



MAKERERE

UNIVERSITY

SCHOOL OF LAW

**ASSESSING THE CONSTITUTIONALITY OF THE SUCCESSION
ACT IN PROTECTION OF PROPERTY RIGHTS OF SEPARATED
SPOUSES IN UGANDA**

VICTOR MANZI

REGISTRATION: 2006/HD09/5872U

STUDENT NO: 206014143

SUPERVISOR: Dr. Busingye Kabumba

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
FULFILLMENT OF THE REQUIREMENTS FOR
THE AWARD OF THE DEGREE OF MASTER
OF LAWS OF MAKERERE UNIVERSITY**

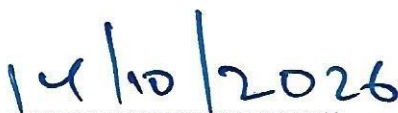
OCTOBER 2026

DECLARATION

I, **Victor Manzi**, declare that this thesis has been prepared and completed independently. It is an original work that has not been submitted to any institution for any form of credit, award, or examination, and all contributions borrowed from any other work in the form of literature have been duly acknowledged through quotations, footnotes, and as complete references.

Student's Name: Victor Manzi

Signature: 

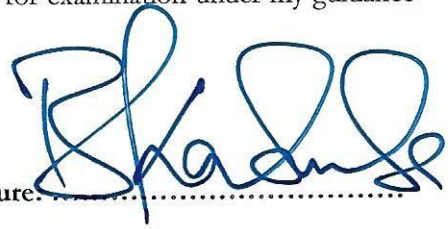
Date: 

APPROVAL

The dissertation, *assessing the Constitutionality of the Succession Act in Protection of Property Rights of Separated Spouses in Uganda*, has been prepared and submitted for examination under my guidance and supervision.

Supervisor's Name: Dr. Busingye Kabumba

Signature:



Date:

15th October 2026

DEDICATION

This dissertation is dedicated to my parents for the strength, discipline and courage of the person I am today; I will forever be grateful. To my dear wife Tracy, your unwavering love, guidance and endurance will constantly be appreciated. To my children; Michael, Moriel and Michaela, your genuine love remains memorable.

ACKNOWLEDGMENTS

I would like to express my deepest gratitude to my supervisor, Dr. Busingye Kabumba, for his invaluable guidance and support and expertise throughout this research journey. His insightful feedback and guidance have been instrumental in shaping this dissertation. His selfless sacrifice and availability have been instrumental in ensuring my timely completion of this research.

I am profoundly grateful to my wife Tracy for keeping up with the mother and father's psychological responsibilities at the time when my attention was majorly vested in completing this work. To my exceptional children; Michael, Moriel and Michaela thanks for the space created for me during the execution of this time-demanding assignment.

I am also thankful to my colleagues and workmates at the Office of the Administrator General for their thoughtful ideas in helping me to shape the topic for dissertation and for their thoughts that have greatly bolstered my comprehension of the topic and enhanced the quality of this research.

I also remain grateful to God for the gift of life and for His provision, without which this research would have been impossible.

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGMENTS	iv
TABLE OF CONTENTS	v
LIST OF ACRONYMS	xi
LIST OF NATIONAL CASES	xii
LIST OF INTERNATIONAL CASES	xvi
LIST OF STATUTES	xvii
LIST OF INTERNATIONAL INSTRUMENTS	xix
ABSTRACT	xx
CHAPTER ONE	1
INTRODUCTION	1
1.1 Introduction	1
1.2 Background to the Study	2
1.2.1 Historical background	2
1.2.2 Theoretical Background	8
1.2.3 Conceptual Background	9
1.2.4 Contextual Background	11
1.3 Statement of the Problem	15
1.4 Purpose of the study	16
1.5 Objectives of the Study	17
1.5.1 General Objective	17
1.5.2 Specific Objectives	17
1.6 Research Questions	17
1.7 Scope of the study	17
1.7.1 Content Scope	18
1.7.2 Geographical Scope	18
1.7.3 Time scope	18
1.8 Justification of the study	18
1.9 Significance of the study	19
1.10 Operational definition of key terms	19
1.11 Literature Review	21

1.11.1 International Legal Framework Studies on Protection of Property Rights of Separated Spouses	21
1.11.2 The Succession Laws and Protection of Spousal Property Rights	27
1.11.3 Legal and policy achievements of other jurisdictions	34
1.11.4 Lessons that can be learnt from other jurisdictions	38
1.12. Methodology	41
1.12.1 Research Design	42
1.12.1.1 Non-Doctrinal Research Method	43
1.12.2. Theoretical Framework	43
1.12.3 Research Limitations	46
1.12.4 Researcher's Positionality	47
1.13 Arrangement of the chapters	48
CHAPTER TWO	50
INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK ON PROTECTION OF PROPERTY RIGHTS OF SEPARATED SPOUSES	50
2.1 Introduction	50
2.2 International Legal Framework	51
2.2.1 Universal Declaration of Human Rights	51
2.2.2 International Covenant on Civil and Political Rights (ICCPR)	53
2.2.3 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	54
2.2.4 Beijing Platform for Action	56
2.3 Regional Legal Framework	58
2.3.1 African Charter on Human and Peoples' Rights (1981)	59
2.3.2 The Maputo Protocol (2003)	60
2.3.3 African Charter on the Rights and Welfare of the Child (1990)	62
2.4 Sub-Regional Legal Framework	63
2.4.1 The East African Community (Treaty)	63
2.4.2 The East African Community Gender Equality and Development Act (2016)	65
2.5 National legal Framework	65
2.5.1 Constitution of the Republic of Uganda, 1995	66
2.5.2 Succession Act Cap 268	67
2.5.3 Land Act Cap 236	67
2.5.4 The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263	69

2.5.5 The Administrator General Act Cap 264	69
2.5.6 The Estate of Missing Persons (Management) Act Cap 265	71
2.5.7 Probates (Resealing) Act Cap 266.	72
2.5.8 Public Trustee Act Cap 267	73
2.5.9 Trustees Act Cap 270	74
2.6 Conclusion	74
CHAPTER THREE	76
THE CONSTITUTIONALITY OF THE SUCCESSION ACT IN PROTECTION OF PROPERTY RIGHTS OF SEPARATED SPOUSES	76
3.0 Introduction	76
3.1 The Constitutional Provisions on Protection of Property Rights of Separated Spouses in Uganda	77
3.2 The Succession Act and Protection of Property Rights of Separated Spouses in Uganda	78
3.3 The Inconsistencies in Succession Act on Protection of Property Rights of Separated Spouses in Uganda	83
3.3.1 Disqualification Due to Separation	84
3.3.2 Physical and Functional Separation of Household/ ‘Separation in Fact’ Requirement	86
3.3.3 Burden of Proof on the Surviving Spouse	88
3.3.4 Time Limit for legal Action	91
3.3.5 Limitation on Amount Recoverable	93
3.3.6 Discretionary Judicial Power	95
3.3.7 Non-ratification of Hague Convention on the Law Applicable to Matrimonial Property Regimes (HCLAMPR) 1978	97
3.3.8 Non-Ratification of Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons (HCLASEDP) 1989	99
3.4 Conclusion	100
CHAPTER FOUR	101
GLOBAL AND REGIONAL BEST PRACTICES ON PROTECTION OF PROPERTY RIGHTS OF SEPARATED SPOUSES DURING SUCCESSION	101
4.1 Introduction	101
4.2 Analysis of Selected Jurisdictions	102
4.2.1 The United States of America	103
4.2.1.1 Non-Automatic Disqualification Because Of Separation	103
4.2.1.2 ‘Separation in Fact’ Requirement	104

4.2.1.3 Burden of Proof on the Surviving Spouse	105
4.2.1.4 Time Limit for Legal Action	106
4.2.1.5 Limitation on Amounts Recoverable	108
4.2.1.6 Discretionary Judicial Power	108
4.2.2. United Kingdom	109
4.2.2.1 No Direct Disqualification in case Separation	110
4.2.2.2 Physical and Functional Separation of Household	111
4.2.2.3 Burden of Proof on the Surviving Spouse	112
4.2.2.4 Time limit for legal action	113
4.2.2.5 Limit on Amount Recoverable	114
4.2.2.6 Discretionary Judicial Power	115
4.2.3 India	116
4.2.3.1 Non-Disqualification Due to Separation	116
4.2.3.2 Spousal Physical and Functional Separation of Household	117
4.2.3.3 Burden of Proof on the Surviving Spouse	118
4.2.3.4 Time limit for legal action	119
4.2.3.5 Limit on the Amount Recovered by Surviving Spouse	120
4.2.3.6 Court Discretion	121
4.2.4 South Africa	122
4.2.4.1 Enjoyment of Property Rights During Separation	123
4.2.4.2 Physical and Functional Separation of Household by Spouses	123
4.2.4.3 Burden of Proof on the Surviving Spouse	124
4.2.4.4 Time limit for legal action	125
4.2.4.5 Limitation on Amount Received by the Surviving Spouse	126
4.2.4.6 Discretionary judicial power	127
4.2.5 Kenya	128
4.2.5.1 Non-Automatic Disqualification Due to Separation	128
4.2.5.2 'Separation in Fact' Requirement	129
4.2.5.3 Burden of Proof on the Surviving Spouse	130
4.2.5.4 Limitation for a Legal Action	131
4.2.5.5 Limit on Amount Recoverable	133
4.2.5.6 Court Discretion in Intestate Succession Matters	134
4.2.5.7 Matrimonial Property Act	135
4.3 Emerging Issues	136

4.3.1 Non-Automatic Disqualification due to Separation	136
4.3.2 Physical and Functional Separation of Household	137
4.3.3 Burden of Proof on the Surviving Spouse	138
4.3.4 Time Limit for Legal Action	140
4.3.5 Limitation on Amounts Recoverable	141
4.3.6 Discretionary Judicial Power	142
4.3.7 Matrimonial Property Act	143
4.4 The rationale of Section 26 of the Succession Act (Newly enacted) in comparison with Succession Act Cap 162 (Scrapped) in protecting spousal rights during succession	144
4.5 Conclusion	145
CHAPTER FIVE	147
CONCLUSIONS AND RECOMMENDATIONS	147
5.1 Introduction	147
5.2. Conclusions	147
5.2.1 International and National Legal Standards	148
5.2.2 The Ugandan Legal Framework	149
5.2.3 Global and Regional best practices	149
5.3 Recommendations	151
5.3.1 Legal Reforms	152
5.3.1.1 Revisit Automatic Disqualification of Surviving Spouses due to Separation	152
5.3.1.2 Revisit the clause on ‘Physical and Functional Separation of Household’ by spouses	152
5.3.1.3 Reduce the Burden of Proof on the Surviving Spouse	153
5.3.1.4 Revise the Time Limit for Legal Action	154
5.3.1.5 Review the Process and Procedure of Enforcing Limitations on Amounts Recoverable	155
5.3.1.6 Reduce the wider Discretionary Judicial Power	155
5.3.1.7 Enacting Matrimonial Property Act	156
5.3.1.8 Ratification of Hague Convention on the Law Applicable to Matrimonial Property Regimes (HCLAMPR) 1978	156
5.3.1.9 Ratification of Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons (HCLASEDP) 1989	157
5.3.1.10 Amendment of ICCPR	158
5.3.2 Policy Reforms	159

5.3.2.1 Continuous Capacity Building	159
5.3.2.2 Increasing public awareness of law related to protection of property rights	159
5.3.2.3 Protection of Surviving Spouse (Victim)	159
5.3.2.4 Zero tolerance policy on abuse of property rights of surviving spouses	160
5.4 Suggested Areas for Further Study	160
BIBLIOGRAPHY	162
Books	162
Book Chapters	162
Journal Articles	164
Reports	167
Dissertations	167
Newspapers	168
Websites	168

LIST OF ACRONYMS

ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of Children
AG	Attorney General
CEDAW	Convention on the Elimination of Discrimination Against Women
CEDAW	Convention on Elimination of Discrimination Against Women
DHS	Demographic Health Survey
EAC	East African Community
EACJ	East African Court of Justice
EALA	East African Legislative Assembly
ECtHR	European Convention on Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICPHR	International Charter on Human and Peoples Rights
MPA	Matrimonial Property Act
NGOs	Non-Governmental Organizations
PIL	Private International Law
UDHR	Universal Declaration on Human Rights
UGX	Uganda Shillings
UK	United Kingdom
UMSC	Uganda Muslim Supreme Council
UN	United Nations
US	United States

LIST OF NATIONAL CASES

Uganda

- Abasi Magunda & Anor v Sulaiman senoga & others* 1986 (Unreported) H.C. Misc. Cause No. 13.
- Administer General v Bukirwa and Another* 1992 HCB 192.
- Ambayo Joseph Waigo v Aserua Jackline* [2022] Civil Appeal No.0100 of 2015.
- Baryamureeba James vs. Kabakonjo Abwooli and Others* 2013 HCU CIVIL SUIT NO. 20.
- Bonney M. Katatumba v. Shumuk* [2014] UGHCEBD 5.
- Dima Domnic Poro v. Inyani* [2017] UGHCCD 154.
- Edith Nakyingi v Melekizedeke* [1978] HCB107.
- Elizabeth Nalumansi v. Jolly Kasande* [2015] Civil Appeal No. 0100.
- Ethel Makumbi v. Nabatanzi Maureen* [2021] (H.C.C.S No. 841) [2024] UGHCFD 86.
- Hajji Musa Kigongo v. Olive Kigongo* [2015] HCCS No. 295 (Land Division).
- Julius Rwabinumi v Hope Bahimbisomwe*, 2009 No. 10 UGSC 2 (25 April 2013).
- Kajubi v Kabali* 1941 E.A.C.A. 34.
- Kasozzi v. Mulindwa* [1975] HCB 103.
- Katende & Others v. Katende* HCCS 160/2021.
- Kaybul v. Kaybul* [2016] Divorce Cause No. 133) [2020] UGHCFD 7.
- Kintu v Kintu* [2001] UGHC 46. Divorce Appeal No. 135 of 1997.
- Law and Advocacy for Women in Uganda v The Attorney General* 2007 Constitutional. Petitions Nos. 13 /05 /& 05 /06 [2007] UGCC 1.
- Lanyer and Banker Case: Estate of Charles William Makumbi Dumba* [2024] UGHCLD 284.
- Makumba James v Watsemba Sikola* 2005 UGHCFD 4.
- Makumbi v Nabatanzi & Nabatanzi & 3 Others v Nakiburara & 2 Others* Civil Suit Nos. 84 & 15 of 2021) [2024] UGHCFD 86.
- Matata v. Estate Property* [2025] UGHCLD 200.
- Mayambala v. Mayambala* [1998] (High Court Divorce Cause No. 3).
- Mboijana vs Mboijana* [2005] UGSC 2 (21 February 2005).
- Medadi Fredrick Ongwen v. Estate of the Late Cissy Bazanya* Civil Appeal No. 1582 of 2023.
- Mifumi (U) Limited and Others v AG* [2014] Constitutional Appeal No. 02 (Supreme Court of Uganda).
- Milly Namutebi v Lwanga Charles & Others* [2021] Civil Suit No. 518 of 2021 (High Court of Uganda at Kampala).
- Musoke v Kakooza* [1977] HCB 90.

Nalumansi vs. Jolly Kasande [2019] (*Civil Application 29*) 2019 UGSC 2.

Namatoru v Bukenya [2024] Miscellaneous Application 2870.

Nyendwoba Lucy vs. Nyendwoba Robert 1998 KALR 95.

Omella & Omella v. Etieng & Odeke 1994 KALR 98.

Rev Onesifolo Ngaaga and Another v Moses Matovu 2003 HCCS No.107.

Sanyu Lwanga Musoke V Sam Galinango [1995] (High Court Civil Suit No. 309 of 1987).

Shanti Devi Manek v. Hasmukhbhai Jasani and Others [2020] HCCS 160/2021.

Sir John Bageire v Ausi Matovu [1996] Civil Appeal No. 07.

Uganda Association of Women Lawyers and ors v Attorney General 2003 Constitutional Petition No 2, UGCC 1.

United States of America

Belenski v. Jefferson County [1999] 76 Cal. App. 4th 1056.

Estate of Lahey [1999] 76 Cal. App. 4th 1056.

Estate of Lensch [2009] 177 Cal.App.4th 667.

Estate of Leslie [1984] 37 Cal.3d 186, 207 Cal.Rptr. 561, 689 P.2d 133.

Estate of Lima [1964] 37 Cal.Rptr. 404, 225 Cal.App.2d 396.

Lawrence v. Chater [1996] 516 U.S. 163.

Marriage of Dadashian [2024] 102 Cal.App.5th 392.

re Brace [2020] 9 Cal. 5th 903, 470 P.3d 15, 266 Cal. Rptr. 3d 298.

Re Marriage of Norviel [2002] 102 Cal. App. 4th 1152.

Samad v. Pla [2019] 267 So.3d 476 (Fla. App.).

United Kingdom

Berger v Berger [2013] EWCA Civ 1305.

Bhusate v Patel & Or [2019] EWHC 470 (Ch).

Burgess v Rawnsley [1975] 1 Ch 429.

Busi v Busi [2019] ZALAC 68.

Coker v. Coker 1944 17 NLR 55.

Dingmar v Dingmar [2006] EWCA Civ 92.

Kaur v Estate of Karnail Singh [2023] EWHC 403 (Fam).

Kinch v Bullard 1999] 1 WLR 423.

Mastaka v Midland Bank Executor and Trustee Co Ltd [1941] 1 All E.R. 236.

Re Coventry 1980 Ch 461.

Re Drapers Conveyance [1969] 1 Ch 486.
Re Salmon [1981] Ch. 167.
Thomas Sismey v Marissa Salandron [2021] 10 WLUK 372.
Williams v Hensman [1861] 70 ER 862.

India

Eramma v. Veerupana AIR 1966 SC 1879.
Janak Rani Chadha v the State [2009] 15 SCC 66.
Jayachandran vs. Valsala [2008] 4 SCC 520.
Kalawatiba v Soiryabai (1991) 3 SCC 410.
Kamal Anant Khopkar vs Union of India [2022] (Civil) No. 1517/2018.
Kaur v Estate of Karnail Singh & Ors [2023] EWHC 304 (Fam).
Lachhman v. Thunia (Himachal Pradesh HC) [1972] AIR HP 69.
Om Prakash v. Radhacharan [1992] A.S. No. 471.
Sampathkumari v. M. Lakshmi Ammal AIR 1963 Mad 50, or (1961) 2 Mad LJ 387.
Sangili v. Jeyakodi, [2024] SA(MD).199/2023.
Seema vs Ashwani Kumar [2008] 1 SCC 180.
Smt. Tej Kaur & Others [2016] (2) KHC 177.
Thankam vs Rajan [2007] AIR DEL 107.
Tulasamma v. Vaddeboyina Sesha Reddy [1977] AIR SC 194.
Tulsa v. Durghatiya [1992] A.S. No. 471.

South Africa

Alexa v Alexa [2022] ZACC 17.
Bhe v Magistrate, Khayelitsha [2005] (CCT 49/03) ZACC 17.
Bwanya v Master of the High Court [2021] ZACC 51.
Daniels v Campbell and Others [2004] ZACC 14.
J W v Williams-Ashman NO and others [2020] (16108/19) ZAWCHC 27.
K v S [2021] Case No. PFA 72.
Laubscher NO v Duplan [2016] ZACC 44.
Mrs. Estrida Lucy Janet Vaz v. Nil 2024 HC-KAR In the High Court of Karnataka at Bengaluru.
Paixão v Road Accident Fund [2012] (6) SA 377 (SCA).
Smit v The Master of the High Court [2022] 4 All SA 146 (WCC) / [2022] ZAWCHC 56.
Van Heerden v Minister of Justice [2004] ZACC 3; 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC).

Kenya

Busi v Busi [2019] ZALAC 68.

Chelang'a vs Juma [2000] KEHC 408 (KLR).

Estate of Ellah Warue Nthawa 2000 High Court of Kenya at Nairobi Succession Cause No. 1374.

Estate of Leslie [1984] 37 Cal.3d 186, 207 Cal.Rptr. 561, 689 P.2d 133.

FEO v ACO [2024] Matrimonial Cause E006 of 2023) [2024] KEHC 14889 (KLR).

Janak Rani Chadha v the State [2007] AIR DEL 107.

JOO v MBO [2023] KESC 4 (KLR) (27 January 2023).

Loice Wanjiku Kagunda v Julius Gacheru Mwangi [2020] Civil Appeal 14.

Mary Nyambura Kangara v Paul Ogari Mayaka [2023] KESC 2.

Mulungye v Kisangi & another [2025] eKLR.

Mungai v Attorney General [2025] *Petition E416 of 2023*) KEHC 8544 (KLR).

Re Brace [2020] 9 Cal. 5th 903, 470 P.3d 15, 266 Cal. Rptr. 3d 298.

Re Estate of Ainea Masinde Walubengo [2017] KEHC 1356 (KLR) (5 October 2017).

Re Estate of Bernard Kilonzo Katiku [2023] KEHC 3992 (KLR).

Re Estate of Fredrick Rephas Omukoko (Deceased) [2025] eKLR.

Re Estate of Kiptugen Chepkwony [2021] eKLR.

re Estate of MM [2020] eKLR.

Re Estate of Ngaruhiya Kamau [2025] eKLR.

Re Estate of Peter Kiplangat Koech – Deceased [2025] eKLR.

Re Estate of Singh [2023] EWHC 55 (Fam).

Re Salmon [1981] Ch. 167.

Samad v. Pla [2019] 267 So.3d 476 (Fla. App.).

Sangili v. Jeyakodi [2024] SA(MD).199/2023.

Smit v The Master of the High Court [2022] 4 All SA 146 (WCC) / [2022] ZAWCHC 56.

Tau Katungi -v- Margrethe Katungi & Another [2014] eKLR.

Thankam vs Rajan [1992] A.S. No. 471.

Tulsa v. Durghatiya [2008] 4 SCC 520.

