Environmental Law

Colophon

Published by Suigeneris Publishers, Kampala, Uganda.

Typeset in Garamond on A4, house style of Suigeneris Publishers.

© 2026 Isaac Christopher Lubogo. All rights reserved.