LIST OF INTERNATIONAL CASES

- Association for Human Rights in Ethiopia (AHRE) v. Mali* [2018] African Court of Human and People's Rights.
- Bhe v. Khayelitsba Magistrate* [2005] (1) SA 580 (CC); 2005 (1) BCLR 1 (CC); CCT 49/03.
- Burden v. United Kingdom* 2007 Application No. 13378/05.
- Case v. Ruguru* [1970] 1 EA 55.
- Cecilia Kell v. Canada* [2011] CEDAW/C/51/D/19/2008.
- Cholang v South Sudan* [2024] Application No. 20 of 2022 (arising from Reference No. 28 of 2022).
- Community Law Centre and Others (on behalf of the Five Victims) v Federal Republic of Nigeria* [2024] (Communication 564 of 2015) ACHPR 1.
- Cowan v Foreman* [2019] EWCA Civ 1336.
- E.S. and S.C. v. Tanzania*, CEDAW/C/60/D/48/2013.
- EB v ER NO and Others; KG v Minister of Home Affairs and Others* [2024] ZACC 32; 2024 (2) SA 1 (CC).
- Estate of Roccamonte v United States* [2019] EWCA Civ 1336.
- Graham v Murphy* 2019 EWHC 1079 (Ch).
- K.K. v. Russian Federation* [2020] CCPR/C/127/D/2912/2016.
- Kars v Brown & Others* [2026] EWHC 31 (Fam).
- Koteke v Saffarini* 2005 EWCA Civ 221 court Of Appeal (Civil Division).
- Lawrence v. Chater* [1996] 516 U.S. 163.
- Lindop v Agus, Bass and Hedley* 2009 EWHC B 14 (Ch).
- Ms. A.T. v. Hungary* [2005] Communication No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003.
- Ngaruko v Burundi* [2019] EACJ Reference No. 09.
- Noor Bhai v Adanji* 1946 13 E.A.C.A. 17.
- Re Estate of Singh (deceased)* [2023] EWHC 55 (Fam).
- Re Headen's Estate* 1877 52 Cal. 298.
- Re Krubert* [1977] (vLex United Kingdom).
- Re: Sutcliffe* (1942) Ch. 453.
- S v S and another* 2019 (CCT147/18) ZACC 22.
- Steer v Steer* 1864 12 WR 933.

LIST OF STATUTES

Uganda

Constitution of the Republic of Uganda 1995
Civil Procedure Act *Cap 282, 1929*.
Equal Opportunities Commission Act Cap 7, 2007
Evidence Act Cap 8, 1909.
Judicature Act Cap 13, 1996.
Land Act Cap 236, 2004.
Limitation Act Cap 290, 1963.
Limitation of Actions Act Cap 22, 2023.
Marriage Act Cap 251, 1904.
Subsidiary Legislation Caps 31-101
Succession (Amendment) Decree 1972.
Succession Act Cap 268, 2023.
Succession Ordinance, 1906.
Succession to the Crown Act Cap 15, 2013.
The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263, 2023.
The Administrator General Act Cap 264, 2023.
The Estate of Missing Persons (Management) Act Cap 265, 2023.
The Probates (Resealing) Act Cap 266, 1963.

United States

Arizona Revised Statutes Title13-801.
California Probate Code 1990.
California Evidence Code, 1965.
California Family Cod 2320.
Florida Statute, 732.101.
New York (EPTL 4-1.1).
Pennsylvania (20 Pa.C.S. § 2102).
Probate Code 1990.
United States Code (18 U.S.C. sections 2241–2248), Chapter 109a.
UPC 1990, S.2-120.
Utah Code § 75-2-102.

United Kingdom

Administration of Estates Act, 1925.

EU Succession Regulation, 2012.

Inheritance (Provision for Family and Dependants) Act, 1975.

Inheritance and Trustees' Powers Act, 2014.

Law Reform (Succession) Act, 1995.

India

Hindu Succession Act, 1956.

Indian Evidence Act, 1872.

Protection of Women from Domestic Violence Act 2005.

Special Marriage Act 1954.

South Africa

Intestate Succession Act 81, 1987.

Intestates' Estates Act 1952.

Maintenance of Surviving Spouses Act 27, 1990.

Recognition of Customary Marriages Act 120.

Wills Act 7 1953.

Kenya

The Constitution of Kenya 2010.

Marriage Act 2014.

Matrimonial Causes Act 1973.

Mortgage Act Cap 239, 2009.

Matrimonial Property Act 2013.

Public Trustee Act Cap 267.

LIST OF INTERNATIONAL INSTRUMENTS

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), 1990.

African Charter on Human and People's Rights (ACHPR), 1981

Convention on the Elimination of All Forms of Discrimination against Women (CEDAWA) 1979.

East Africa Community (EAC) Treaty, 1999.

International Covenant on Civil and Political Rights (ICCPR), 1966.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994.

Maputo Protocol, 2003.

Beijing Declaration and Platform for Action (BPfA), 1995.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 2014.

Universal Declaration of Human Rights (UDHR), 1948.

Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons (HCLASEDP), 1989.

ABSTRACT

This study is an exploration of the adequacy of the Succession Act Cap 268 in observance of constitutional provisions in protection of property rights of separated spouses in Uganda. It is a comparison of selected jurisdictions that have adopted the law of interstate succession whose results have been applied to comprehend the adequacy of succession law in Uganda based on which lessons have been drawn to address the underlying inconsistencies and to propose suggestions for improvement of protection of property rights of separated spouses in Uganda. Four main research questions were explored, namely; i) what is the international and national legal regime for the protection of property rights of separated spouses in the context of Uganda? ii) To what extent is the Succession Act consistent with the constitutional provisions on protection of property rights of separated spouses in Uganda? iii) What regional and global best practices exist for the protection of property rights of separated spouses during succession? iv) What legal and policy proposals can be obtained from other jurisdictions to enhance Uganda's succession law towards protection of property rights of separated spouses? The study submits that the Succession Act Cap 268 contravenes Article 26 (1) of the Constitution of Uganda which states that 'every person has a right to own property either individually or in association with others.' This has implied that Section 26(1) fails on ground of right to equality, non-discrimination (Article 21), and the dignity of women (Article 33). This is because the Section appears to disqualify separated spouses from taking any interest in the estate if they were separated from the deceased 'as a member of the same household' at the time of death. Secondly, the existing principal law focuses on the physical, functional separation of households rather than just legal divorce. Thirdly, if a spouse is separated, they must prove that they were not responsible for the separation, or that the separation was due to the deceased's actions, to inherit. Fourthly, separated spouses seeking to claim interest in an intestate's estate must apply to court for a declaration allowing them to inherit within six months of the death of the intestate. Fifth, even if a court allows a separated spouse to inherit, they may only be entitled to a portion of the property acquired *before* the separation, not the entire estate. Sixth, the protection is not automatic since the court has the discretion to determine what constitutes 'good cause' for a separated spouse to inherit, creating uncertainty. Lastly, if a deceased spouse left a valid will, they have broad discretion over their property. Overturning the above hiccups, demands borrowing from a series of achievements from selected jurisdictions that have embraced succession law reforms in the above areas. This study concludes that there is still a huge chance for succession legal standards to improve in Uganda in accordance with legal and policy reforms as suggested by the researcher.

CHAPTER ONE

INTRODUCTION

- 1.1 Introduction
- 1.2 Background to the study
- 1.3 Statement of the problem
- 1.4 Purpose of the study
- 1.5 Objectives of the study
- 1.6 Research questions
- 1.7 Scope of the study
- 1.8 Justification of the study
- 1.9 Significance of the study
- 1.10 Operational definitions of key terms
- 1.11 Literature review
- 1.12 Methodology
- 1.13 Arrangement of chapters

1.1 Introduction

Despite the enactment of the Succession Act Cap 268, significant challenges persist in its practical application and effectiveness towards observing of constitutional provisions on protection of property rights of separated spouses. While the available Succession Act Cap 268 aim to facilitate the smooth transfer of property rights and obligations across generations by promoting equity and justice, some of its provisions appear to exist only on paper rather than being effectively enforced in practice. Specific issues include unequal treatment and the potential for abuse of power by the Administrator General due to limited accountability within the current framework.¹

¹ KK Kodiyo (2024) *'Intestate Succession in Kenya, Uganda, and Tanzania'*. Doctoral dissertation, University of Pécs.

Furthermore, concerns exist regarding the inadequate timeframes allocated for the administration of estates, which in turn hinder the proper settlement of property affairs.² It is also important to note that the Act may not adequately consider certain customs, potentially undervaluing the property a customary heir is entitled to receive, among other overlooked considerations.³ Given these challenges and the recent amendments to Uganda's succession principal law, this research seeks to critically analyze the effectiveness of the Succession Act Cap 268 in protecting spousal property rights in Uganda. This propelled this study to ascertain the extent by which spousal property rights are abused in civil proceedings, its persistence and lessons towards eliminating this menace in Uganda's Justice System in comparison to other jurisdictions globally.

1.2 Background to the Study

Succession existed in the different parts of the world without having a definitive name of succession. The origins of succession laws date back to ancient civilizations with various cultures and societies developing their own unique customs and ways of passing down property, wealth and power. However, grounding the origin of the succession to the English as they were Uganda's colonizers which is our focus in this research. This study assesses the effectiveness of Section 26 of Succession Act Cap 268 in protecting spousal property rights in Uganda as provided in the Constitution of Uganda.⁴ It also examines the inconsistencies between the legal framework and practical realities.

1.2.1 Historical background

The origins of succession of property began in England, meaning how ownership of land was passed down, can be traced back to the Norman Conquest in 1066.⁵ However, prominent legal historians Sir Fredrick Pollok and Frederic William Maitland in their Book 'The History of English Law' explain immediately following the conquest land was primarily held by the King and powerful nobles. During this period, the transfer of property was governed by customary law, which was relied on established traditions and practices rather than written statutes. But this was well established in 1066 where the Norman Conquest had occurred and introduced feudalism to England which significantly influenced succession laws. Where the King granted land to the

² B Kitui (2024) '*The Land Governance Architecture and Securing Women's Land Rights in Uganda*' (Doctoral dissertation, University of Pretoria).

³ JD Mujuzi 'The Conundrum of Intestate Succession for Muslims in Uganda: Qadhis Court, Women's Rights, and Islamic Inheritance Law Issues'. 2023;16(1):43-68. *Al-Ahwal: Jurnal Hukum Keluarga Islam*.

⁴ Constitution of Uganda 1995, Art 26.

⁵F Pollock, FW Maitland 'The History of English Law Before the Time of Edward I', 1895. The University Press.

Nobels and Vassals in exchange for loyalty and Military Service. From this those Nobels would pass down their property, wealth to their eldest son which became known as Primogeniture.⁶

During the Medieval Period, roughly from the 12th to 15th century, the English Common law began to take shape.⁷ This era saw the emergence of the concept of ‘fee simple’, which represented absolute ownership of land that could be formally transferred across generations. With the enactment and passing of the Statute of Westminster in 1275, which legally introduced the Concept of ‘Inheritance’ and formally established the rules of succession of property for example primogeniture, Inheritance of women with the absence of Male heirs as per its Chapter two and excluded illegitimate children.⁸ But during the Tudor period Monarchs introduced significant changes in the 16th century in succession laws by enacting the Wills Act 1540 which allowed individuals to make wills.⁹ A will as per the Wills Act was defined to mean a written document, signed and sealed by the testator who is the person making the will, disposing property after death.¹⁰ The statute of use 1536 which introduced the Concept of ‘trusts’ where property is held for the benefit of another¹¹.

The modern era, specifically in the 17th century to the 20th century, witnessed profound transformations in England, largely influenced by the English Civil war. These events led to significant changes in the English Monarchy and Development of Constitutional Law.¹² In relation to succession law the Bill of Rights 1689 which introduced protection laws granting protection to heirs by prohibiting the monarch from arbitrary disposing of property or altering the Course of succession and the Act of Settlement 1701 which did the same. As the British Empire expanded its colonial reach in the 17th and 18th centuries, it imposed its laws on succession on its colonies this includes those in Africa specifically in Uganda which this study focused on.

In USA, the law of inheritance was deeply rooted in the fabric of society that played a role in shaping family dynamics and transferring wealth across generations. In America the legal framework surrounding inheritance evolved significantly from colonial times to present day. When the European settlers arrived in America, they brought with them customs and legal traditions

⁶ As Above.

⁷Pollock & Maitland (n 5 above) Pg. 54.

⁸Succession to the Crown Act 2013, Chapter 15.

⁹ As Above.

¹⁰ R Harding ‘The rise of statutory wills and the limits of best-interests decision-making in inheritance.’ 2015, 945-970. *The Modern Law Review*. 78(6).

¹¹Succession to the Crown Act 2013 (n 1 Above).

¹²As Above.

including those related to inheritance.¹³ The early Americans inheritance mirrored the complex corpus of the rules established in Great Britain which blended statutory and common law. The settlers understood the importance of inheritance law in maintaining social structure and stability. This, thus leading them to adopt these principles in their new colony.¹⁴ Despite the British roots, the colony began to develop distinctive characteristic within their inheritance laws. One being the merging of jurisdiction over both real and personal property into secular courts this simplified probate process compared to the dual systems in Great Britain.¹⁵ This paving way for innovations like the 'holographic' will allowing individuals to write their wills without a witness.¹⁶ American settlers significantly altered the traditional rules of intestacy, which typically favored the eldest son. This change was particularly evident in the New England colonies, which adopted a system of equal distribution among all children.¹⁷ They recognized that concentrating land ownership solely on the eldest child could hinder settlement and limit opportunities for younger children. This shift not only underscored the American ideals of equality and fairness but also became a major objective of the emerging Republic.¹⁸

The American Revolution marked a turning point, with the desire of republican's ideals which inspired law makers to promote spread of equal treatment for all children in intestate succession, abolishing preferential treatment to the oldest son, dismantling restrictive practices which limited property to a specific bloodline to mention a few.¹⁹ This reflecting broader societal shifts toward individual freedoms and economic independence. In the 19th Century, there as a rise of trusts, a legal innovation that allowed individuals to specify detailed conditions for property distribution.²⁰ While trusts originated to navigate feudal restrictions, they evolved into a means of protecting wealth and ensuring specific intentions were honored even after death.²¹ America in the 20th century, there inheritance laws adapted to reflect current family dynamics²². The legislation begun to address gender biases and ensure equal rights of all Heirs regardless of sex. In addition, the

¹³As Above.

¹⁴ As Above.

¹⁵ As Above.

¹⁶ As Above.

¹⁷JA Hirsch 'American History of Inheritance Law: SSRN' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=982428 [Last accessed 20 October 2025].

¹⁸ As Above, Pg 9.

¹⁹As Above, Pg 4.

²⁰As Above, Pg 32.

²¹ As Above, Pg 20.

²² As Above, Pg 24.

complexities of modern family structures including blended families and multiple marriages prompted the development of more nuanced intestacy statutes that accommodated the realities.²³

In Africa and particularly Nigeria, In Nigeria, statutory inheritance laws were governed by the Wills Act, the various Administration of Estates Laws and other relevant statutes which regulated testate succession.²⁴ However, it is important to note that intestate succession was largely governed by customary laws which differed due to the different diverse ethnic groups in Nigeria. Customary laws often reflect traditional societal values and norms which in turn led to the variations in inheritance rights among the different communities in Nigeria.²⁵ In many cases some customs were often discriminatory against women and children born out of wedlock. Take for example on the different inheritance variations, the Efik people whose daughters could inherit property and women were even appointed as heads of the families the only disadvantage being widows lacking rights to their deceased husband's estate unless they had children together.²⁶ In Ibo culture, property succession primarily followed primogeniture, meaning the eldest son inherited. Daughters generally could not inherit property unless specific ceremonies were performed, and widows had limited rights to their deceased husband's estate The Yoruba tradition had a more equitable approach in regards to inheritance of property by the children. This was so as both male and female children were allowed to inherit property and it was shared equally amongst them. However, the eldest son would typically assume management of the family estate. This practice has since then received judicial endorsement in the various rulings of the courts in Nigeria²⁷ The intricacies of inheritance and succession laws in Nigeria reflect the country's rich cultural diversity and ongoing struggle for equitable legal practices.²⁸ While statutory law exists to provide a framework for inheritance the reality of customary laws often leads to inequalities that disadvantage certain groups such as women and illegitimate children and sometimes men.²⁹

In Kenya, the evolution of inheritance laws in Kenya has been significantly shaped by two major forces: its rich cultural heritage and the profound influences of colonialism. In pre-colonial Kenya, property inheritance was governed primarily by the diverse communities' well-established customary laws. These traditional practices, which operated effectively before the advent of colonial rule, often shared characteristics with certain aspects of English Common Law, such as

²³ As Above, Pg 24.

²⁴ MT Otu 'Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis' (2021) 62 *European Journal of Social Sciences* 50 [Last accessed 22 October 2025].

²⁵ As Above.

²⁶ As Above Pg. 47.

²⁷ As Above Pg. 22.

²⁸ As Above Pg. 21.

²⁹ As Above Pg. 76.

primogeniture (inheritance by the eldest son). Additionally, property was frequently viewed.³⁰ Before the advent of colonial rule Kenya's diverse communities operated well established customary laws that dictated the inheritance of property.³¹ These practices had similar characteristics to the English Common Law such as primogeniture, and another being property viewed as a communal asset held by male family heads. The British colonization of Kenya introduced English common law, which significantly influenced the country's administrative and legal frameworks. This ultimately led to the establishment of the Succession Act of 1981, a landmark piece of legislation that aimed to harmonize inheritance laws across Kenya's diverse communities.³² The 2010 Constitution of Kenya marked a significant turning point by recognizing the importance of customary laws and promoting gender equality.³³ Article 78 of the Constitution of Kenya provides for a requirement for the National Assembly to Enact legislation that recognizes and regulates the application of indigenous law, encouraging alignment of customary practices with constitutional principles.³⁴

In Uganda, the Succession Ordinance of 1906 that introduced British Models of Succession on inheritance into Uganda which later on evolved to the Succession Act Cap 268.³⁵ These models included primogeniture where the eldest son inherits the majority of the estate, testate succession, intestate succession and executorship. However, the ordinance heavily relying on customary and cultural practices, which in turn, discriminated against illegitimate children and relatives placing them in a secondary position.³⁶ This is observed as per section 87 of the then Succession Ordinance 1906 that provided for the legitimate child a prima facie inheritance to the property.³⁷ In general, the ordinance was very impracticable to the Ugandan citizens then as very many succession matters needs were not met. This Ordinance, however, retained these flaws, underscoring the urgent need to address gender inequality, vulnerability, and cultural sensitivity.

The 1972 succession amendment act came in to act as a response to the flaws of the 1906 ordinance and also an addition to the restriction to the disposal of property by will and related

³⁰ KK Kodiyo (2023) 'Customary Law of Succession and the Influence of Colonialism' PhD diss., University of Pécs.

³¹ As Above.

³² KELIN Kenya 'Recommendation-KELIN Kenya. <https://www.kelinkkenya.org/wp-content/uploads/2022/05/LAW-OF-SUCCESSION-ACT-ANALYSISBY-KELIN.doc> 2022. [Last Accessed on 24 October 2025].

³³ FAO 'The Constitution of Kenya, 2010', <https://faolex.fao.org/docs/pdf/ken127322.pdf> [Last Accessed 25 October 2025].

³⁴ As Above.

³⁵ P Tibihikirrab 'Latest Laws and Amendments on Estates and Succession Management in Uganda. A Presentation by Dr. Pamela Tibihikirra-Kalyegira, Chairperson, Uganda Law Reform Commission at the 25th Annual Judges Conference Held On 5th-8th February, 2024 At Kampala Serena Conference Centre' (2024).

³⁶ As Above.

³⁷ Succession Ordinance 1906, Sec. 18.

matters.³⁸ The new amendments brought about significant changes. These included the recognition of illegitimate and adopted children as beneficiaries, consistent with the definition of a child found in Section 3 of the amended Succession Decree 1972. Furthermore, the amendments introduced 'dependent relatives' as a category of beneficiaries, acknowledged polygamous and customary marriages in succession matters (along with their legal heirs), and protected matrimonial homes from distribution.³⁹ Its shortcomings whereby it still favored males selecting the heir and this in turn was discriminating to the women. In addition, it terminated widow occupancy upon remarriage. This still showed the impracticability of this act for the then Ugandan Citizens.

The 2006 succession act better known as the Succession Act Cap 162 was a big game changer as it repealed the 1906 ordinance. It introduced key aspects such as, equality in inheritance thus abolishing primogeniture, acknowledged widows' rights to inheritance and also illegitimate and adopted children to mention and a few through the help of various research and studies. It tried to include the aspirations of the citizens in line of succession.⁴⁰ However, the legislation had shortcomings, which were pointed out in *Law and Advocacy for Women in Uganda V Attorney General*⁴¹; these included the provision that a husband's will could override his wife's rights to inherit property, its failure to address vulnerable groups such as orphans and disabled individuals inheriting property, its unclear stance on property distribution, its lack of recognition for separated partners in inheritance, and its limited provision of only mediation as a dispute resolution, which generally discriminated against women in terms of property distribution compared to men.⁴²

The 2022 succession amendment act came in to address the shortcomings of the previous act as members of Parliament had to sit down, to discuss the supersession Amendment Bill of 2018.⁴³ With the launch of the Seventh Edition of the Principal Laws of Uganda, which incorporated renumbering, updated capitalization, and corrected various errors due to additions and repeals of sections, the laws governing succession in Uganda were also revised,⁴⁴ the laws revolving Uganda's succession were no exception. This resulted in new legislation, including 'The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263,' the 'Administrator General Act Cap 264,' 'The Estate of Missing Persons (Management) Act Cap 265,' 'Probates (Resealing) Act Cap 266,'

³⁸ 'Succession (Amendment) Decree 1972, Pg 1 [Accessed 22 October 2025].

³⁹ Tibihikirrab (n 32 Above).

⁴⁰ As Above.

⁴¹ 2007 Constitutional. Petitions Nos. 13 /05 /& 05 /06 UGCC 1.

⁴² As above.

⁴³ NTV 'Succession Amendment Bill: What Are the Likely Implications of Amendments? 2022. <https://www.youtube.com/watch?v=6rzT1G3FrEM> (Last Accessed 26 October 2025).

⁴⁴ Uganda Law Reform 'Launch of the 7th Revised Edition of The Principal Laws of Uganda' 2022. <http://www.ulrc.go.ug/launch-of-the-7th-revised-edition-of-the-principal-laws-of-uganda/> [Accessed 19 October 2025].

'Public Trustee Act Cap 267,' 'Succession Act Cap 268,' 'Trustees Act Cap 270,' and 'Trustees Incorporation Act Cap 271,' among others. With all these laws in place, the research aims to review them and their effectiveness in dealing with abuse of spousal property rights in Uganda.

1.2.2 Theoretical Background

Theoretically, the abuse of spousal property rights during succession is anchored on a number of theoretical explanations and these include Afrocentric and feminist theories. The Afrocentric theory explores the situation which obtains in Uganda and to a large extent in African cultures where women and children suffer at the demise of their breadwinner. Moreover, there is the current discussion around gender discrimination and the protection of the rights of the vulnerable in the society. The pursuit of African-centered models for fostering the healthy development of Black communities, according to many Afrocentric scholars, practitioners, and community organizers, is motivated by a shared desire to overthrow Eurocentric interpretations of the Black American experience, particularly regarding the identity of African diasporan people, their needs, and ways to address issues in their communities.⁴⁵ From an Afrocentric perspective, succession and spousal property rights are guided by communalism and lineage, with customary law placing emphasis on collective family responsibility rather than individual ownership rights. This view is in stark contrast to Western models, which prioritize individual property rights and inheritance through wills.⁴⁶

Afro-feminism (and African feminist scholarship championed by thinkers like Akosua Adomako Ampofo, Steady, Sylvia Tamale, and Tripp) provides a grounded lens to examine the property rights of separated spouses for several reasons. For instance, Afro-feminism insists that the struggles of African women cannot be delinked from neo-imperialism, global capitalism, and local patriarchal structures deeply embedded in both customary and statutory institutions. For a Ugandan woman, separation and subsequent destitution upon a spouse's death are inextricably tied to broader issues of poverty, lack of access to formal credit, and discriminatory customary land practices. Secondly, unlike mainstream Western frameworks that sometimes dismiss cultural practices entirely, Afro-feminism critically deconstructs how custom is often invoked selectively by patriarchy to deny women property rights while ignoring the protective elements historically

⁴⁵ H Lateef, EO Amoako, P Nartey, J Tan, S Joe 'Black youth and African-centered interventions: A systematic review. *Research on Social Work Practice*. 2022 Jan;32(1):3-12.

⁴⁶ RL Jackson, MA Hogg, editors. *Encyclopedia of identity*. Sage; 2010 Jun 29.

embedded in some African kinship systems⁴⁷. Thirdly, Afro-feminist theory pushes beyond the mere text of the law (such as the formal amendments in the Succession Act, 2022) to examine whether structural enforcement mechanisms actually reach the grassroots Ugandan woman who may lack the legal literacy, financial resources, or social capital to challenge clan elders in court. This places women in a precarious position, as their rights to land and other property are often conditional on their relationship to a man (e.g., father, husband, or brother). The study looked forward to ascertain the appropriateness of the Afrocentric theory theoretical assumptions while undertaking a new study in a Ugandan scene.

1.2.3 Conceptual Background

Conceptually, according to Monis,⁴⁸ succession is the transmission of the rights and obligations of the deceased to the heirs. It can also be defined as the process by which the estate of a deceased person devolves to another person upon the death of the former. In *Re Headen's Estate*,⁴⁹ it was held that to ensure the continuity of the estate of the deceased, the law of succession establishes in advance how the property and the responsibilities of the deceased would be managed upon his or her demise. Succession is viewed in two lenses and that is testate succession (when a person dies leaving a valid will) and intestate succession (when a person dies without a valid will), with a potential third category being 'partly testate and partly intestate' where a will exists but doesn't cover all the deceased's property. In the case of *Administer General v Bukirwa and Another*,⁵⁰ it was held that 'testate succession' means that when someone dies, they have left behind a valid will, which outlines how their property and assets should be distributed to their beneficiaries, as opposed to 'intestate succession' where someone dies without a will and their assets are distributed according to the laws of the jurisdiction where they were domiciled.⁵¹

Spousal property rights⁵² during succession therefore are the legal entitlements a surviving spouse has to a share of their deceased spouse's estate, even if the deceased left a will or not.⁵³ The perspective of common law on spousal property rights during succession has evolved dramatically over time, shifting from the historical concept of coverture, which gave a wife virtually no rights,

⁴⁷ S Arun 'From Beauvoir and Woolf's Critique and Analysis of 'Women as Property' to the Evolution of the Hindu Succession Law: How Far Have We Come in Achieving Equality in Women's Property Rights in India? 2021; 3:1. *Indian JL & Legal Rsch.*

⁴⁸ H.F Monis 'The law of succession in Uganda', 1971.

⁴⁹ 1877 52 Cal. 298.

⁵⁰ 1992 HCB 192.

⁵¹ Succession Act Cap 268, Sec.20.

⁵² Succession Act Cap 268, Sec.26.

⁵³ RF Storrow 'Family Protection in the Law of Succession: The Policy Puzzle.' 2019;11:98 Ne. UL Rev.

to modern statutory schemes that grant significant inheritance and support rights to a surviving legal spouse. This modern position varies significantly by jurisdiction, but key principles include inheritance for legally married spouses and very limited or no automatic inheritance for 'common-law' partners. Beginning in the 19th century, common law jurisdictions enacted major reforms to eliminate coverture and grant women independent legal and property rights. In *Re Coventry*,⁵⁴ it was established that the purpose of the 1975 Act is to provide for the maintenance of an applicant, not to rectify perceived unfairness. A financially capable adult son's claim was rejected because he could not prove a financial need for maintenance. Today, statutory schemes in common law systems define a surviving spouse's succession rights, which differ depending on whether the deceased left a will or no. In *Makumba James v Watsemba Sikola*,⁵⁵ it was found out that the defendant was entitled to live in the suit house with her children. However, in the same judgment it was stated that the defendant should sit with the plaintiff and ensure that the property of the deceased including the suit house be distributed among the beneficiaries according to the law.

The perspective of feminist on property rights of separated spouses emphasizes gender equality, arguing for the removal of discriminatory customary, social, and religious laws that limit women's inheritance to achieve economic and political parity with men. Sylvia Wallby⁵⁶ believe women should have the same rights to inherit property as men, regardless of their marital status or contribution to the family wealth. They speak against traditional and customary laws are deeply patriarchal, excluding women from inheriting property and denying them economic power. Sara Zeigler⁵⁷ explained that access to property, especially land, is seen as crucial for women's economic stability and political power. Zeigler argue that denying women inheritance perpetuates their subordination and dependence pointing out that the struggle for succession rights is part of a larger fight against systemic discrimination that affects women's lives in multiple spheres, including legal, social, economic, and political. The feminist thus restricts themselves on observing spousal property rights during succession. However, the Afrocentric theorists take an extra mile to seeking spouses' rights given the mode of marriage in African setting.⁵⁸

⁵⁴ 1980 Ch 461.

⁵⁵ 2005 UGHCFD 4.

⁵⁶ S Wallby 'Six Structures of Patriarchy (Revise Sociology)'. 2012.

⁵⁷ SL Zeigler, & GG Gunderson 'Pernicious Patriarchy or Prosecutorial Progress? Confronting Culture, War, and Rape in International Law.' 2005;25(2):23-44. *Journal of Conflict Studies*.

⁵⁸ JC Chukwuokolo 'Afrocentrism or Eurocentrism: The dilemma of African development'. 2009; 6:24-39. *OGIRISI: A new journal of African studies*.

Specifically, Kafumbe⁵⁹ conceptualized property rights of separated spouses to include the right to inherit their parent's property, rights to matrimonial property upon death, protection from degrading treatment as widows; property ownership and equal sharing of estate. The Succession laws provides for parental inheritance due to kinship and consanguinity principles⁶⁰; the rights to matrimonial property upon death⁶¹; and against degrading treatment as widow or widower⁶², property ownership⁶³ and equal sharing of estate⁶⁴.

The modern law however, conceptualizes property rights of separated spouses to include spouses, customary law, and waiver of rights. This emerges from the fact that African culture is still forming and many spouses who contribute huge on assumption of matrimonial property tend to be treated harshly by the very law which advocates for equality, equity and trust. Courts in modern law are increasingly willing to recognize a cohabitant's contributions to a shared life, particularly when it comes to property disputes. In *S v S and another*,⁶⁵ the court highlighted the development in common law that recognizes a duty of support in a familial setting, even without a formal marriage. In *Graham v Murphy*,⁶⁶ the court awarded a substantial sum to the deceased's long-term separated partner. The deceased's will had left everything to his two children. The court found that the will did not make reasonable financial provision for the surviving partner, who had lived in and contributed to their shared home for many years.

1.2.4 Contextual Background

Worldwide, it is a contextually perceived notion that abuse of property rights of separated spouses is a significant problem of gender equality importance. Yet, abuse of property rights of separated spouses and particularly wives' succession rights in the global arena have been exponentially on the rise since 2007.⁶⁷ Current global statistics indicate that there are 285 million widows and over 115 million of them live in deep poverty, in fragile conditions and vulnerable to abuse their

⁵⁹ AL Kafumbe 'Women's rights to property in marriage, divorce, and widowhood in Uganda: The problematic aspects. Human Rights Review.' 2010 Jun;11(2):199-221.

⁶⁰ Succession Act (n 53 Above) Sec 18 and 19.

⁶¹ As Above. Sec 22.

⁶² As Above, Sec 265.

⁶³ Constitution of Uganda (n 4 above).

⁶⁴ As Above, Art. 31.

⁶⁵ 2019 (CCT147/18) ZACC 22.

⁶⁶ 2019 EWHC 1079 (Ch).

⁶⁷UN Women 'Statement: Widows' rights to independent life and livelihood after loss' 2023. <http://www.unwomen.org/en/news/stories/2017/6/statement-un-women-international-widows-day> [Accessed 23 October 2025].

succession rights.⁶⁸ These widows have been referred to by the UN as ‘invisible women’⁶⁹ due to the absence of data on their situation. Legislation to condemn, prohibit, and penalize harmful practices against widows varies greatly in scope. In 36 of the 189 economies covered by the World Bank’s Women, Business and the Law, widows do not have the same inheritance rights as widowers.

In spite of the many ratifications to the CEDAW, the consensus of the Beijing Platform for Action, the widespread support for the Declaration on the Elimination of Violence to Women, and the endorsement by governments of the UNSCR 1325, very few UN conventions make specific reference to the rights of widows, and widows continue to be excluded from the progress made in raising the status of millions of the world’s women. In response to this gap, Widows for Peace through Democracy (an umbrella organization for widows associations) has proposed a ‘Charter for Widows’ Rights’⁷⁰ which demands the elimination of all discrimination against widows both within the family and in community and in public life. However, even where legislation exists, widows may be unable to access the modern justice system. Where parallel systems of law co-exist (religious, customary, modern), widows’ lives may be determined by interpretations, made by leaders of their local communities, of religious or customary systems.⁷¹ Key factors contributing to the effective implementation of legislation include: political will and enabling environment; shifting attitudes and norms towards harmful practices; appropriate training and capacity building of public officials, including police and judicial officers; coordination between different agencies; and women-led campaigns to ensure governments fulfil their commitments and to shift public opinion⁷².

How abuse of succession rights has been handled in the past has not prevented its escalation to the extent that it is one of the critical issues that triggered the Civil Rights Movement, notably, the Feminist Movement and Gay and Lesbian Movement of the early 20th Century.⁷³ One of the significant consequences of these movements was the formulation of modern-day legal instruments against abuse of those rights.⁷⁴ These included international conventions, regional

⁶⁸As above. <https://medium.com/we-the-peoples/day-8-ending-violence-against-widows-e481ac9688c4>. 2007 [Accessed 23 October 2025].

⁶⁹ UN Women ‘Widows continue to face severe stigma and discrimination’, 2024. <http://asiapacific.unwomen.org/en/news-and-events/stories/2024/12/widows-continue-to-face-severestigma-and-discrimination>[Accessed 23 October 2025].

⁷⁰ The Widows Charter 1325, Art.5.

⁷¹ As Above, Art. 6.

⁷² E Fraser & S Wood ‘VAWG Legislation, Helpdesk Research Report No. 156. London, UK’. 2024. VAWG Helpdesk.

⁷³ LE Jared ‘Freedom indivisible: Gays and lesbians in the African American civil rights movement’ (2013) 61 Dissertation History Department University of Nebraska-Lincoln 25. <https://digitalcommons.unl.edu/historydiss/61>. [Last accessed 22 October 2025].

⁷⁴ D Cavicchioli, D Berton, R Pretolani ‘Farm succession at a crossroads: The interaction among farm characteristics, labor market conditions, and gender and birth order effects’, 2018;61:73-83 *Journal of Rural Studies*.

conventions, and national laws. The particular international conventions formulated to strengthen protection against abuse of spousal property rights during succession include UDHR; Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons (1989); Hague Convention on the Law Applicable to Matrimonial Property Regimes (1978).⁷⁵ These protocols aimed to promote equality, equity and against discrimination during succession. This gap is, however, covered by different international conventions. In particular, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides for women equality in acquiring and managing property.⁷⁶ The CEDAW also guarantees women's equal rights in all matters related to marriage and family including inheritance and succession⁷⁷.

At the regional level, the conventions formulated to provide for protection against abuse of spousal property rights include the Maputo Protocol on the Rights of Women in Africa⁷⁸ and the African Charter on Human and Peoples Rights.⁷⁹ Different countries have enacted national laws in promotion of property rights of separated spouses guided by the United Nations' framework for legislation which spells out the international standards established under the international human rights law, international humanitarian law, and international criminal law on this right. For instance, America formulated the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women regionally.⁸⁰ Besides, each American country has its succession law.⁸¹ In addition, the European Union formulated the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention);⁸² the EU Succession Regulation⁸³ which also known as 'Brussels IV'. This regulation harmonizes private international law rules on succession for EU member states (excluding Denmark and Ireland). It governs all civil law aspects of succession, including the surviving spouse's inheritance rights. This applies even if the deceased was a national of a non-EU country. It allows for a choice-of-law provision, enabling a person to choose the law of their nationality to govern their succession. This designation must be made in a formal declaration, such as a will.⁸⁴ On

⁷⁵ As Above. Pg 89-93.

⁷⁶ CEDAWA 1979, Art 15.

⁷⁷ As Above. Art 16.

⁷⁸ Maputo Protocol 2003, Art 19.

⁷⁹ African Charter on Human and People's Rights (ACHPR) 198, Art 14.

⁸⁰ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará), Art 1.

⁸¹ United States Code (18 U.S.C. sections 2241–2248), Chapter 109a.

⁸² The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Art 1.

⁸³ EU Succession Regulation 2012, Regulation 65.

⁸⁴ M Pazdan, M Zachariasiewicz 'The EU succession regulation: achievements, ambiguities, and challenges for the future', 2021;17(1):74-113. *Journal of Private International Law*.

top of that each member state of this Union has its own succession laws. As other regions and nations formulated their regional conventions and national laws on succession, respectively, so did Africa and Uganda.

In Sub Saharan Africa, less than half of widows (47%) report inheriting any assets, according to the findings of the largest cross-country study of data from 15 sub-Saharan African countries. Using demographic and health survey (DHS) data on ever-widowed women aged 15-49, results shows that inheritance of any assets ranges from a low of 22% in Sierra Leone to 66% in Rwanda.⁸⁵ In Uganda, upon the death of a husband, widows are frequently evicted from their marital homes by their in-laws. Relatives often seize the property, dispossessing both the widow and her children.⁸⁶ In patriarchal systems common throughout Uganda, customary law traditionally dictates that property should remain within the deceased's clan and be inherited by a male heir, such as the eldest son or a brother. Widows can be forced by clan members to remarry a male relative of the deceased in order to retain property. Refusing to do so may result in the forfeiture of their inheritance. In addition, cultural norms often dictate that only male children can inherit property, leaving daughters with few or no rights to their family's estate.⁸⁷ Even with legal protections, traditional views can lead relatives to exclude female family members from inheritance. Traditional succession practices give immense power to male relatives, leaving widows economically vulnerable and dependent. Widows are often left at the mercy of their husband's family, who may manage the property on behalf of minor sons while denying the mother control or income from it.⁸⁸

The laws Uganda has enacted to protect spousal property rights during separations include the Constitution of the Republic of Uganda, 1995;⁸⁹ the Succession Act Cap 268;⁹⁰ The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263, the Administrator General Act Cap 264, The Estate of Missing Persons (Management) Act Cap 265, Probates (Resealing) Act Cap 266, Public Trustee Act Cap 267, Trustees Act Cap 270 and Trustees Incorporation Act Cap 271, among others. The rationale for enacting and refining the framework governing residential holdings and spousal property under *Section 26 of the Succession Act* centers on resolving historical injustices, securing housing rights, and upholding constitutional mandates.

⁸⁵ UN Women (n 66 Above).

⁸⁶ JD Mujuzi 'The Conundrum of Intestate Succession for Muslims in Uganda: Qadhis Court, Women's Rights, and Islamic Inheritance Law Issues' 2023:43-68 *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 16(1).

⁸⁷ KK Kodiyo 'Historical Analysis of Women's Inheritance Rights in East Africa (Kenya, Uganda, and Tanzania) and the Influence of Colonialism.' 2022:116-140 *Diké-A Márkus Dezső Összehasonlító Jogtörténeti Kutatócsoport folyóirata*, 6(2).

⁸⁸ MG Byaruhanga 'Women's access to land in Uganda', 2020.

⁸⁹ Constitution of Uganda (n 4 above), Art 26.

⁹⁰ Succession Act (n 53 Above), Art 22.

Historically, upon the death of a family head (particularly a husband), extended family clans routinely subjected surviving spouses especially widows—to arbitrary eviction from the matrimonial home. Section 26 was enacted to anchor a statutory shield, ensuring that a surviving spouse and dependent children are legally protected from sudden homelessness and dispossession. Landmark litigation and civil society advocacy exposed how older succession frameworks disproportionately marginalized women and codified discriminatory treatment. The current iteration of the law corrects these structural imbalances, ensuring that both male and female surviving spouses enjoy equal protections regarding residential occupancy. By stipulating how residential holdings devolve and safeguarding them from immediate forced liquidation, the legislature intended to prioritize the welfare, education, and upbringing of minor children. The law ensures that the family asset base is not prematurely torn apart by competing extended relatives before dependents reach maturity. The provisions function alongside strict rules against intermeddling and unauthorized estate disposal to prevent bad-faith actors from selling off core family properties. It embeds a mandatory legal consensus that a principal residential holding carries an inherent social and familial trust that overrides unchecked testamentary or clan-based greed.

However, despite the existence of the above succession legal standards, the cries about the abuse of property rights of separated spouses remain an issue in Uganda. With a special focus on Succession Act Cap 268, this study intended to explore the extent by which this principal law observes the constitutional provisions in observing protection of property rights for separated spouses.

1.3 Statement of the Problem

There are a number of international, regional, and sub-regional laws which endeavor to observe the protection of property rights of separated spouses. These include; UDHR, CEDAW, Beijing Platform for Action, UNSCR 1325, Charter for Widows' Rights, Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons, and Hague Convention on the Law Applicable to Matrimonial Property Regimes, Maputo Protocol on the Rights of Women in Africa and the African Charter on Human and Peoples Rights.

Uganda has ratified some of the international human rights treaties including ICCPR, CEDAW and others and enacted the Constitution of 1995 (which protects the right to property under Article 26) as well as the Succession Act Cap 268, aiming at protection of property rights of separated spouses. Submissions from civil society organizations (such as legal aid providers and women's rights advocates), the Uganda Law Society, and the Ministry of Justice during the

committee readings highlighted critical tensions including preventing opportunism verses protecting the vulnerable. Proponents of the clause argued that it curbs fraudulent or opportunistic claims by estranged partners who had long abandoned the matrimonial home. Conversely, human rights NGOs raised concerns that informal separations, which disproportionately affect women due to domestic friction or economic migration, could be weaponized by extended families to unlawfully disinherit grieving widows. They indicated that the inclusion of this clause effectively places a heavy evidentiary burden on a surviving spouse to prove that any physical separation was either temporary, mutually understood as non-terminating, or forced upon them by the deceased. By tying inheritance strictly to active household membership at the time of death, Parliament sought to align succession law with the social reality of family units while creating rigid guardrails against estate stripping by absentee partners⁹¹.

However, despite the ratification and enactment, property rights of separated spouses remain persistently abused even in the presence of the Succession Act Cap 268. For instance, internal institutional reviews and Justice, Law and Order Sector (JLOS) reports indicate that over 60% of the succession and estate files handled or opened by the office involve active disputes, family wrangles, or contested claims among spouses⁹². Furthermore, the Family Division manages thousands of pending matters (with active caseloads frequently exceeding 6,000 files spanning administrative causes, civil suits, and application categories) annually⁹³. This has thus prompted concerns regarding the adequacy of Uganda's Succession Act Cap 268 and court decisions in upholding the constitution provisions on protection of property rights of separated spouses.

This study thus sought to assess the constitutionality of the Succession Act Cap 268 in relation to protecting property rights of separated spouses with an aim to identify gaps and propose potential reforms.

1.4 Purpose of the study

The study assesses the effectiveness of Succession Act Cap 268 in observance of constitutional provisions in protection of property rights of separated spouses in Uganda's Civil Litigations.

⁹¹ Uganda Parliament. *Parliamentary Debates (Hansard)*, 2024. Volume 4. Page 29-33. Kampala: Government Printer

⁹² JLOS Annual Performance Report 2024/2025. <https://jlos.go.ug/annual-reports/>

⁹³ Uganda Judiciary Annual Performance Report 2024/2025. https://www.judiciary.go.ug/data/dpublications/33/Releases_publications.html

1.5 Objectives of the Study

To meet the above purpose, the study sought to achieve the following objectives.

1.5.1 General Objective

To assess the adequacy of the Succession Act Cap 268 in observance of constitutional provisions in protection of property rights of separated spouses in Uganda.

1.5.2 Specific Objectives

- i) To ascertain the international and national legal regime for the protection of property rights of separated spouses in the context of Uganda;
- ii) To establish the extent by which the Succession Act is consistent with the constitutional provisions on protection of property rights of separated spouses in Uganda;
- iii) To assess regional and global best practices which exist for the protection of property rights of separated spouses during succession; and
- iv) To establish the legal and policy proposals which can be obtained from other jurisdictions to enhance Uganda's succession law towards protection of property rights of separated spouses.

1.6 Research Questions

- i) What is the international and national legal regime for the protection of property rights of separated spouses in the context of Uganda?
- ii) To what extent is the Succession Act consistent with the constitutional provisions on protection of property rights of separated spouses in Uganda?
- iii) What regional and global best practices exist for the protection of property rights of separated spouses during succession?
- iv) What legal and policy proposals can be obtained from other jurisdictions to enhance Uganda's succession law towards protection of property rights of separated spouses?

1.7 Scope of the study

The study examined the following aspects:

1.7.1 Content Scope

The content scope of the study includes an assessment of adequacy of the international, regional, and sub-regional conventions and Uganda's Succession Act Cap 268. The study also compares this adequacy with that of similar laws in other jurisdictions in order to come up with lessons for addressing this mess.

1.7.2 Geographical Scope

The geographical scope of the study is Kampala city, the capital of Uganda. This scope was selected because this city's primary data sources are easy to access compared to parts of the country. Indeed, the main library of Makerere University and the School of Law library, where most of the secondary data sources are accessed, are located in Kampala City. In addition, Kampala has the strongest and highest internet connectivity in Uganda which makes it easy to access online sources of relevant literature and more secondary data needed to explore the adequacy of international conventions and to enable comparing the adequacy of Uganda's Succession Act Cap 268 in observing constitutional provisions on protection of property rights of separated spouses with that of other jurisdictions.

1.7.3 Time scope

The study's scope covered the period from 1906, when the Succession Ordinance of 1906 came into force, to May 2026, when the study was accomplished. This time scope covers the collection of secondary data, its analysis and report writing which started in January 2026 and ended in May 2026.

1.8 Justification of the study

The international, regional, and sub-regional conventions as well as national succession law have been in place since early 20th Century. Previous research has, however, focused on analyzing the adequacy of these conventions and laws in protecting victims of abuse of succession rights.⁹⁴ Their adequacy in protection of spousal property rights has negligibly been examined, especially when women suffer under auspices of patriarchy and cultural practices. This analysis has notably not provided the inconsistencies between Uganda's Succession Act Cap 268 and other jurisdictions in protecting property rights of separated spouses in Uganda with a view of coming up with lessons on how to deal with this challenge legally. Yet, these lessons are urgently needed

⁹⁴Mujuzi (n 87 above) Pg 43-68.

to comprehend how to address abuse of succession rights among separated spouses.⁹⁵ This study highlights the inadequacies particularly from a legal perspective in terms of how the law, Administrator General and the courts have not protected spousal property rights during separation. The study emphasizes the need for legal reforms, barrowing from other jurisdictions to enhance Uganda's legal and institutional framework in dealing with succession rights.

1.9 Significance of the study

The study establishes the extent to which international, regional, and sub-regional conventions, as well as Uganda's Succession Act Cap 268 in protection of property rights during separation, are, in themselves and in comparison, to the laws in other jurisdictions, adequate in protecting suspects against abuse of succession rights. The study also explains the lessons drawn from this extent for protecting property rights of separated spouses in Uganda. Theoretically, this extent and lessons enrich the existing legal scholarship with new knowledge on the degree to which property rights of separated spouses are legally protected internationally and nationally and how this protection can be strengthened in the context of Uganda.

Law students, academics, and researchers can use this knowledge as a basis for further research. To the academicians, the findings are an addition of knowledge to the existing database. They thus can serve as a source of referential literature to the Afrocentric based perceptions of succession and the implication of its institutionalization on the protection of property rights of separated spouses from the injustices promulgated by cultural systems, patriarchy and other socio-economic conditions. To the researchers, the study findings provide a basis for future research for any key areas that may not be addressed under this current study. Practically, the new knowledge to be generated in this study can be used by international and national human rights activists, particularly those dealing with economic rights, as a basis for advocating necessary improvements in Uganda's legal framework on succession to ensure that it provides for adequate protection of suspects. Uganda's legislators and policymakers can use the same knowledge to appreciate the adequacy of Uganda's laws. This appreciation can be used to determine the exact provisions to review and how to improve them to make this legal framework sufficient for this protection.

1.10 Operational definition of key terms

Subject to this study, the following key terms were used to mean as stated hereto:

⁹⁵ UN Women (n 68 above).

Succession: is the transmission of the rights and obligations of the deceased to the heirs. It can also be defined as the process by which the estate of a deceased person devolves to another person upon the death of the former. In *Re Headen's Estate*,⁹⁶ it was held that to ensure the continuity of the estate of the deceased, the law of succession establishes in advance how the property and the responsibilities of the deceased would be managed upon his or her demise.

Intestate succession: is the legal term for the inheritance of property that has not been disposed of by a valid final will and testament, or a Will that has been struck down or ruled unconstitutional by a court of competent jurisdiction for infringing on a mirage of legal issues such as the perpetuity rule.⁹⁷

Testate Succession: is the legal process of transferring a deceased person's rights and obligations with regard to their inheritance, office, and dignity to those who will succeed them, such as their heirs, children, spouse, or other family members. After that, those assets are regarded as belonging to the recipient, or the successor to whom they were bequeathed. The properties are then said to have been inherited by the named beneficiary. In the case of *Administer General v Bukirwa and Another*,⁹⁸ it was held that 'testate succession' means that when someone dies, they have left behind a valid will, which outlines how their property and assets should be distributed to their beneficiaries.

Spouse: means a husband or wife married in accordance with the laws of Uganda or in accordance with the laws of another country and recognized in Uganda as a valid marriage⁹⁹. In *Babumba and 2 others v Esther Kizito*, a man died, leaving behind 9 children from 6 different women. The deceased's nephew applied for letters of administration but was challenged by one of the widows, who had two children but had never lived with the deceased. There was no evidence to show that she was the widow and hence could not be granted letters of administration. Therefore, after the death of one's spouse, one becomes a widow or widower, and the surviving spouse(s) must have been staying together before the death of the deceased person. To the effect that a surviving spouse of an intestate shall not take any interest in the estate of the intestate if, at the death of the intestate, the surviving spouse was separated from the intestate as a member of the same household.¹⁰⁰

⁹⁶ 1877 52 Cal. 298.

⁹⁷ *Coker v. Coker* (1944) 17 NLR 55.

⁹⁸ 1992 HCB 192.

⁹⁹ Succession Act (n 53 above), Sec.2.

¹⁰⁰ Succession Act (n 53 above), Sec.26(1).

Separated Spouses. A separated spouse is a legal partner who is not living as a member of the deceased's household at the time of death generally loses their claim to the estate. The Succession Act¹⁰¹ bars a surviving spouse from inheriting under intestacy if they were separated and no longer living as a member of the deceased's household when the death occurred, even if a formal legal divorce has not been finalized. In *Makumbi v. Nabatanzi & Others*¹⁰², the High Court reaffirmed that a surviving widow (*Ethel Makumbi*) forfeited her inheritance rights after a 25-year separation from her husband, *Patrick Makumbi*, despite them remaining legally married until his death. The court ruled that separation outside the shared household disqualifies a spouse under Section 26 of the Succession Act.

Property rights of separated spouses: are the legal entitlements a surviving spouse has to a share of their deceased spouse's estate, even if the deceased left a will or not.¹⁰³

A common-law partner: is an unmarried person who lives with another partner in a long-term, marriage-like relationship, though the legal rights and definitions vary significantly depending on the country or region. This is reflected in the landmark 1917 colonial case *R v Amkeyo*¹⁰⁴ held that African customary unions were not legally valid marriages under English common law, dismissing them instead as “wife purchase” or commercial transactions

1.11 Literature Review

This section critically reviews literature that relates to succession law with a view of obtaining confessions and information. Focus has been attributed explicitly to generating and highlighting critical information that enhances the study to comprehend how spousal property rights are explicitly and implicitly abused during separation. Analytically, this aimed at comparing with other jurisdictions that have adopted succession laws and suggesting possible legal and policy improvements in Uganda as presented in the subsequent chapters.

1.11.1 International Legal Framework Studies on Protection of Property Rights of Separated Spouses

With recourse to international standards and the theoretical framework, the conceptualization of property rights of separated spouses is not conceptually synonymous across jurisdictions and

¹⁰¹ Succession Act (n 53 above), Sec.26(1).

¹⁰² [2024] UGHCFD 86.

¹⁰³ RF Storrow ‘Family Protection in the Law of Succession: The Policy Puzzle’ 2019; 11:98. Ne. UL Rev.

¹⁰⁴ [1917] 4 K.L.R. 14.

authors. How such rights are perceived and practiced is a determinant of the effectiveness of the standards by which it is reported and prosecuted under the law that applies.

Christandl¹⁰⁵ studied about succession rights of separated spouses while studying their space in international succession law. It was established that rights of separated spouses in succession are generally recognized under international law as they are under national laws governing marriage, but international human rights bodies have influenced legal reforms. While states have discretion on how to protect different types of families, there is growing international pressure to eliminate discrimination against separated partners, particularly on the grounds of status. The scholar highlighted Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which prohibit discrimination on the basis of gender and marital status. Denying inheritance rights to a separated partner while granting them to a married spouse is argued to be a form of discrimination. Christandl¹⁰⁶ for instance cited the General Comment 19 of the ICCPR which states that countries should recognize and protect all forms of family, not just those formed by marriage. This broader interpretation puts pressure on states to grant separated spouses some of the same protections traditionally reserved for married couples, especially concerning succession. Furthermore, international law prioritizes the best interests of the child. This principle is relevant when a separated couple has children, as courts are expected to ensure the children are not disadvantaged by their parents' marital status. Inheritance and property rights are generally extended to children born out of wedlock. International instruments affirm the right to own property, such as Article 26 of the Universal Declaration of Human Rights, are relevant when a spouse has contributed to the acquisition of property but is denied succession. Tebbe¹⁰⁷ further provides the Afrocentric perspective on spouse's rights during succession which prioritizes the traditional African family structure, communal land ownership, and social safety nets over western legal individualism. In this framework, although separated partners generally have no automatic rights to inheritance, as inheritance traditionally passes through marriage and patrilineal bloodlines. However, this perspective also recognizes evolving social realities, prompting ongoing re-evaluations and calls for legal reform to protect vulnerable partners, particularly women. However, the perspectives of feminist theorist, according to Auchmuty¹⁰⁸ is that the lack of succession rights

¹⁰⁵ G Christandl 'Succession Rights for Cohabitants', 2020; 138-43. *Edinburgh Law Review* 24(1).

¹⁰⁶ As Above.

¹⁰⁷ N Tebbe 'Inheritance and disinheritance: African customary law and constitutional rights. In Religion and Equality Law' 2017; 377-407. Routledge.

¹⁰⁸ R Auchmuty 'The feminist case against marriage. In Research Handbook on Marriage, Cohabitation and the Law', 2024; 39-57. Edward Elgar Publishing.

for separated partners is viewed as a form of gender inequality rooted in patriarchal norms that undervalue women's contributions to a relationship. Inheritance laws often prioritize formal marriage, leaving women in separated relationships vulnerable and unprotected upon the death of their partner, even after decades of shared life.

Mathew¹⁰⁹ in his study about evolving legal perspective on spouses navigating rights and regulations expressed that several decisions by regional human rights courts illustrate the evolution of rights for separated spouses during succession. For instance, the European Court of Human Rights (ECtHR) while traditionally upholding the distinction between married and unmarried couples, the court has broadened its view to recognize the 'natural family' under Article 8 of the European Convention on Human Rights, which protects private and family life. It has increasingly found that discrimination based on marital status in inheritance and other matters can violate human rights, especially when concerning the rights of children. In *Burden v. United Kingdom*¹¹⁰, the ECtHR found no violation of human rights where UK law denied unmarried, separated siblings the same inheritance tax exemptions as married couples. The court held that the difference in treatment was reasonably and objectively justified to protect the institution of marriage. This ruling established that states have a wide 'margin of appreciation' in differentiating between married and unmarried couples for inheritance purposes, as long as a reasonable justification exists. The Inter-American Court of Human Rights also recognize that same-sex and different-sex separated couples should have the same inheritance and property rights as married couples. It views the exclusion of separated spouses as discriminatory on the basis of their family status. Mathew¹¹¹ adds that many legal systems distinguish between formal, 'registered spouses' and informal, 'de facto spouses.' The former provides clear inheritance rules, while the latter typically requires courts to establish the existence of a marriage-like relationship based on certain criteria. The above scholarly arguments therefore inform the researcher that property rights of separated spouses extend to separated partners which invite to be safeguarded in the succession laws of the land. This study intended to interrogate and find an avenue of how this was being considered in Uganda's Succession Act Cap 268.

¹⁰⁹ AA Mathew 'Evolving Legal Perspective on Cohabitation Navigating Rights and Regulations', 2023;6:2704. *Issue 6 Int'l JL Mgmt. & Human Rights Law*.

¹¹⁰ 2007 Application No. 13378/05.

¹¹¹ Mathew (n 102 above) Pg 43-75.

Maunatlala and Maimela¹¹² studied that about the implementation of customary law of succession and common law of succession while making a specific focus on the eradication of the rule of male primogeniture in Commonwealth Countries. It was established that international law has a room for recognizing customary laws. They acknowledged that the EU Succession Regulation primarily follows the law of the deceased's habitual residence at the time of death, unless the deceased has chosen the law of their country of citizenship in a will. Customary laws can be considered in specific international contexts, especially in cases related to indigenous peoples' land and resources. In many countries, especially in Africa and parts of Asia, customary law operates alongside statutory law, a condition known as legal pluralism and this emerges from customary international law. Saxena¹¹³ ascertained that the international succession law often prioritizes the law of the deceased's last place of domicile and the deceased's will which is a key contrast to intestate succession where there is no valid will. Whereas national and international courts may handle conflicting claims based on their specific jurisdiction. The researcher thus understood that sometimes, there is room for customary law as long as it is not repugnant with the existing international law practices. However, some customary laws, particularly those favoring male heirs, may conflict with modern notions of individual rights and equality, leading to potential legal challenges in some countries. This study endeavored to explore the relevance of customary law in protecting spousal successional rights in presence of Succession Act Cap 268 and the constitution provisions on protection of spousal property rights.

Nampewo et al.,¹¹⁴ highlight how weak protections for spousal property during a marriage directly spill over and compound vulnerabilities during succession. When surviving spouses—particularly widows—lack clear, legally recognized titles or documented contributions to matrimonial property while the marriage is subsisting, they face severe hurdles upon the death of a partner. A major thrust of academic and legal discourse reflected in such works is the historical precarity of surviving spouses when a person dies intestate (without a will). The authors analyze how customary law practices, patriarchal structures, and gaps in statutory implementation have traditionally threatened a spouse's right to retain the family home and core assets, frequently pitting grieving families against the surviving widow or widower. Nampewo et al.,¹¹⁵ details the legislative architecture governing estates in Uganda, underscoring the tension between statutory laws (such as the

¹¹²K Maunatlala & C Maimela 'The implementation of Customary Law of Succession and Common Law of Succession respectively: With a specific focus on the eradication of the rule of male primogeniture'. 2020;53(1):36-53. *De Jure Law Journal*.

¹¹³ PP Saxena 'Succession laws and gender justice. In Redefining family law in India'. 2020; 282-305. Routledge India.

¹¹⁴ Z. Nampewo P. Atim, P.H.D Musoke, and V. Kange, 'Family and succession in Uganda'. (2024). 2nd Edition, Kluwer Law International.

¹¹⁵ Nampewo [As Above] 109.

Succession Act amendments) and customary norms. The authors map out how legal protections are meant to shield the “residential holding” or matrimonial home from being arbitrarily grabbed or distributed away from a surviving spouse and dependent children by extended family members. In examining testamentary succession (when a person leaves a will), the arguments underscore the limits of absolute freedom to testate. Legal frameworks heavily emphasized by scholars like Nampewo et al.,¹¹⁶ advocate for mandatory provisions ensuring that a testator cannot completely disinherit dependent spouses and children, reinforcing the principle that property acquisition and ownership within a family carry implicit social and legal obligations of maintenance. Across family and succession domains, the authors consistently spotlight the systemic disadvantage faced by women. Their analysis supports legal recognition of non-monetary contributions (such as domestic labor, caregiving, and indirect support to household wealth) as a basis for securing proprietary rights ensuring that a surviving spouse isn’t rendered destitute simply because property was formally registered solely in the deceased partner's name.

Pattnaik¹¹⁷ while studying about matrimonial property rights of women in India asserted that the presence of matrimonial property act in Indian succession laws has eased the process of obtaining justice to the side of spouses. They explored that whereas many other jurisdictions do rely on common law practices and court discretions to determine matrimonial property rights during succession, however, the clarity and certainty remains questionable. This is synonymous with what was expressed by Amore *et al.*,¹¹⁸ who also established the importance of matrimonial property act as a stand-alone as it clearly differentiates matrimonial properties instead of confusing them with residential holdings. The discriminatory tendencies in the law emanate from the fact that much of the powers are left in the hands of the judicial officers to determine some important issues yet they would best straight forwards resolved by interpretation of the law in place. The above speaks to the fact that matrimonial property act is relevant to a full constitution of succession laws. However, the researcher posits that even without an independent matrimonial property act, if the existing succession laws on residential holding is followed well, the abuse of property rights of separated spouses can be limited. The study was undertaken to ascertain the necessity of matrimonial property act in Uganda’s succession laws.

¹¹⁶ Nampewo [As Above] 109.

¹¹⁷ A Pattnaik & NC Pattnaik ‘Matrimonial property rights of women in India. 2023;13(4):1-7. *Asian Journal of Research in Social Sciences and Humanities*’.

¹¹⁸ MD Amore, M Bennedsen, I Le Breton-Miller, & D Miller ‘Back to the future: The effect of returning family successions on firm performance’. 2021; 32-58. *Strategic Management Journal*. 42(8).

Mappong and Lili¹¹⁹ did an investigation in on international law, western inheritance law for the heirs of Islamic religion whom the property leaver has different religion. It was established that international succession laws have continuously accepted Islamic succession law governed by the principles of private international law (conflict of laws), rather than public international law. Private international law (PIL) provides the framework for determining which national law applies in a cross-border inheritance case. National legal systems use connecting factors such as the deceased's last domicile, nationality, or the location of their property (*lex situs*) to decide the applicable law. For example, in many common law systems, the law of the deceased's last domicile governs movable property (e.g., bank accounts), while the law of the property's location (*lex situs*) governs immovable property (e.g., land). This can lead to different laws applying to different assets within the same estate, a principle known as 'scission'. Schneider¹²⁰ ascertained that the diversity of legal systems means there is no uniform global framework for handling cross-border inheritance disputes. Some Muslim-majority countries have codified Islamic inheritance laws into their national legal systems, while others, like Saudi Arabia, apply rules directly from interpretations of Islamic scholars. Husain *et al.*,¹²¹ in the study on legal pluralism in contemporary societies (Dynamics of interaction between Islamic law and secular civil law) found out that restricts a testator's freedom to dispose of their assets through a will (*wasiyyah*), allowing them to bequeath only up to one-third of their estate to non-heirs. The remaining two-thirds must be distributed according to fixed shares prescribed in the Quran. This is in contrast to many Western jurisdictions that grant much greater testamentary freedom. A good number of spouses, both men and women, remain running to Islamic succession law. Husain *et al.*,¹²² summed while indicating that natural justice calls for respect for the rights of others. This means that where Islamic succession laws provides against succession when a person has changed a religion. This is not provided for under a number of international and national laws, yet it is a virtue which is believed by Islam and does easily makes several Muslims to run away from national jurisdictions to Islamic Quadi Courts. In the case of *Chelang'a vs Juma*,¹²³ courts held that succession under Islam is governed by sharia law which excludes non-Muslims from inheriting the property of a deceased person. But the law is not against the making of will by a Muslim in favor of his non-Muslims heir within the disposable amount of one third of his total estate to take effect after death.

¹¹⁹ Z Mappong & L Lili 'Right to self-submission to western inheritance law for the heirs of Islamic religion whom the property leaver has different religion. 2023; e423-e423. *Journal of Law and Sustainable Development*, 11(2).

¹²⁰ I Schneider 'Family law and succession. In Routledge handbook of Islamic law' 2019; 324-339. Routledge.

¹²¹ S Husain, NP Ayoub, M Hassmann 'Legal pluralism in contemporary societies: Dynamics of interaction between Islamic law and secular civil law', 2024;1-7. *SYARLAT: Akhwal Syaksijah, Jinayah, Siyasah and Muamalah*. 1(1).

¹²² As above.

¹²³ [2000] KEHC 408 (KLR).

1.11.2 The Succession Laws and Protection of Spousal Property Rights

The legal and policy framework on succession in Uganda has been studied by different scholars who have highlighted several loopholes in relation to how it integrates with customary law, religious beliefs, matrimonial property, spouses and many others.

Tamale's¹²⁴ arguments regarding the protection of spousal (and specifically women's) property during succession intertwine post-colonial critique, legal pluralism, and indigenous philosophy. For instance, Tamale¹²⁵ argues that the modern African nuclear family structure and its accompanying property laws are not native African traditions, but rather heavily engineered products of Victorian imperialism and Christian-colonial morality. Colonial administrators deliberately imposed patriarchal legal structures that stripped indigenous African women of their independent pre-colonial land and property rights, centralizing ownership strictly in the hands of male "heads of households." In analyzing family law and succession, Tamale highlights the danger of static, state-codified "customary laws." She points out that colonial courts and post-colonial states often froze customs into rigid, patriarchal interpretations that favored male heirs and disinherited widows. She advocates for looking at *living* customary practices that historically provided communal security networks for women, rather than corrupted, state-sanctioned versions used to justify property grabbing by a deceased husband's extended family. Tamale remains deeply critical of uncritical, top-down "human rights" frameworks that rely solely on Western notions of formal equality. Simply passing a gender-neutral succession statute often fails in practice because it ignores the structural, economic, and psychological coloniality embedded in judicial institutions. Formal legal protections on paper do little for a widow facing hostile local power dynamics, systemic poverty, and corrupt estate administration unless systemic decolonization occurs. As an alternative to hyper-individualistic, capitalist models of property inheritance—where property is hoarded or fiercely contested upon death—Tamale champions the indigenous philosophy of *Ubuntu* (relationality, mutual care, and social justice). Applied to family and succession, an *Ubuntu*-inspired framework prioritizes community welfare, equitable support for dependents, and the security of the surviving spouse over rigid, winner-take-all testamentary freedoms or patriarchal clan expropriations. Tamale¹²⁶ stresses that protecting spousal property cannot be separated from intersecting vectors of class, race, and gender. A rural widow facing property dispossession experiences vulnerability differently than an urban, elite woman. Therefore, succession laws must

¹²⁴ S. Tamale, 'Decolonization and Afro-feminism.' 2020. Journal of Contemporary African Studies.

¹²⁵ Tamale [As Above].

¹²⁶ S. Tamale, 'Decolonization and Afro-feminism.' 2020. Journal of Contemporary African Studies.

actively account for the marginalized material realities of women who perform unremunerated domestic labor, ensuring that their lifelong contributions to household wealth are legally recognized when a spouse dies.

Maina¹²⁷ in her study on the impact of duration of spouses on succession in marriages supported the study which was done in 2018 by the international Food Policy Research Institute where it was found out that separated spouses form 42% of Ugandan Families. However, the Succession laws do not make provision for the unmarried separated unions. The Marriage Act¹²⁸ and the Succession Act¹²⁹ provides that a ‘spouse’ means a husband or wife married in accordance with the laws of Uganda or in accordance with the laws of another country and recognized in Uganda as a valid marriage. However, the words ‘wife’ and ‘husband’ remain casually, loosely and culturally used in the Ugandan society to mean ‘legal wife’ or ‘legal husband’. Mujuzi¹³⁰ in his study on distribution of property at the termination of de facto unions (marriages by spouses/repute) in some African countries asserted that if a separated partner dies without leaving a will, there is no assumption that their separated spouses should inherit any of their estate, no matter their contribution to the estate or how they might have lived together. He adds that these two issues are easy to proof because most of separated relationships have off springs (children) and they happen in the eyes of people. Cohabitees are fully excluded by succession laws in Uganda which contravenes the protection of property rights provided by the Constitution of Uganda in Article 26. This exclusion was clearly upheld in the case of *Uganda Association of Women Lawyers and ors v Attorney General*¹³¹ where they successfully challenged several provisions of Uganda's Succession Act for being discriminatory and unconstitutional, particularly in relation to women's rights during marriage and at dissolution. The court declared certain sections null and void, finding them inconsistent with Articles 20, 21, 24, 31, 33, and 44 of the Constitution.

Mujuzi¹³² however asserts that this extended in the Amended Succession Act 2022 retaining failure to recognize the property rights of separated partners. The Act only protects legally married spouses. This leaves parties in long-term separated relationships—many of whom are women—with no legal claim to property they may have jointly acquired and built with the deceased. The

¹²⁷ PM Maina ‘Impact of Duration of Cohabitation on Succession in Cohabitation Marriages.’ 2024; 8(1):53-69. *Journal of Public Policy & Governance*.

¹²⁸ Marriage Act Cap 251, Sec 2.

¹²⁹ Succession Act (n 53 above) Sec 2.

¹³⁰ JD Mujuzi ‘Presumption of Marriage in Uganda’. 2020:247-71. *International Journal of Law, Policy and the Family* ;34(3).

¹³¹ 2003 Constitutional Petition No 2, UGCC 1.

¹³² JD Mujuzi ‘Distribution of property at the termination of de facto unions (marriages by cohabitation/repute) in some African countries.’ 2023;37(1). *International Journal of Law, Policy and the Family* 37(1): ebad 015.

significance of spouse's rights was upheld in *Baryamureeba James vs. Kabakonjo Abwooli and Others*,¹³³ where the court, while not recognizing the spouses as a legal marriage, applied the principle of constructive marriage. The court found that a long-term separated partner had a claim to 'family land' on which the couple had lived and derived their sustenance. The researcher therefore understands that this gap ignores the reality of modern family structures in Uganda, where spouses is common. This is because the existing succession law does not recognize 'marriage by repute' regardless of the duration of the relationship. This means that separated partners who are denied inheritance rights must pursue separate, challenging legal avenues to claim their contributions based on principles of equity. This study was conducted as a way of understanding the extent by which property rights of separated spouses are eroded by spouses and the significance of spouse's succession rights in succession laws in Uganda.

Samaila¹³⁴ in her study on inheritance and succession: customary law, practice and procedure explained that right from the Succession ordinance of 1906 and Legal Notice Cap of 1906 which exempted the estates of all natives of the Protectorate from the operations of the Succession Ordinance, African customary law relating to marriage and succession has continued to play a central role¹³⁵ alongside statutory laws. It is provided that the Judicator Act recognizes the application of existing custom which is not repugnant to the natural justice, equity and good conscience and such customs should be incompatible either directly or by necessary implication with any written law¹³⁶. Kodiyo¹³⁷ further explains that customary practices of succession are often gender-biased, with a strong emphasis on male inheritance and a legal framework that sometimes gives way to traditional norms. These practices, which are flexible and vary by community, dictate how a deceased person's property is distributed, often favoring male heirs and sometimes leaving widows without land or income, even if they co-owned it.

Kodiyo¹³⁸ in his study on reconciling customary law and cultural practices with human rights in Uganda established that even with the amended legislation, systemic and practical issues continue to undermine the protection of spousal property rights. The scholar also spoke about the customary guardianship as provided in Succession Act¹³⁹ where the family members of a minor may appoint a customary guardian for the minor in accordance with the customs, culture and

¹³³ 2013 HCU CIVIL SUIT NO. 20.

¹³⁴ EJ Samaila 'Inheritance and Succession: Customary Law, Practice and Procedure'. 2025; 48-57. *Practice and Procedure*.

¹³⁵ Succession Ordinance (n 35 above) Sec.50.

¹³⁶ Judicature Act Cap 13, Sec. 15.

¹³⁷ Kodiyo (n 1 above) Pg 28-45.

¹³⁸ Kodiyo (n 28 above) Pg 33.

¹³⁹ Succession Act (n 53). Sec 41.

tradition of the family, where— (a) both parents of the minor are dead or cannot be found; the surviving parent of the minor is incapable of being a guardian or is not eligible to be appointed as a guardian; or the minor has no guardian or other person having parental responsibility over him or her. The succession law also provides that for the purpose of this section, ‘customary guardian’ shall be a Ugandan citizen, resident in Uganda and shall have parental responsibility of the minor in accordance with the customs, culture or tradition of the family of the minor. Kodiyo¹⁴⁰ further indicated that public awareness of the 2022 amendments remains low. Many people are still guided by outdated traditions and customs that often disadvantage women in succession matters during separation. The process of estate administration can be fraught with administrative delays, allowing fraudulent claims and mismanagement to occur. Even with the introduction of time limits, such as the one-year limit for an executor to apply for probate, enforcement and compliance are inconsistent. Entrenched traditional and cultural practices often contradict legal provisions found in the constitution. A study by the Uganda Law Reform Commission noted that these customary practices can override the formal law, especially in rural areas.

Kitui¹⁴¹ added that the interaction between customary and statutory law creates legal pluralism, where traditional customs can conflict with national laws and result in discriminatory outcomes. The customary law often prioritizes sons and other male relatives in inheriting property, sometimes bypassing daughters or widows completely. In many regions of Uganda, statutory law coexists with customary law, creating a complex legal landscape where both can be applied. This can lead to situations where traditional practices override national laws and lead to discriminatory outcomes. Customary law is typically unwritten and flexible, meaning its rules can change over time and differ from one community to another. These practices can lead to significant inequalities, particularly for women, who may have contributed to the acquisition of property but are denied ownership or inheritance rights after their husband's death. Widows may be left without property and income, and in some cases, a deceased husband's family can prevent the widow from inheriting the home even if she was a joint owner or named in a will. In *Omella & Omella v. Etieng & Odeke*,¹⁴² two co-wives, applied for letters of administration jointly. This was challenged by the brother and father of the deceased because these women could not apply without the permission of clan members. The court held that it was not contrary to morality, equity, and justice for widows to apply for letters of administration. The court, however, appointed an elder as a co-administrator

¹⁴⁰ Kodiyo (n 28 above) Pg 19-48.

¹⁴¹ Kitui (n 2 above) Pg 32-49.

¹⁴² 1994 KALR 98.

to ensure that also other children were also taken care of. This is embracing the notion of customary law and its role in spousal succession law in Uganda.

In *Nyendwoha Lucy vs. Nyendwoha Robert*,¹⁴³ the wife left the husband on account of insecurity on 2^{1st} May 1982, the husband was subsequently gunned down on 2nd June 1982. Court held that such separation did not mean any physical separation for a given reason. The provision does not take into account any contributions made by the other spouse to the wealth of the deceased as a ground for waiver of this provision. The researcher therefore provides that the only issue that is likely to be keeping customary law relevant alongside statutory law is that the existing statutory law may not be serving immediate purpose and its development distanced the existing cultural practices. This new study was undertaken to assess why customary law had remained relevant in the face of the succession law.

Nabawanda¹⁴⁴ while studying spouses and the Law Relating to Property Sharing in Uganda established that the existing succession laws in Uganda lack a law on matrimonial property which would be a very good ingredient in the fight against abuse of property rights of separated spouses in Uganda. She adds that matrimonial property law and succession laws interact in cases of death, as succession law governs how property is passed down, and matrimonial property law defines what that property is and who has rights to it. Historically, succession laws, like Uganda's Succession Act, often undermined women's property rights, but courts have increasingly used constitutional provisions to protect spouses' claims to matrimonial property, even if the property is left in a will. In addition, Bakibisemu¹⁴⁵ ascertained that recent amendments, like the Succession Amendment Act, 2022 in Uganda, aim to align succession laws with matrimonial property rights and constitutional equality. In the case of *Julius Rwabinumi v Hope Babimbisomwe*,¹⁴⁶ the principle of sharing property acquired during a marriage based on contribution was affirmed. The researcher is therefore wondering the extent by which matrimonial property rights are observed in the existing succession laws hence inviting a new study like this. The study thus was imperative in determining whether Uganda needs a Matrimonial Property Act independently or not.

¹⁴³ 1998 KALR 95.

¹⁴⁴ V Nabawanda 'Cohabitation and the Law Relating to Property Sharing in Uganda'. 2024;485-98. *KAS African Law Study Library*, 10(4).

¹⁴⁵ E Bakibisemu 'An examination on the right of women on inheritance and ownership of property in marriage'. 2019.

¹⁴⁶ 2009 No. 10 UGSC 2 (25 April 2013).

Yusuf¹⁴⁷ did a comparative study of sharia and secular law of inheritance rights of children born out of wedlock and established that in Uganda, religious beliefs, particularly Islamic law, present significant challenges and have a complex relationship with the country's formal, secular succession laws. While the Constitution protects religious freedom,¹⁴⁸ the implementation of a single, secular succession law often conflicts with the deeply held religious practices of citizens. The most prominent religious challenge to Uganda's secular succession law comes from the Muslim community, which views inheritance as a matter of religious worship governed by Sharia.

Yusuf¹⁴⁹ asserted that in 2022, Muslims formally requested to be excluded from the new Succession Amendment Bill, arguing that it contravened the inheritance rules set forth in the Quran. The request was denied by a parliamentary committee. The Sharia specifies fixed proportions for heirs that differ from the secular law. For example, a widow with children is entitled to one-eighth of her husband's estate, whereas secular law may provide a different portion. A major point of contention is the inheritance rights of children born out of wedlock, known as *Walad Zina* in Sharia. Under Islamic law, these children can inherit from their mothers but not their fathers. In contrast, Uganda's secular law, following the case of *Uganda Association of Women Lawyers and ors v Attorney General*¹⁵⁰ where the court granted equal inheritance rights to all children, regardless of their legitimacy. This position was further reinstated in the case of *Kajubi v Kabali*.¹⁵¹ which established important precedents in inheritance law, such as the rights of illegitimate children and the limitations on inheritance claims for women who were not married to the deceased.

Mujuzi¹⁵² furthermore expressed that the Ugandan constitution provides for Qadhi courts for Muslims to handle matters like marriage, divorce, and inheritance. However, parliament has been slow to pass legislation to establish and regulate them, creating legal uncertainty. Although some courts have recognized Sharia in succession cases, others have applied the secular law. Despite the legal ambiguity, many Ugandan Muslims continue to distribute estates according to Sharia, often guided by religious leaders and the Uganda Muslim Supreme Council (UMSC). Yusuf¹⁵³ explained

¹⁴⁷ B Yusuf 'A Comparative Study of Sharia and Secular Law of Inheritance Rights of Children Born Out of Wedlock. Islamic University in Uganda. 2024;187-95. *Journal of Comparative Law* 8(1).

¹⁴⁸ Constitution of Uganda (N 62 above) Art 7, 21, & 29.

¹⁴⁹ Yusuf (n 134 above) Pg. 187-95.

¹⁵⁰ 2003 Constitutional Petition No 2, UGCC 1.

¹⁵¹ 1941 E.A.C.A. 34.

¹⁵² JD Mujuzi 'The Conundrum of Intestate Succession for Muslims in Uganda: Qadhis Court, Women's Rights, and Islamic Inheritance Law Issues' 2023; 43-68. *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16(1).

¹⁵³ Yusuf (n 134 above) Pg. 187-95.

further that by use of legal notice excluded the succession law that existed then hence inviting interstate property abuse.

A Legal Notice¹⁵⁴ Mohammedans were excluded from the operations of part V of the Succession Ordinance of 1906 which provided for distribution of an intestate's property. Therefore, the Mohammedans were entirely left to rely on the Sharia law in cases of intestate. This position has not changed much over the past decades. The distribution of property of a deceased among the Muslims is believed to have been determined by God in such a way that a widow is entitled to a quarter of the man's wealth, in case the couple did not have children. Where there are children, the wife is entitled to one eighth of the husband's wealth. The girl children receive half of what the boys receive. This distribution takes place after settlement of a deceased's death.¹⁵⁵ Property distribution is done by an experienced Sheikh who is appointed by the Uganda Muslim Supreme Council. The recipients are expected to sign an agreement showing that they are contented with the distribution of property. In cases where a Moslem believer makes a will and it is deemed to favour some children, the will is disregarded (destroyed) and the property is distributed according to Sharia law.

Mujuzi¹⁵⁶ while referring to the case of *Abasi Magunda & Anor v Sulaiman senoga & others*,¹⁵⁷ further indicated that petitioner had to go to court to be declared or for court or court for a declaration that a will left by a Muslim testator was invalid because the testator was a muslim who should not have made a will but relied on Sharia Islamic law for succession. Justice Okello held that the law of succession in Uganda had been codified largely under the Succession Act as amended. Therefore, there was no such thing as customary or religious law of succession. She added that the deceased had opted out of Sharia law when he chose to make a will. Such has been the courts position on the legal pluralism of succession in Uganda. Evidently the national laws take precedence. However, the situation is different in communities where customary and religious practices of succession are preferred to the statutory laws to the prejudice of women and children. The scholars indicate that even though the law activists advocate for people to run to the conventional legal means, people still choose to seek solution from the religious discourses which are taken to be discriminating. This means speaks volume to the existing succession laws in Uganda on whether they meet the immediate needs of people and whether they emanated from

¹⁵⁴ Subsidiary Legislation caps 31-101 and Buganda native Laws. *Laws of Uganda 1951* Vol 7.

¹⁵⁵ P Nyotah, EO Abuya, & FD Situma 'The Right of Establishment for Spouses of East African Community Citizens—a Paper Entitlement?' 2024. *Comparative & International Law Journal of Southern Africa* 1;57(2).

¹⁵⁶ Mujuzi (n 87 above) Pg 43-68.

¹⁵⁷ 1986 (Unreported) H.C. Misc. Cause No. 13.

respect to religious beliefs. The researcher finds it imperative that succession law integrates the virtues of Islamic law on succession for purpose of meeting property rights of separated spouses which are ignored. Hence, this means that there is a need to understand the effect is need to understudy the effects of these customary and religious practices of the application of the law of succession and come up with a clear and settled position on the hierarchy, relevancy and applicability of each of these seemingly competing practices.

1.11.3 Legal and policy achievements of other jurisdictions

Several jurisdictions globally present not totally a different legal framework from that of Uganda. However, there are significant aspects which can be benchmarked on and these aspects rotate around the integration of cohabitant succession rights, the customary practices, the matrimonial property adoption and missing person's legal provisions.

O'Sullivan¹⁵⁸ took a study in Ireland about posthumously conceived children and succession law where it was established that laws in Ireland have created specific 'redress schemes' that allow a financially dependent cohabitant to apply to a court for a share of their deceased partner's estate, even without a will. Given the international inconsistencies, legal experts advise separated couples to proactively protect their rights by creating wills and spouses' agreements. These documents clarify the partners' intentions and can be crucial for courts to consider if the relationship is contested after death. In UK, The UK's Inheritance (Provision for Family and Dependents) Act 1975 provides recourse for separated spouses who are not provided for in their deceased partner's will. In the case of *Lindop v Agus, Bass and Hedley*,¹⁵⁹ the High Court of England and Wales addressed whether a cohabitant was 'living with and maintained by' the deceased, enabling them to make a claim under the Inheritance Act. Similarly, in *Koteke v Saffarini*,¹⁶⁰ the Court of Appeal clarified the interpretation of 'household' for the purposes of the Inheritance Act, emphasizing the importance of genuinely living together rather than simply maintaining a part-time presence in the household. The researcher thus comprehended that the above cases illustrate that separated spouses' rights under UK law are not automatic, but depend on proving a specific financial dependency or qualifying as a 'cohabitee' under the 1975 Act. This study was undertaken to ascertain how such jurisdictions could be anchored on in an effort to seek for protection of property rights of separated spouses in Uganda.

¹⁵⁸ K O'Sullivan, 'Posthumously conceived children and succession law: a view from Ireland', 2019;380-402. *International Journal of Law, Policy and the Family* 33(3).

¹⁵⁹2009 EWHC B 14 (Ch).

¹⁶⁰ 2005 EWCA Civ 221 court Of Appeal (Civil Division).

Claassens and O'Regan¹⁶¹ did an editorial citizenship and accountability about customary law and traditional leadership under South Africa's democratic constitution. They established that several jurisdictions have formally recognized customary laws, others have legally limited or outlawed discriminatory aspects, particularly those that violate constitutional guarantees of equality. They acknowledged that the EU Succession Regulation primarily follows the law of the deceased's habitual residence at the time of death, unless the deceased has chosen the law of their country of citizenship in a will. Customary laws can be considered in specific international contexts, especially in cases related to indigenous peoples' land and resources. In many countries, especially in Africa and parts of Asia, customary law operates alongside statutory law, a condition known as legal pluralism. They asserted that in many sub-Saharan African countries, the legal system is split, where matters of personal and family law, like inheritance, are often governed by customary rules. Meanwhile, other matters are handled by the formal state system. This often results in a conflict between constitutional provisions and discriminatory customary practices. In India, Hindu, Muslim, and Christian communities each have their own personal laws regarding succession, which exist alongside the Indian Succession Act. Customary practices, such as the preference for male heirs, frequently override statutory rights, particularly in rural areas. Ochilo¹⁶² in his critique of the constitutionality of section 3 (2) of the law of succession act of Kenya relied on the Matter of the *Estate of Ellah Warue Nthava*¹⁶³ (deceased), Nairobi, two sons and a daughter survived the deceased. It was proposed that the majority of the properties be divided equally between the two sons, with the female survivor getting a small portion. The court rejected the proposal on the basis that Section 38 of the Kenyan Succession Act envisaged equal division of the estate amongst all the children. The researcher therefore understands that due to the significant importance of the customary law in filling gaps in the existing statutory law, this is why it has remained resorted. However, it has been understood from the above that many customary succession laws are based on patriarchal traditions that privilege men as inheritors and exclude women and illegitimate children. This study endeavored to explore the relevance of customary law in protecting spousal property rights during separation.

In the landmark Ugandan High Court Family Division decision *Herbert Kolya v. Ekiriya Mawemuko Kolya*¹⁶⁴, the judiciary established crucial protections for spousal property rights upon a partner's death. The court firmly ruled that a husband cannot unilaterally give away or dispose of the

¹⁶¹ A Claassens, & C O'Regan 'Editorial citizenship and accountability: customary law and traditional leadership under South Africa's democratic constitution'. 2021; 155-72. *Journal of Southern African Studies* 47(2).

¹⁶² LA Ochilo 'A critique of the constitutionality of section 3 (2) of the law of succession act of Kenya,'2020.

¹⁶³ 2000 High Court of Kenya at Nairobi Succession Cause No. 1374.

¹⁶⁴ [2016] Civil Suit No. 150.

matrimonial home (or core marital property) in a will to an heir or a third party without the explicit consent of his spouse. Testators cannot use wills to bypass a surviving spouse's proprietary rights. Anchoring its reasoning in Article 31(1) of the 1995 Constitution of Uganda—which grants men and women equal rights in marriage, during marriage, and at its dissolution—the court affirmed that a surviving widow or spouse holds an automatic, vested interest in matrimonial property that transcends patriarchal testamentary demands. The court established that if a testator attempts to include or dispose of a surviving spouse's matrimonial property or property belonging to someone else within a will, those specific illegal bequests render the entire will legally defective. When a will is thus invalidated, the estate is treated under the framework of partial intestacy, clearing the path for the surviving spouse to protect their stake. The judgment dismantled the common patriarchal practice where a testator leaves the matrimonial home to a male heir while relegating the widow to a precarious, conditional right to "stay in the home only until she dies or remarries". The court ruled that the property passes outright to the surviving spouse as absolute matrimonial property, freeing her from being treated as a tenant or hostage in her own home. The ruling protected the widow's right to secure letters of administration for her deceased spouse's estate without annexing a heavily flawed or discriminatory will, reinforcing her legal standing to manage and dispense with the remaining estate responsibly. Overall, the *Kolya* resolution serves as a cornerstone precedent in Ugandan jurisprudence, ensuring that a surviving spouse's rights to matrimonial property trump a testator's absolute freedom of testate distribution.

Odhiambo¹⁶⁵ did a study on fighting for gender equality in matrimonial property division in Kenya's legal landscape upon marriage dissolution and death. It was ascertained that the role of matrimonial property act is paramount in the effort towards realization of property rights of separated spouses. He acknowledged that the Matrimonial Property Act (MPA) 2013 in Kenya affects succession by establishing that property jointly acquired during a marriage is considered matrimonial property, which can be claimed by a surviving spouse. This means that when a spouse dies, their legal spouse is entitled to a share of the matrimonial assets, in addition to their claim on the deceased's separate property under the Law of Succession Act. This protects a surviving spouse from being left with nothing, ensuring a level of security for the surviving family unit. The views of Odhiambo are synonymous with Thakur¹⁶⁶ who studied about spousal property law in India. He established that the MPA clarifies that property rights are not just about ownership but also about the rights that come with it, like the right to co-own and claim property acquired during

¹⁶⁵ W Odhiambo 'Fighting for Gender Equality: Matrimonial Property Division in Kenya's Legal Landscape Upon Marriage Dissolution'. 2024; 626-36. *KAS African Law Study Library*10(4).

¹⁶⁶ D Thakur 'Spousal Property Law in India: A Solace to Spouses', 2023; 42. *Part 2 Indian J. Integrated Rsch.*;3:1.

the marriage. It also reinforces the principle of separate property- that is property acquired before the marriage or through inheritance (if not commingled) remains separate and is not considered matrimonial property, although this can be complex. The above narrative informs the researcher that the role of matrimonial property act is paramount in an effort to protect property rights of separated spouses. This research was conducted as a way of ascertaining if Matrimonial Property Act would be essential in succession laws of Uganda as depicted in other jurisdictions like Kenya and India.

Adnan *et al.*,¹⁶⁷ while making a comparison between Islamic law and private international laws in jurisdiction matters of succession in Pakistan. It was established that there are a number of gaps in the existing succession laws which end up chasing spouses from conventional legal systems to religious courts. He highlighted that according to Quran 4:12 and in the case of *Noor Bhai v Adanji*,¹⁶⁸ it was noted that Muslims testamentary freedom is limited to 1/3 of the estate, so his or her destitute. The hierarchy of distribution in this case was provided to follow; burial expenses, debts, 1/3 that is bequest, rightful heirs and public treasury in case there are no heirs. The testamentary freedom in Islamic succession law emerges from the spirit of giving back to the society which is largely ignored by the existing national jurisdictions and this invites an assessment in existing laws.

Furthermore, Caplan¹⁶⁹ in a study by Women and law in East Africa 'Muslim women in marriage and household resource management in Uganda'¹⁷⁰ revealed a conflict between the application of statutory law and religion. Some religious practices which discriminate against women in the distribution of property where females are entitled to half of what their male counterparts receive contravene the Constitution which is the supreme law of the land hence rendering them null and void ab initio¹⁷¹. This further makes a case for law reform to bring these religious practices in conformity with the Constitution by addressing these imbalances. The researcher is interested in understanding the extent by which Islamic succession is integrated in the mainstream or principal act and to what extent this is affecting observance of spousal property rights during separation in Uganda.

¹⁶⁷ SM Adnan, AH Shah, & K Baig 'Comparison Between Islamic Laws and Private International Laws: Jurisdictional Matters of Succession'. 2024; 101-18. *Pakistan Islamicus (An International Journal of Islamic & Social Sciences)*.

¹⁶⁸ 1946 13 E.A.C.A. 17.

¹⁶⁹ P Caplan 'Cognatic descent, Islamic law and women's property on the East African coast. In *Women and Property*' 2023; 23-43. Routledge.

¹⁷⁰ Nyotah, et al., (n 142 above).

¹⁷¹ Constitution of the Republic of Uganda (n 62 above) Art. 33 (2).

Bakibinga¹⁷² in his property and trust law in Uganda asserted that property rights of separated spouses begin at the time of death, however, Uganda lacks a law to safeguard estates before they are granted and this is the avenue which is being utilized by wrong minds to infiltrate and affect the legal process. The law of succession provides that a person entitled to administration has no power to do anything before he is granted the power.

This is not the practice in other jurisdictions like England. The practice in UK is the practice in England is either for the court to appoint a receiver pending the grant on application by any party interested including a creditor or beneficiary and this was demonstrated in the case of *Re: Sutcliffe*¹⁷³ where the court had to appoint a receiver where an executor had carried on the deceased solicitor's practice for the three years taking probate. This is similar to the case of *Steer vs. Steer*,¹⁷⁴ a receiver and manager of the deceased's businesses was appointed.

The UK granted administration and colligenda bona to any suitable person for the purpose of preserving the assets of the estate until a general grant is made. Such a grant is useful for instance where urgent action is needed and the person entitled to a general grant cannot readily apply for it. This grant is usually limited to the purpose of collecting, getting in and receiving the estate and doing acts necessary for its preservation, and is always limited until a further grant of representation is made. The grant is one of administration and no distribution to the beneficiaries is authorized¹⁷⁵. Although the law stipulates that an intestate vest in the state and provides protections in criminalising the act of intermeddling, it is important to include a provision that protects the assets of the estate prior to the grant of letters of administration and probate. This was to augment protection especially in light of the context of legal pluralism where there are de-facto competing practices in custom and in law as to how an estate should be managed.

1.11.4 Lessons that can be learnt from other jurisdictions

Having explored interventions provided by various researchers, organizations, and institutions across the world, this study aims to borrow from these inferences to make recommendations for improvement in Uganda's succession law. Literature in relation to reforms in the law against torture stems from integration of missing virtues in religion domains, customary good practices which are not repugnant to the mainstream law and the matrimonial property propositions.

¹⁷² DJ Bakibinga 'Property and Trust Law in Uganda'. 2022. *Kluwer Law International BV*.

¹⁷³ *Re: Sutcliffe* (1942) Ch. 453.

¹⁷⁴ 1864 12 WR 933.

¹⁷⁵ CH Sherrin, L Parry & S Clark 'The Law of Succession'. 1978.

O'Sullivan¹⁷⁶ acknowledged that there is a need to create specific redress schemes that allow a financially dependent cohabitant to apply to a court for a share of their deceased partner's estate, even without a will. Specifically, O'Sullivan¹⁷⁷ showed that existing succession laws need to adopt testamentary disposition (making a will) or by making a claim under specific legislation, such as the Inheritance (Provision for Family and Dependents) Act 1975 in the UK, if they meet certain criteria. Without a will, the separated partner is not automatically recognized under traditional succession laws and may have to rely on a court to make a discretionary award based on factors like the duration of the relationship and their financial dependence on the deceased. Mujuzi¹⁷⁸ also provides that in cases where a separated partner has to apply to the court for a share of an estate, the court makes a discretionary award, which means there is no guarantee they will receive what they are expecting. As a way forward, the researcher grasps that observation and integration of separated property rights need to be obtained and this is the role of matrimonial property act. This study was conducted to ascertain where spouses' rights would be adopted in the succession laws in Uganda as a way of observing constitutional provisions on protection of property rights of separated spouses.

Judiasih *et al.*,¹⁷⁹ in their investigation of inheritance law system while considering the pluralism of customary law in Indonesia found out that the customary adat laws of various ethnic groups are recognized, with customary dispute resolution processes used in places like Papua. However, adat laws are not uniform across the nation and vary widely among the 19 designated legal circles. In Kyrgyzstan, the government moved to revitalize traditional *aqsaqal* (council of elders) courts to handle customary law issues, including those involving property. The courts operate alongside the formal state legal system. Gyapong¹⁸⁰ also reported that the Ghanaian government passed the Head of Family (Accountability) Law to require heads of family to register family property. The law aims to regulate and modify existing customary practices concerning communal property. In South Africa, Moore & Himonga,¹⁸¹ the reform of Customary Law of Succession Act of 2009 was enacted to modify the customary law of succession and abolish the rule of male primogeniture. The reform was prompted by constitutional court rulings that found the practice discriminatory. The

¹⁷⁶ K O'Sullivan 'Cohabitant protection on relationship breakdown in Ireland: A lesson in illusory justice?' 2023; 017 *International Journal of Law, Policy and The Family* 37(1).

¹⁷⁷ As above.

¹⁷⁸ Mujuzi (n 121 above) JD Page 15-28.

¹⁷⁹ SD Judiasih, & EL Fakhriah 'Inheritance law system: Considering the pluralism of customary law in Indonesia'. 2018; 315-30. *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*5(2).

¹⁸⁰ AY Gyapong 'Commodification of family lands and the changing dynamics of access in Ghana. 2021; 1233-51. *Third World Quarterly* 42(6).

¹⁸¹ E Moore, & C Himonga 'Living customary law and families in South Africa. Children, Families and the State.' 2018;61.

researcher therefore explores that there is a role which customary law can play alongside statutory law during succession especially when it comes to issue of time, cost, bureaucracies which are embedded in seeking justice. This study was thus required to ascertain how best this can be fully adopted in Uganda.

Bakibinga¹⁸² in his writings on ‘Property and Trust Law in Uganda’ asserted that Uganda needs a comprehensive Matrimonial Property Act to address gaps in its current laws and ensure equality in property division upon divorce, according to various legal analyses and recent legislative efforts. This emerges from the fact that the current system is a mix of statutory law, common law principles, and customary practices, which can lead to unfair outcomes, particularly for women. Nabawanda¹⁸³ reported that advocates and legal experts argue that a new act is necessary to provide a clear, equitable framework that recognizes both monetary and non-monetary contributions to property. She explained that the legal framework for matrimonial property is inconsistent, relying on a mix of common law, statutes, and customary laws that can be discriminatory. Customary laws often favor men, leading to unequal property distribution. A new act could help rectify this by explicitly recognizing both financial and non-financial contributions. Bakibinga also add that the 1995 Constitution¹⁸⁴ mandates equal rights in marriage, but current laws do not always reflect this principle, creating a need for updated legislation to align with the constitution. A dedicated act would provide a clearer definition of what constitutes matrimonial property and how it should be divided, reducing ambiguity and potential for lengthy court battles. The Land Act provides some protection for spouses, such as requiring spousal consent for transactions on ‘family land,’¹⁸⁵ but the scope is limited. Nabawanda¹⁸⁶ explained that most of the disputes in matrimonial property rely on the Supreme Court key decisions, such as in *Julius Rwabinumi v Hope Bahimbisomwe*,¹⁸⁷ which affirm the principle of sharing property acquired during a marriage based on contribution. The new Marriage Bill has been presented to Parliament, which includes provisions for property rights and aims to address these issues, showing a move towards creating a more comprehensive legal framework. However, this has been the parliamentary floor for several years. From the researcher’s point of view therefore, it looks like the existing succession laws need to be adjusted to welcome the matrimonial property act as it was a step to closing loopholes available in

¹⁸² Bakibinga DJ. Property and Trust Law in Uganda. Kluwer Law International BV; 2022 Aug 20.

¹⁸³ Nabawanda (n 133 above) Pg. 485-98.

¹⁸⁴ Constitution of Uganda (n 62 above) Art 31(1)b.

¹⁸⁵ Land Act Cap 236, Sec 39.

¹⁸⁶ Nabawanda (n 133 above).

¹⁸⁷ 2009 No. 10 of 2009 UGSC 2 (25 April 2013).

property sharing during dissolution and death. This study was undertaken to establish the extent by which they are true.

Namuli and Mugalula¹⁸⁸ arguments and analytical perspectives on the protection of spousal property during succession center on several core themes. They emphasize that the forcible eviction of widows from the matrimonial home following a husband's death is one of the most glaring manifestations of patriarchy in Uganda. They argue that property grabbing by extended family members (clans) treats the surviving spouse frequently a woman as an outsider or mere property herself, stripping her of basic human dignity and housing security. Namyalo-Ganafa and Mugalula¹⁸⁹ dissect how patriarchal traditions dictate that land and immovable property strictly follow male lineage lines. Even when testators use formal wills, these documents are frequently weaponized to bypass the wife's lifetime contributions, assigning the family residence entirely to male heirs or relatives and reducing the widow to a precarious, conditional occupant. While statutory frameworks (such as protections under the Succession Act and constitutional equality provisions) exist on paper, the authors highlight the deep disconnect in enforcement. Patriarchal customary norms often override statutory protections at the community level, where local power dynamics, biased clan elders, and administrative delays leave grieving spouses legally unprotected and economically destitute. The authors analyze how control over letters of administration becomes a battleground. Because patriarchal systems historically sidelined women from administering estates, surviving spouses were routinely locked out of decision-making processes regarding the property they helped build, allowing extended families to liquidate or mismanage family assets before legal remedies could be invoked. Their work underscores the necessity for aggressive judicial intervention such as robust enforcement of women's land rights, strict penalties for illegal evictions, and the unyielding elevation of constitutional equality over discriminatory cultural practices—to ensure that death does not legally sanction the dispossession of a surviving spouse.

1.12. Methodology

The methodology constitutes the research design, researcher positionality and the potential limitations to the study,

¹⁸⁸ H. Namuli & G. Mugalula, 'Patriarchy and posthumous spousal right to property' 2016. East African journal for peace and Human rights.

¹⁸⁹ Namuli & Mugalula [As Above].

1.12.1 Research Design

This study applied a doctrinal research method. These were the Afrocentric and feminist theoretical construction of the succession law vis-à-vis the actual constitutional provisions undermined. A background evaluation of abuse of property rights of separated spouses across the different regions of the country under the existing laws and policies and their challenges were explored. Secondary findings from documents reviewed, laws, policies and determined cases were applied to specifically help the researcher in making a comparative analysis on the protection of property rights of separated spouses and the law that regulates this with selected jurisdictions of US, UK, India, South Africa and Kenya. These countries were selected because they are largely applying common law system as used in Uganda in relation succession law.

This study applied a doctrinal research method. The method helped to capture the four thematic areas embedded in the two-dimensional approaches. These were Afrocentric and feminist theoretical construction of the succession law vis-à-vis the actual constitutional provisions undermined. A background evaluation of abuse of property rights of separated spouses across the different regions of the country under the existing laws and policies and their challenges were explored. Secondary findings from documents reviewed, laws, policies and determined cases were applied to specifically help the researcher in making a comparative analysis on the protection of property rights of separated spouses and the law that regulates this with selected jurisdictions of US, UK, India, South Africa and Kenya.

Doctrinal research helped the researcher to, through reasoned exploration and evaluation, focus on written law and legal materials rather than just on the law in action. This enhanced the qualitative analysis of the written legal materials to support the testing of the existing assumptions on the Afrocentric and feminist construction of succession on how this affects justice for the victims. The researcher generated a descriptive and detailed analysis of the legal rules embedded in cases, statutes, and guidelines to gather, organize, and describe the law to provide an appropriate explanation of the sources used and how these sources connect to the current study.

Secondary data materials included reviewing existing relevant literature available on property rights of separated spouses, in particular, and judicial decisions, in general. Legal sources accessed for secondary data included the internet, scholarly materials, legal texts, journals, articles, case law, legislative laws, policy briefs on data protection and privacy regulation. Furthermore, they included government reports, treaties, and conventions as well as rules

covering the legislative history of succession and its regulation in respect to separated spouses. This helped the researcher to acquire a concrete structure from which ambiguities and criticisms of the law of succession were identified and solutions were suggested in the recommendations section of this paper.

Related material sources on constitutionality of Succession Law and its perceptions and implications on spouses as victims were used to facilitate the quality of interpretation of the inferences made and their analysis were guided by Afrocentric and feminist construction of succession were adopted for the study. Regarding ethical liability, the researcher ensured that all the data borrowed from the works of other authors are acknowledged through accurate citation in footnotes and references. The accessed data was carefully examined and thematically represented.

1.12.1.1 Non-Doctrinal Research Method

The research adopted this method to complement on what was established by doctrinal research method. In this case, a quantitative approach was adopted in gathering primary data. The study targeted primary stakeholders in the field of protection of property rights of surviving spouses in Uganda. In this case, a list of respondents was obtained amongst the previous Administrator Generals, Head of family division, Registrar of family division, Academician in family law, Civil Society Organisation Representatives (FIDA-U) and Legal practitioners in Family Matters. These were selected while using purposive sampling technique because they were presumed to be knowledgeable as far as protection of property rights of surviving spouses are concerned. A key Informant Interview (*Refer to Appendix I*) was designed with a series of questions which were answered by the selected interviewees. This was preferred to allow detailed collection of information while probing and prompting respondents. Data was analysed while using thematic and content analyses technique

1.12.2. Theoretical Framework

Theoretically, the abuse of spousal property rights during succession is anchored on a number of theoretical explanations and these include Afrocentric and feminist theories. The Afrocentric theory explores the situation which obtains in Uganda and to a large extent in African cultures where women and children suffer at the demise of their breadwinner. Moreover, there is the current discussion around gender discrimination and the protection of the rights of the vulnerable in the society. The pursuit of African-centered models for fostering the healthy development of

Black communities, according to many Afrocentric scholars, practitioners, and community organizers, is motivated by a shared desire to overthrow Eurocentric interpretations of the Black American experience, particularly regarding the identity of African diasporan people, their needs, and ways to address issues in their communities.¹⁹⁰ From an Afrocentric perspective, succession and spousal property rights are guided by communalism and lineage, with customary law placing emphasis on collective family responsibility rather than individual ownership rights. This view is in stark contrast to Western models, which prioritize individual property rights and inheritance through wills.¹⁹¹

Afrocentric theory prioritizes African cultural values, history, and perspectives, often interacts with the issue of spousal property rights through the lens of customary law, patriarchy, and communal family structures. In many African contexts, traditional practices—when interpreted through a patriarchal lens—can lead to the abuse of spousal property rights, particularly against women. While designed to foster community and family unity, these traditions are frequently exploited to disinherit women and facilitate domestic violence. In many African communities, marriage is seen as a union between families rather than just individuals. While traditionally offering a form of social security, modern applications of these customs can lead to the "grabbing" of property from widows by the deceased husband's family.¹⁹² This is because bride price is a central element in many customary marriages. However, the commercialization of this practice has led to its abuse, where some husbands view it as a purchase of the wife, giving them absolute ownership over her and the property acquired during the marriage. This power dynamic often leads to domestic violence, as husbands feel entitled to control their wives. The traditional systems often vest control of matrimonial property in the husband or his lineage. This structure leaves women with limited rights to land, household goods, and property upon divorce or the death of their husband. In some regions, customary laws exclude wives from inheriting their husband's property, leaving them vulnerable to eviction from their homes. While Afrocentric theory encourages a return to African traditions, these traditions often clash with international women's rights frameworks that emphasize equality.¹⁹³ Grassroots organizations frequently navigate this tension, using human rights frameworks to address the abuse of women's rights to property and safety.

¹⁹⁰ H Lateef, EO Amoako, P Nartey, J Tan, S Joe 'Black youth and African-centered interventions: A systematic review. *Research on Social Work Practice*. 2022 Jan;32(1):3-12.

¹⁹¹ RL Jackson, MA Hogg, editors. *Encyclopedia of identity*. Sage; 2010 Jun 29.

¹⁹² MM Whitehead, Minnie M. 'Applying Afrocentric theory to mezzo practice with African-Americans.' 2018: 125-141. *Journal of Human Behavior in the Social Environment* 28, no. 2.

¹⁹³ SK Davis, AD Williams, M Akinyela, 'An Afrocentric approach to building cultural relevance in social work research.' 2010:338-50. *Journal of Black Studies*. Nov;41(2).

The Feminist theory is grounded on the extermination of the cultural ideologies that encourage discrimination against women and children.¹⁹⁴ Therefore, it is important to approach the study from this angle and unveil an option that would address the gaps identified by the study. Feminism is often viewed as movement against men, a platform to fight men to secure equality of rights. It is the belief in the struggle for equality politically, socially, economically and in marital relations. It has been described as the belief in social, economic, and political equality of the sexes¹⁹⁵. Specifically, the feminist theory views traditional succession laws and spousal property rights as inherently biased, arguing they are rooted in patriarchal systems that subordinate and disadvantage women. They further focus on how these laws and customs, even in modern legal systems, often undermine women's autonomy by restricting their rights to inherit and control property. Arun¹⁹⁶ argues that feminists look the legal systems are based on patrilineal descent, where inheritance passes through male heirs. This places women in a precarious position, as their rights to land and other property are often conditional on their relationship to a man (e.g., father, husband, or brother). The study looks forward to ascertain the appropriateness of the feminist theoretical assumptions while undertaking a new study in a Ugandan scene.

Feminist theory analyses the abuse of spousal property rights as a mechanism of patriarchal control, where the restriction of economic resources is used to enforce dependency and perpetrate intimate partner violence (IPV).¹⁹⁷ Economic and patrimonial violence—including the control of income, destruction of assets, and denial of housing rights—are recognized as key strategies to maintain male dominance and prevent women from leaving abusive relationships. This theory particularly in the Global South and Latin America, distinguishes between physical violence and patrimonial/economic violence. This includes the illegal withdrawal of assets, destruction of personal documents or tools of the trade, and the squandering of joint household resources by a partner. A core tenet is that lack of independent property ownership (land or housing) removes a woman's ability to leave an abusive relationship, forcing her to choose between continued abuse or destitution. In many contexts, particularly in African and Asian societies, customary laws and cultural attitudes often deny women inheritance or matrimonial property rights, reinforcing their subordinate status. While property ownership can empower women, feminist theory also highlights the 'backlash effect,' where women who gain economic independence or assets may face

¹⁹⁴ PP Saxena 'Succession laws and gender justice. In *Redefining family law in India*', 2020: 282-305. Routledge India.

¹⁹⁵ As Above. Pg. 33.

¹⁹⁶ S Arun 'From Beauvoir and Woolf's Critique and Analysis of 'Women as Property' to the Evolution of the Hindu Succession Law: How Far Have We Come in Achieving Equality in Women's Property Rights in India? 2021; 3:1. *Indian JL & Legal Rsch.*

¹⁹⁷ J Lawson, 'Sociological theories of intimate partner violence. 2012:572-90. *Journal of human behavior in the social environment.* Jun 26;22(5).

increased violence as partners act to reassert dominance. Women are often forced out of their homes or denied their share of property upon separation, even if they contributed to its acquisition. While joint ownership is generally seen as protective, in situations of abuse, it can lead to "gender-violence evictions," where the woman is forced to flee, losing access to the property. Widows and women are frequently disinherited by in-laws or male relatives, particularly in situations involving unregistered or customary land. Feminist advocacy has therefore pushed for legal reforms that recognize economic/patrimonial violence as a specific, actionable form of gender-based violence, not just an economic dispute. Legal mechanisms like civil protection orders (CPOs) that allow for the eviction of an abusive partner from a shared home, regardless of ownership, are crucial for victim safety. The theory focuses on formalizing women's land tenure, ensuring joint titling of property, and promoting legal literacy to ensure women can defend their property rights. Feminist jurisprudence hence argues that even when laws are gender-neutral, they are often administered in ways that perpetuate male privilege, requiring active and often radical, changes to both law and cultural norms to eliminate property-based abuse.¹⁹⁸

1.12.3 Research Limitations

This research experienced a limitation of the principle of legality to further substantiate the claim that abuse of property rights of separated spouses is a real and under recognized phenomenon. While it was considered essential to provide real-life scenarios where this has occurred, the examples remain limited because the laws of the countries where it occurs also have laws which protect spousal property rights. The cases of *Rev Onesifolo Ngaaga and Another v Moses Matovu*,¹⁹⁹ *Law and Advocacy for Women in Uganda v The Attorney General*,²⁰⁰ and *S v S and another*,²⁰¹ were specifically cited. Nonetheless the examples helped to further furnish the image of property rights of separated spouses to give the study a stronger position of qualification. Besides, this as a practitioner in Administrator General's Office writing this research, I was able to control my biases from influencing the results of this study. The account of this is indicated in sub-section 1.12.2.

The implication is that the limitation demonstrated that the problem is not necessarily a total *absence* of laws, but rather the inadequacy or rigidity of application under laws like the Succession Act. Because laws presume clear household structures, they inadvertently expose separated spouses

¹⁹⁸ Faustina, A. A. (2025). A Critical Analysis of Women's Inheritance Rights Under Customary and Statutory Law. *Alex-Ekenneme Federal University Faculty of Law LL. B Projects*.

¹⁹⁹ 2003 HCCS No.107.

²⁰⁰ 2007 Constitutional. Petitions Nos. 13 /05 /& 05 /06 [2007] UGCC 1.

²⁰¹ 2019 CCT147/18) [2019] ZACC 22.

who often lack formal legal dissolutions to property grabs. This study shifts from claiming a legislative void to exposing a doctrinal disconnect between constitutional protections (right to property, non-discrimination, and human dignity) and rigid statutory enforcement. Therefore, the scarcity of direct, clear-cut cases allowed this study to position itself as a pioneer or gap-filler. Rather than weakening its claims, the limited case law emphasizes that victims of this phenomenon are often silenced, economically disempowered, or lack access to justice, meaning the issue is under-litigated rather than non-existent. This heavily supports your constitutional critique: the law fails to protect a vulnerable class precisely because their predicament falls into a legal “limbo” (separated but legally married).

Lastly, by acknowledging that comparative or local examples are bounded by existing protective mechanisms, this study avoids overgeneralization. It demonstrates academic honesty, showing that you evaluated the problem critically through a balanced lens. It qualifies your conclusions, ensuring your final recommendations for legislative reform are viewed as carefully calibrated rather than reactionary.

1.12.4 Researcher’s Positionality

As a legal player in the Administrator General Office in Uganda, I have been delighted to have been part of several succession events. These succession events and experiences have been teaching me that although we may have the Succession Act Cap 268 as amended, some of the challenges this law came to cure remain evident. I had witnessed a good number of spouses resorting to religious and cultural forums to solve their property rights during separation. Secondly, I had witnessed a number of separated spouses reaching out for help, yet I do not have any legal cure to serve them. Thirdly, I had seen several women waiving their rights intentionally and unintentionally because of fear to go through the bureaucracy of the existing legal standards. Fourthly, a good number of spouses remain passive and less informed about the constitutionality of Succession Act Cap 268 which has come to affect their access to justice. The absence of Matrimonial Property Act has also been witnessed as one of the challenges in the existing Succession Act Cap 268 curtailing its ability to observe constitutional provisions in protecting property rights of separated spouses in Uganda. I had also attended several symposiums at both national and international levels about ending abuse of property rights of separated spouses. These have exposed me to the extent of this menace. Given this experience, I desire to contribute to the global and regional discourse around dealing with this abuse. My study contributes to the existing body of knowledge on the courses, the trends and how to effectively deal with protection of

property rights of separated spouses. As a person working with Administrator General Office, I feel this study was, in addition, contributes to getting to effective mechanism of dealing with existing challenge of property rights of separated spouses as provided in Section 26 of the Succession Act Cap 268.

Finally, I consistently controlled my personal views and biases, as they particularly pertain to assumptions about endangered spouses. I actively sought to remain objective, making sure that my conclusions are made based on a balanced and thorough examination of the existing laws and literature.

1.13 Arrangement of the chapters

This section presents the overview of what each and every chapter aims to achieve in this study. It ranges from chapter one to chapter five as demonstrated below;

Chapter One provides a general overview of this entire thesis. It provides an introduction, background to the study, statement of the problem, purpose, and points out objectives, research questions, scope, justification, and significance of the study. It further presents a review of related literature in line with the adequacy of principal laws on succession in observance of constitutional provisions or legal standards in protection of property rights of separated spouses. The chapter also singles out the identified gaps in the literature and highlights how the gaps can be addressed through undertaking the research study as highlighted in the subsequent chapters.

Chapter Two explores the available international and national standards on protection of property rights of separated spouses in general and explores such instruments as the UDHR, CEDAW, ICCPR, ICESCR and Beijing Platform for Action on international level. Regionally, Maputo Protocol, ACHPR and ACRWC, Treaty for the Establishment of the East African Community (Treaty) and the East African Community Gender Equality and Development Act (2016) were reviewed. At national level, Constitution of Uganda, Succession Act, Land Act Cap 236, The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263, the Administrator General Act Cap 264, The Estate of Missing Persons (Management) Act Cap 265, Probates (Resealing) Act Cap 266, Public Trustee Act Cap 267, and Trustees Act Cap 270 were studied.

Chapter Three examines the adequacy of Succession Act Cap 268 in observation of constitutional provisions on protection of property rights of separated spouses and, within this perspective, property rights are put in a right context. It also examines the adequacy of various

statutes and their provisions on protection of property rights of separated spouses. The Chapter further provides the underlying gaps in the Succession Act Cap 268 concerning protection of property rights of separated spouses as provided in the constitution of Uganda. It also highlights the implication of the gaps in the protection of property rights of separated spouses in Uganda.

Chapter Four analyses the adequacy of Succession Act Cap 268 in comparison with selected jurisdictions, that is; the United States of America (USA), United Kingdom (UK), India, South Africa, Kenya in protection of property rights of separated spouses as provided by constitutional provisions.

Chapter Five provides conclusions and recommendations to deal with the protection of property rights of separated spouses in Uganda drawing lessons from selected jurisdictions.

CHAPTER TWO

INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK ON PROTECTION OF PROPERTY RIGHTS OF SEPARATED SPOUSES

2.1 Introduction

2.2 International legal framework

2.3 Regional legal framework

2.4 Sub-Regional legal framework

2.5 National Legal Framework

2.6 Conclusion

2.1 Introduction

The role of protection of property rights of spouses during succession is credited in stemming and sustaining gender equality globally. This is associated with the fact that it balances statutory law (formal, and equal rights) with deeply ingrained customary practices that often favor male inheritance. Progressive legal frameworks are designed to ensure equitable distribution of property and safeguard women's entitlements. Internationally, property rights of separated spouses are protected through international and regional human rights instruments demanding equality, and national laws focusing on equitable distribution, spousal consent for asset disposal, and, in some jurisdictions, formal recognition of non-monetary contributions.¹

In the majority of cases, the property rights a typical Ugandan woman claims upon the death of a spouse arises from her rights over the same acquired by virtue of marriage. According to Ahikire and Mwiine,² women's rights to property during death of a spouse is far from satisfactory and must be reformed to advance the status of women in Uganda. Equally unsatisfactory is the fact that in Uganda, partly owing to the phenomena of legal pluralism, even where the relevant statutory laws are protective of women's rights to matrimonial property, their implementation is hindered by customary law practices, socialization, and the generally weak economic capacity of many women in the country. It is therefore imperative to appreciate the international, regional

¹ JT Oldham 'Divorce, separation and the distribution of property.' 2021. Law Journal Press.

² J Ahikire & AA Mwiine 'Gender equitable change and the place of informal networks in Uganda's legislative policy reforms.' 2020.

and sub-regional legal framework adopted by Uganda in auspices of protecting property rights of separated spouses during succession. The rubric of international and national legal framework constitutes a series of laws right from CEDAWA, Maputo Protocol to the Constitution and other statutes. This Chapter thus appraises the strength of international and national instruments and standards in illustrating legal mechanisms which can be relied on to protect property rights of separated spouses during succession.

2.2 International Legal Framework

The international legal framework for protecting the property rights of separated spouses is built on the principles of equality, non-discrimination, and the protection of the family unit. This is because these concepts ensure that women and men have equal economic rights during and after marriage, preventing the impoverishment of spouses upon separation. International law further recognizes that patriarchal structures and traditional customs often leave women economically disadvantaged, sometimes without rights to matrimonial property. The framework aims to ensure that women and men enjoy the same rights to property during, and upon the dissolution of, marriage, regardless of, or even in spite of, local, customary, or religious laws that might be discriminatory. Furthermore, the international legal framework recognizes the family as the fundamental unit of society, and as such, it must be protected and supported in its welfare, even when it breaks down. This protection ensures that when a marriage or union ends, the property distribution does not leave one party, or the children involved, in a state of destitution. Violon³ claimed that a fundamental aim of these principles is to guarantee that women can access and own property, which is crucial for their economic independence and empowerment. This includes the right to share in joint property, pensions, and social security payments. International standards, including the UDHR, ICCPR, and ICESCR, provide the foundation for these protections, which require that any differences in treatment regarding property on separation must be justified by objective and reasonable criteria. These are espoused below.

2.2.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR), adopted in 1948, establishes fundamental principles of equality and property rights that apply to all individuals, regardless of marital status or gender. While it does not contain specific clauses on ‘separated spouses’ in legal detail, its provisions on gender equality in marriage dissolution and the right to property form the foundation

³ JM Violon ‘Women Empowerment Under International Law: A Comprehensive Analysis.’ 2023. *Research Ethics: Journal of Multidisciplinary Research* 1, no. 4.

for such protections. It primarily and explicitly states that men and women of full age have the right to marry and that they are entitled to equal rights as to marriage, during marriage and at its dissolution.⁴ This mandates that upon separation or divorce; men and women must have equal rights regarding the division of assets. In Article 17, it guarantees that ‘Everyone has the right to own property alone as well as in association with others’ and that ‘No one shall be arbitrarily deprived of his property’. In the context of separation, this protects an individual's right to their own property, including their share of matrimonial property.⁵ UDHR establishes that everyone is entitled to the rights in the declaration without distinction of any kind, such as sex, property, or other status.⁶ This ensures that women cannot be denied property rights during separation due to their gender or marital status. It further provides that all are equal before the law and are entitled to equal protection,⁷ which is crucial for ensuring that legal systems do not discriminate against separated women.

The provisions imply that upon separation, both parties have a right to an equitable share of the joint property acquired during the marriage. The UDHR, combined with international law, mandates that women have the right to own and administer property without restriction based on marital status, and this remains true upon separation. While the UDHR is not legally binding, it is the basis for international treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which specifically obliges states to eliminate discrimination against women in marriage and divorce.

UDHR has therefore, served as a foundational legal and moral framework in Uganda, significantly influencing the evolution of domestic laws to protect the property rights of surviving spouses, particularly widows. By promoting the principles of non-discrimination (Article 2), equal rights in marriage and dissolution (Article 16), and the right to own property (Article 17), the UDHR has driven legal reforms that challenge, albeit with challenges in implementation, patriarchal customary practices that formerly dispossessed widows. Specifically, the UDHR's emphasis on equality and non-discrimination, which is regarded as one of the most gender-sensitive in Africa. Specifically, it prohibits laws, cultures, and traditions that violate the dignity or interests of women and mandates Parliaments to protect the rights of widows to inherit property.

⁴ UDHR 1948, Art.16.

⁵ As Above, Art.17.

⁶ UDHR (n 4 above) Art.2.

⁷ As Above, Art.7.

The principles of the UDHR and subsequent international instruments (like CEDAW) compelled amendments to the Succession Act. These changes improved the legal position of widows regarding the matrimonial home and other assets upon the death of a spouse, moving away from systems that left them with only temporary user rights. UDHR's right to property, introduced 'security of occupancy' for spouses on family land. This requires that a spouse's written consent is obtained before family land is sold or mortgaged, protecting the surviving spouse from being forced off their land by in-laws. UDHR has been influential in interpreting national laws. Judicial rulings have increasingly affirmed that a wife has the right to own property, overriding discriminatory customary practices where clan members claim a deceased man's property.

2.2.2 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR, established in 1966, came into force in 1976 to promote upholding people's civil and political rights by member states. It provides a foundational framework for gender equality and the protection of property rights for separated spouses. The covenant requires that, upon the dissolution of marriage (divorce or separation), couples have equitable rights to joint property and that women are not discriminated against in the division of assets. It provides for equal right of men and women to the enjoyment of all civil and political rights, including equality in property management.⁸ It mandates that State Parties 'take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution'. This implies that upon separation or divorce, property must be shared equitably.⁹ In Article 26, it guarantees equality before the law and equal protection of the law, prohibiting discrimination on grounds such as sex and property. In interpreting Article 23, it notes that equality during marriage applies to the administration of assets and continues to apply to arrangements regarding legal separation or dissolution.¹⁰

The ICCPR thus recognizes that 'homemaking' and other non-monetary contributions to the family should be considered when dividing property, ensuring women who may not have earned income are not left destitute. It further requires that discriminatory customs or laws, which might deny a separated woman access to matrimonial property, are overridden and it reinforces standards like CEDAW (often read alongside it), guarantees women the right to own, manage, and dispose of property independently, meaning they retain their personal property upon

⁸ ICCPR 1966, Art.3.

⁹ As Above, Art.23(4).

¹⁰ As Above, General Comment No. 19.

separation. While the ICCPR provides these rights, however, they depend on national implementation (e.g., legislation, court decisions) to be fully realized.

The ICCPR has significantly influenced the protection of property rights for surviving spouses by providing an international legal benchmark that pushes for gender equality and non-discrimination. Its contribution is primarily seen through the domestication of its principles into the Ugandan Constitution, judicial activism, and subsequent legislative reforms, which aim to override discriminatory customary. For instance, the ICCPR guarantees equal rights for men and women, equal protection before the law, and equality in marriage and at its dissolution. This has forced a shift in Uganda from patriarchal customary ownership—where wives could be evicted by in-laws upon a husband's death—to a rights-based approach.

The ICCPR's non-discrimination provisions are used by courts to invalidate customary laws that deny widows inheritance rights or ownership of matrimonial property. Courts have increasingly used international human rights instruments to uphold the rights of widows. Landmark decisions have affirmed that a wife's right to matrimonial property overrides wills that unjustly disinherit her and have prohibited relatives from seizing property. The pressure to comply with international obligations has led to reforms, which aims to protect the surviving spouse's right to inherit. In line with protecting rights, recent legal amendments have made it a criminal offence to evict a surviving spouse or misappropriate a deceased person's estate.

2.2.3 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW) was adopted by the UN General Assembly in 1979 and later by Uganda in 1985. CEDAW mandates gender equality in property rights during and after marriage (separation/divorce). It guarantees equal rights to own, manage, and dispose of property while requiring equitable distribution of joint property, including land and pensions, upon marriage dissolution and ensures equal legal capacity for women in contracts. It urges State parties to provide legal protection for women's rights.¹¹ It also enjoins States to modify social and cultural patterns that discriminate against women¹². Crucially though, it provides for same rights for men and women 'in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration'.¹³ In Article

¹¹ CEDAW, Art.2.

¹² As Above, Art 5.

¹³ As Above, Art16(h).

16(1)(h),¹⁴ it grants women and men the same rights to ownership, administration, management, enjoyment, and disposition of property, whether free of charge or for a consideration. CEDAW further guarantees women identical legal capacity to men, including entering contracts and managing property, ensuring they are not dependent on husbands for financial decisions.¹⁵ As its general recommendation No.29, it clarifies that upon separation or divorce, property acquired during marriage (including land, pensions, and social security) must be distributed equitably.¹⁶ It emphasizes protecting rural women's land rights and preventing the disinheritance of widows¹⁷. This convention¹⁸ also ensures same rights and responsibilities during marriage, preventing the loss of assets due to unequal power dynamics. These provisions require states to abolish discriminatory laws, such as those that allow husbands to control wives' property, ensuring equal economic status upon marriage breakdown.

It is noted therefore that according to CEDAW, property rights subject to fair distribution after the dissolution of marriage include pensions, social security payments and land. The General Recommendation also addresses the rights of widows. According to the General Recommendation, 'Many States parties, by law or custom, deny widows equality with widowers as to inheritance, leaving them vulnerable economically upon the death of a spouse.' The Committee recommends that States parties implement their obligations under Article 16 of the CEDAW Convention in light of the General Recommendation. According to Article 16,

'States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.'

CEDAW jurisprudence highlights that property allocation and distribution often contribute to structural discrimination against women. For instance, in the case of *Ms. A.T. v. Hungary*,¹⁹ The Committee found that Hungarian law failed to adequately protect a woman's property rights and safety in a domestic violence situation, emphasizing that property rights should not be used to endanger women. In the case of *Cecilia Kell v. Canada*²⁰, the Committee ruled that denying property rights to women in common-law relationships, while granting them to married women, was discriminatory and failed to address the economic disadvantage women face upon relationship

¹⁴ As Above, Art 16(1)(h).

¹⁵ As Above, Art.15(2).

¹⁶ As Above, Art.16.

¹⁷ As Above, Art.14 & 16.

¹⁸ As Above, Art.16(1)(c).

¹⁹ [2005] Communication No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003.

²⁰ [2011] CEDAW/C/51/D/19/2008.

breakdown. However, in *K.K. v. Russian Federation*,²¹ it was highlighted that courts should consider spousal violence when dividing marital property. In Tanzania, the Committee affirmed that a woman's equal right to property is essential for her financial independence, especially for widows facing discriminatory customary laws.²² This is similar in South Africa in the case of *Bhe v. Khayelitshe Magistrate*,²³ a domestic court, citing CEDAW obligations, ruled against customary inheritance laws that discriminated against women.

CEDAW principles of equal access to property influenced several countries to prohibit customary decisions that deprive women of land access or ownership. It requires the consent of both spouses for any transaction on family land, protecting a widow's right to reside on matrimonial land. The Succession Act amendment aligns with CEDAW by addressing previous inequalities. It protects the residential holding (matrimonial home) for the surviving spouse and children, ensuring it does not form part of the general estate for distribution, thus preventing the eviction of widows. The law now criminalizes the eviction of a surviving spouse and dependents from their home, making it an offense liable to imprisonment.

CEDAW has provided a basis for challenging traditional practices like widow inheritance and the denial of women's inheritance rights in customary law, which formerly left widows destitute. Courts are increasingly relying on the constitutional provisions (which are informed by CEDAW) to uphold a widow's right to inherit, even in cases where customary norms prefer male relatives. CEDAW has encouraged civil society to fight for women's inheritance rights through legal aid and advocacy, increasing awareness among women about their rights. The adoption of these rights has helped address the economic vulnerability of widows, allowing them to retain access to land, which is critical for their livelihood and that of their children.

2.2.4 Beijing Platform for Action

The Beijing Platform for Action (BPfA) prioritizes women's property rights, inheritance, and economic equality as fundamental human rights, specifically urging governments to remove discriminatory laws. It emphasizes equal access to economic resources, including land, credit, and inheritance, crucial for autonomy after separation. Key provisions focus on legal reform and strengthening women's rights. The platform promotes full implementation of human rights instruments, including CEDAW, to ensure equality and non-discrimination, specifically addressing

²¹ [2020] CCPR/C/127/D/2912/2016.

²² *E.S. and S.C. v. Tanzania*, CEDAW/C/60/D/48/2013.

²³ [2005] (1) SA 580 (CC); 2005 (1) BCLR 1 (CC); CCT 49/03.

legal, economic, and social rights.²⁴ It calls on governments to revise laws to ensure women's equal rights to economic resources, including land, inheritance, and financial credit.²⁵

The Beijing Platform for Action (1995) mandates gender equality by requiring governments to ensure women have equal rights to land, property, and inheritance, even after separation or divorce. It compels legal reforms to eliminate discrimination, ensuring women's access to economic resources, housing, and financial services, promoting economic independence. Governments must revoke laws and eliminate customs that prevent women from owning, inheriting, or controlling property, including land and housing, regardless of marital status.²⁶ In Paragraph 61(b) concerning the 'Women and Poverty' critical area, the Platform calls on governments to enact laws and implement reforms to ensure women's equal access to and full control over economic resources, including land, property, and inheritance whilst, Paragraph 60(a) and 60(f) highlight the need to address the structural causes of poverty by removing legal and customary barriers that prevent women from accessing credit, land, and inheritance.²⁷ The BPfA puts specific focus on securing women's rights to marital property and fair settlement during divorce or separation. This is done by urging governments to take measures to ensure that women in violent relationships have access to legal and protective services, specifically mentioning the need for legal aid, medical care, and counselling' and measures to 'protect women who are victims of violence,' which is particularly relevant during separation or divorce.²⁸ It explicitly calls for the training of 'judicial, legal, police and health personnel' to handle cases of violence against women, which covers domestic violence during separation.²⁹ In a landmark judgement of *EB v ER NO and Others*,³⁰ *KG v Minister of Home Affairs and Others*,³¹ Constitutional Court of South Africa while relying on BPfA held that section 7(3) of the Divorce Act should include spouses who entered into a marriage out of community of property without accrual. The court ruled that women in such marriages, who often find themselves disadvantaged upon separation, are entitled to request a redistribution of assets if they contributed to the growth of the other spouse's estate.

The BPfA generally urges the removal of laws that discriminate against women regarding property, inheritance, and land ownership. It implicitly supports property rights by allowing women to leave abusive situations (e.g., in separated or divorced cases). The BPfA acts as an 'international bill of

²⁴ BPfA, Sec. 1.

²⁵ As Above, Sec. A.

²⁶ As Above, Para. 61(b).

²⁷ As Above, Para. 60 (a) & (f).

²⁸ As Above, Para. 124(h).

²⁹ As Above, Para. 125(d).

³⁰ [2024] ZACC 32; 2024 (2) SA 1 (CC).

³¹ As Above.

rights' for women. It drives national legal reforms to ensure that upon separation or divorce, women have: equal rights to marital property and assets; legal recognition of non-monetary contributions (e.g., household labour) in property division and protection of inheritance rights. The Platform's emphasis on legal literacy and reform helps ensure that women can enforce their rights to property, preventing homelessness or extreme poverty after the dissolution of marriage.

The 1995 BPfA served as a major catalyst for strengthening the protection of property rights for surviving spouses in Uganda, particularly for women, by shifting legal, policy, and social frameworks away from discriminatory customary practices. Following the 1995 Beijing Conference, several countries strengthened their constitutional framework to guarantee equality in marriage and inheritance. The BPfA acted as a driver for reforming the Succession Act, which was amended to better protect the property rights of widows, ensuring that surviving spouses are not stripped of their homes and land by relatives. The platform brought international focus to the 'property grabbing' menace, prompting the government to develop strategies to protect widows, particularly in rural areas. This led to increased legal recognition of a widow's right to remain on and manage the deceased spouse's land.

2.3 Regional Legal Framework

The regional legal framework for protecting the property rights of separated spouses during succession is primarily anchored in international human rights instruments ratified by African Union (AU) member states. This framework aims to shift from patriarchal, customary systems that often disinherit separated women to a more equitable, human-rights-based approach.³² The framework emphasizes equitable sharing of property, acknowledging non-monetary contributions to its acquisition. It also stresses the importance of judicial processes for separation to prevent property grabbing and safeguards matrimonial property against unilateral sale. States are also obliged to abolish discriminatory practices that deny separated women access to property. This framework faced several implementation obstacles such as conflicts with customary or religious laws, insufficient domestication of the Maputo Protocol into national law, and slow justice systems that limit access to legal recourse.³³ However, it has been instrumental influencing countries like Uganda have enacted legislation, such as the Succession (Amendment) Act 2022, to align with the

³² JM Mbaku 'The Emerging Jurisprudence of the Africa Human Rights Court and the Protection of Human Rights in Africa.' 2023:56-367. Vand. J. Transnat'l L.

³³ JD Mujuzi 'Distribution of property at the termination of de facto unions (marriages by cohabitation/repute) in some African countries.' 2023. International Journal of Law, Policy and the Family. Jan 1;37(1): ebad015.

regional framework and protect separated spouses' property rights, including the matrimonial home. There are three essential laws governing the regional legal framework in Africa and that is the Maputo Protocol, ACHPR and ACRWC.

2.3.1 African Charter on Human and Peoples' Rights (1981)

This is also known as the Banjul Charter which was adopted in Uganda in 1986. This Charter guarantees the right to property, stating it can only be encroached upon in the interest of public need or the general interest of the community.³⁴ It guarantees enjoyment of rights without distinction based on sex or other status.³⁵ It directs States to ensure the elimination of discrimination against women and children³⁶. In *Community Law Centre and Others (on behalf of the Five Victims) v Federal Republic of Nigeria*,³⁷ the focus was on the violation of women's property rights provided in Article 18 of the ACHPR in the context of inheritance and customary law, demonstrating the ongoing challenges to implementing the African Charter's protection of property.

To enforce ACHPR, General Comment No.6 2020 was introduced to provide comprehensive, legally binding protections for women's property rights during separation and ensures gender equality in marriage, separation, and divorce.³⁸ The Article guarantees women equal rights in separation, including equitable sharing of joint property and judicial resolution.³⁹ This General Comment provides guidance on the interpretation of the rights of women during separation, divorce or annulment of marriage, to ascertain that men and women shall have the right to an equitable sharing of the joint property deriving from the marriage as per Article 7(d) of the Maputo Protocol as well as outlines the overall and specific obligations of States Parties towards promoting the effective domestication and implementation of Article 7(d) of the Maputo Protocol. The African Commission established different Special Mechanisms to advance specific human rights issues. One of such mechanisms is the Special Rapporteur on the Rights of Women in Africa (SRRWA). The SRRWA took leadership in the development of this General Comment pursuant to the adoption of Resolution 262 on Women's Right to Land and Productive Resources in 2013 and Resolution 401 on the development of General Comments on Article 7(d) of the Maputo Protocol.

³⁴ ACHPR 1981, Art.14.

³⁵ As Above, Art.2.

³⁶ As Above, Art.18.

³⁷ [2024] (Communication 564 of 2015) ACHPR 1.

³⁸ Maputo Protocol (n 45 above) Art.7.

³⁹ As above.

2.3.2 The Maputo Protocol (2003)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is the most significant instrument for protecting women's property rights during succession. The Maputo Protocol, adopted in 2003 and entered into force in 2005, complements the African Charter on Human and Peoples' Rights (African Charter) by expanding the substantive protection of women's rights in Africa. It does so by explicitly providing for women's equal rights to land and property, as well as their equal rights in marriage. This protocol guarantees widows an equitable share in the inheritance of their husband's property.⁴⁰ It protects a widow's right to continue living in the matrimonial house, even if she remarries, provided the house is hers or she has inherited it. It assures both women and men the right to inherit, in equitable shares, their parents' properties. It also calls for the prohibition of harmful customary practices, such as widow inheritance, that violate women's rights.⁴¹

It called upon state parties to enact appropriate legislation to ensure that women and men enjoy the same rights in cases of separation, divorce or annulment of marriage. In this regard, they shall ensure that '... in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.'⁴² This article protects a woman's right to acquire, manage, and inherit property independently and maintains her right to the matrimonial home. In this Article, it is implied that women and men have the right to an equitable sharing of the joint property deriving from the marriage; separation, divorce, or annulment must be effected by a judicial order; women and men have the same rights to seek separation, divorce, or annulment; both parties have reciprocal rights and responsibilities towards their children, with the best interests of the children being paramount.

The Protocol also provides that during marriage, a woman has the right to acquire, administer, and manage her own property;⁴³ encourages the joint management of the matrimonial home, rejecting the notion of the man as the sole head of the family⁴⁴ and widows are protected from harmful traditional practices and guaranteed an equitable share of inheritance.⁴⁵ Article 2 of the Maputo Protocol explicitly obliges parties to include the principle of equality in their national constitutions and legislative instruments to combat all forms of discrimination against women. The Article

⁴⁰ Maputo Protocol, Art.21.

⁴¹ As Above, Art.5.

⁴² As Above, Art.7(d).

⁴³ As Above, Art.6.

⁴⁴ As Above, Art.7.

⁴⁵ As Above, Art.21.

obliges members not just to enact but also to effectively implement appropriate legislative and regulatory measures to counter practices that endanger the health and general well-being of women. It mandates that states eliminate all forms of discrimination against women and ensure their rights are protected.⁴⁶ It requires states to promote women's access to land, credit, and financial services.⁴⁷ These provisions ensure that women are not left destitute or without property rights upon the dissolution of a marriage.

The General Comment No.6⁴⁸ provides further guidelines to State Parties on interpreting and implementing these rights to ensure fair property division upon marriage dissolution. This aims to remedy systemic discrimination against women regarding property ownership and division in both statutory and customary law across Africa. It mandates that property distribution must be handled in a manner consistent with 'substantive equality,' focusing on outcomes that ensure women are not left disadvantaged after a marriage ends. A key feature in the Comment is the explicit recognition that 'equitable sharing' must account for indirect or non-monetary contributions. This includes domestic work, childcare, and farm Labor, which are often undervalued or uncompensated, ensuring that housewives or those with lower financial input still have a valid claim to joint property. In this Protocol, joint property refers to assets acquired during the marriage, including the matrimonial home, household goods, and other property acquired jointly.⁴⁹ While emphasizing fairness, the Comment generally pushes for an equitable division that acknowledges the contributions and needs of both parties, rather than assuming a mandatory 50/50 split in all cases, though equitable often implies a high degree of equality. The General Comment applies to both formal and informal unions (such as cohabitation or customary marriages) that are recognized under any system of law, custom, or religion.

The framework extends to property rights upon the death of a spouse, affirming that a widow has the right to an equitable share in her husband's inheritance and the right to continue living in the matrimonial home. It requires member states to enact legislation that ensures equitable sharing; address discriminatory customary practices that prohibit women from owning property and ensure that women can exercise decision-making over the use, disposal, and mortgage of property. In essence, General Comment No. 6 forces a shift away from traditional, patriarchal, or purely

⁴⁶ As Above, Art.2.

⁴⁷ As Above, Art.13.

⁴⁸ As Above, Art.7(d).

⁴⁹ As Above, Art.7.

financial-contribution models of property division toward a fairer, rights-based approach that protects the economic rights of both spouses, particularly women.

Specifically, the Maputo Protocol has played a crucial role in strengthening the property rights of surviving spouses, particularly for widows. It acts as a framework to challenge discriminatory customary and statutory laws that historically left widows vulnerable to property dispossession. The Protocol (Article 21) guarantees a widow the right to an equitable share of her husband's property.⁵⁰ It guarantees a widow's right to continue living in the matrimonial house. In case of remarriage, the Protocol provides that a widow retains the right to the house if she inherited it or it belonged to her. These provisions directly influenced succession laws, which strengthened protections for surviving spouses by ensuring they are primary beneficiaries and protecting the residential home from being shared among other relatives.

The Protocol mandates states to stop the dehumanizing practice of 'widow inheritance' or levirate marriage, where a widow is forced to marry her husband's brother to retain her right to land. It provides legal basis to fight the cultural practice of in-laws evicting widows and taking their property.⁵¹ Courts have utilized the Maputo Protocol to uphold women's rights against customary practices, such as in cases where judges have ruled that widows have the right to inherit property, even when clan customs argue otherwise. The Protocol has enabled the legal protection of the surviving spouse, ensuring that the matrimonial home is not considered part of the general estate for distribution.⁵²

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

This charter ensures children's protection, including inheritance rights, particularly when customary law excludes them. The Charter establishes that in all actions concerning children, their best interests are the primary consideration.⁵³ It obligates states to eliminate cultural practices prejudicial to the health or life of the child.⁵⁴ It further mandates that states ensure equality of rights and responsibilities of spouses during marriage and upon its dissolution. While focusing on the child, it mandates protection of the child's interests regarding property and maintenance and guarantees maintenance rights regardless of parents' marital status.⁵⁵ Furthermore, the charter explicitly requires States Parties to take appropriate steps to ensure that both spouses have equal

⁵⁰ As Above, Art.2.

⁵¹ Maputo Protocol (n 45 above) Art.2.

⁵² As Above, Sec. 22.

⁵³ ACRWC, Art.4.

⁵⁴ As Above, Art.21.

⁵⁵ As Above, Art.18.

rights and responsibilities towards their children during the marriage and in the event of its dissolution.⁵⁶ This implies that sharing property is unfairly handled can affect equality after the separation of spouses. This is further cement while stipulating that in the event of the dissolution of marriage; legal provisions must be made for the necessary protection of the child.⁵⁷ Similarly, it also states that no child shall be deprived of maintenance (including, by implication, access to family property/resources for care) based on the parents' marital status.⁵⁸ This is evident in the case of *Association for Human Rights in Ethiopia (AHRE) v. Malr*⁵⁹ which highlighted that maintaining discriminatory Family Codes which disadvantage women in property ownership upon divorce violates international standards and the rights of the child.

Article 18 also recognizes the family as the natural unit and basis of society, deserving state protection and support.⁶⁰ While the Charter does not explicitly detail the specific division of joint property between spouses, the requirement for equality in rights and responsibilities upon dissolution, (Article 18(2) implies a fair distribution of assets to ensure the welfare of the child and equitable treatment of both parents. Courts have established principles recognizing that women are entitled to an equitable share of joint property upon separation, acknowledging both direct and indirect (non-monetary) contributions to the acquisition of that property.

2.4 Sub-Regional Legal Framework

This is essentially built on two major frameworks including Treaty for the Establishment of the East African Community (Treaty) and the East African Community Gender Equality and Development Act (2016)

2.4.1 The East African Community (Treaty)

The East African Community (EAC) legal framework on upholding gender equality is anchored in the Treaty for the Establishment of the East African Community and supported by specific policies, bills, and regional initiatives designed to mainstream gender into all aspects of regional integration. The Treaty for the Establishment of the East African Community (EAC) provides a foundational, legally binding framework that promotes gender equality and the protection of property rights, particularly for women, by anchoring these rights in fundamental principles and committing Partner States to non-discrimination. This framework emphasizes non-discrimination

⁵⁶ As Above, Art.18(2).

⁵⁷ As above.

⁵⁸ As Above, Art.18(3).

⁵⁹ [2018] African Court of Human and People's Rights.

⁶⁰ ACRWC (n 65 above) Art.18(1).

and the economic empowerment of women. It constitutes the foundation of the framework, requiring Partner States to adhere to principles of democracy, rule of law, social justice, and gender equality⁶¹. This implies that no partner states must undertake to abstain from any discrimination on grounds of sex or gender. In similar Article, it implies that the Treaty mandates the recognition, promotion, and protection of human rights in accordance with the African Charter on Human and Peoples' Rights, which includes the right to own property.

It further explicitly recognizes the significant contribution of women towards socio-economic transformation and sustainable growth, emphasizing the need for full participation of women and men in economic and social development.⁶² Article 121 recognizes the significant contribution of women to socio-economic transformation and sustainable growth. It mandates that Partner States promote the full participation of women in economic development, which implies the right to own and control the assets (property) they contribute to. Article 5 explicitly directs the Community to ensure the mainstreaming of gender in all its endeavors. This article emphasizes the enhancement of the role of women in cultural, social, political, and economic development⁶³.

It provides EAC Policy which guides the institutionalization of gender strategies into the EAC integration agenda. It focuses on achieving gender equality, women's empowerment, and the elimination of GBV. It spearheads the establishment of the East Africa Court of Justice (EACJ) which is responsible for interpreting and ensuring compliance with the EAC Treaty, providing a mechanism for accountability regarding women's rights. In the case of *Ngaruko v. Burundi*,⁶⁴ the EACJ heard matters regarding land disputes and property rights violations, specifically enforcing Article 6(d) and 7(2) of the EAC Treaty, which command Partner States to adhere to the principles of human rights, gender equality, and the rule of law. The Applicant, a resident of Bujumbura, alleged that the Burundi National Commission of Land and Other Property (CNTB) unlawfully declared his privately owned land, inherited and acquired over 50 years, as state property. The Court granted *ex parte* interim orders to restrain the Burundi government from disposing of or interfering with the land, noting that the applicant faced irreparable injury, including loss of livelihood and eviction from his home of 50 years. In regard to time-Barred Cases, *Cholang v South Sudan*,⁶⁵ it was resolved by EACJ that many cases against states regarding rights violations are

⁶¹ EAC Treaty, Art.6(d).

⁶² As Above, Art.121&122.

⁶³ As Above, Art.5(3)(e).

⁶⁴ [2019] EACJ Reference No. 09.

⁶⁵ [2024] Application No. 20 of 2022 (arising from Reference No. 28 of 2022).

dismissed if not filed within the strict two-month limit under Article 30(2) of the EAC Treaty, emphasizing the need for prompt legal action after a violation.

2.4.2 The East African Community Gender Equality and Development Act (2016)

This Act was passed to harmonize gender equality commitments across the region. While it provides a broad framework for gender equality, its specific provisions on property rights for separated spouses emphasize equal protection and the removal of discriminatory practices.⁶⁶ The Act seeks to ensure that property acquired during a relationship is managed and distributed fairly upon separation, divorce, or death. The law guarantees that widows and widowers have automatic custodianship of children and guaranteed ownership of the matrimonial home.⁶⁷ It provides for the equitable sharing of joint property derived from the marriage upon separation or divorce. The legal framework acknowledges the spousal contribution toward the improvement and acquisition of matrimonial property, ensuring women are entitled to a fair share even if they were not the primary financial earner.⁶⁸ This law prohibits the restriction of a woman's capacity to own property or enter contracts based on her marital status. The Act mandates that upon the dissolution of marriage (including by death), property distribution decisions must be the same for men and women.⁶⁹

The Act serves as a regional tool to consolidate international and continental commitments (like CEDAW and the Maputo Protocol) into a unified EAC legal framework. It reinforces Article 6(d) of the EAC Treaty, which prohibits discrimination based on sex or gender as a cornerstone of good governance. A primary goal is to harmonize national laws across EAC Partner States so that rights are uniformly promoted and protected throughout the region. The Act recognizes that investing in women's economic participation is fundamental to breaking cycles of poverty, calling for equal access to economic opportunities and resources. It specifically identifies and protects the rights of widows, elderly women, and women with disabilities, ensuring they are not marginalized in property or inheritance matters.⁷⁰

2.5 National legal Framework

The national legal framework in Uganda protecting the property rights of separated spouses during succession underwent major revisions with the Succession (Amendment) Act, 2022,

⁶⁶ EAGEDA, Art.4.

⁶⁷ As Above, Art.6.

⁶⁸ As Above, Art.6(7).

⁶⁹ As Above, Art.3(3).

⁷⁰ As Above, Art.6.

which aimed to align the law with the 1995 Constitution (Articles 21, 31, and 33). While the 2022 Act generally strengthens the rights of surviving spouses—including those separated—it introduces specific, stricter conditions regarding, particularly in cases of intestacy (death without a will). The adequacy of the framework, however, remains in question. Specifically, in Uganda, the framework is built around seven laws and that is the Constitution of Uganda, Succession Act, Land Act Cap 236, The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263, the Administrator General Act Cap 264, The Estate of Missing Persons (Management) Act Cap 265, Probates (Resealing) Act Cap 266, Public Trustee Act Cap 267, and Trustees Act Cap 270.

2.5.1 Constitution of the Republic of Uganda, 1995

The 1995 Constitution of Uganda guarantees gender equality and protects property rights for spouses during and upon dissolution of marriage (separation/divorce). The Constitution guarantees the right of every person, including women, to own property either individually or in association with others.⁷¹ This is interpreted in conjunction with Articles 21 (equality), 31 (rights in marriage), and 33 (rights of women) to invalidate discriminatory succession practices and protect women's property rights. This is the primary authority for fair division of property upon separation⁷². It prohibits discrimination based on sex and guarantees equality before the law.⁷³ The Constitution guarantees the right of every person, including women, to own property either individually or in association with others.⁷⁴ Article 26 also empowers the state to take affirmative action to redress historical imbalances against women.⁷⁵ In *Mayambala v. Mayambala*⁷⁶ where the court established that a wife's non-monetary contribution (homemaking, childcare) entitles her to a share of the matrimonial property, recognizing her right to property even if she did not directly pay for it. The constitution provides for co-ownership whereby a wife's contribution to matrimonial property, even if not monetary, is recognized, and she cannot be deprived of it upon succession; emphasizes equality where customary laws that prefer male heirs over female spouses or children are invalid. It also provides for residential protection where the principal residence (residential holding) of the deceased is held in trust for the spouse and children, prohibiting eviction.

⁷¹Constitution of the Republic of Uganda (n 13 above) Art 26(1).

⁷² As Above, Art 31(1).

⁷³ As Above, Art 21.

⁷⁴As Above, Art 26(1).

⁷⁵ As Above, Art 32.

⁷⁶ [1998] (High Court Divorce Cause No. 3).

2.5.2 Succession Act Cap 268

This Act strengthens property rights for surviving spouses and promotes gender equality by ensuring equal rights for men and women, protecting residential property, and revising intestacy rules to benefit spouses and children. Key changes protect women from eviction, define separated spouse rights, and criminalize intermeddling. The principal residential property of the deceased is now held in trust for the surviving spouse and lineal descendants. Any person who evicts them from this property commits an offense, punishable by up to seven years in prison or a fine.⁷⁷ The Act introduced new percentages: 20% for the spouse, 75% for lineal descendants, and 4% for dependent relatives, ensuring a more equitable distribution.⁷⁸ The Act removes discriminatory terms and language, aligning with the Constitution to protect women and marginalized groups where it defines a spouse to mean ‘husband or wife married in accordance with the laws of Uganda or in accordance with the laws of another country and recognized in Uganda as a valid marriage’.⁷⁹ Administrators must obtain written consent from the spouse and lineal descendants before selling or disposing of the estate's residential property.⁸⁰

The law provides that a surviving spouse who was separated from the deceased at the time of death is generally not entitled to inherit from the intestate estate.⁸¹ A separated spouse may still inherit if: the separation was due to being on an approved course of study; the deceased was the one who abandoned the household and the deceased caused the separation. The court retains the power to determine, on a case-by-case basis, whether a separated spouse should still benefit, particularly if they were not at fault for the separation. In the case such as *Ambayo Joseph Waigo v Aserua Jackline*⁸² confirms that spouses, including those in separation, are entitled to a significant share of matrimonial property, emphasizing joint contribution.

2.5.3 Land Act Cap 236

This Act provides significant protections for spousal property rights and promotes gender equality in land management in Uganda. The law provides for security of occupancy on family land.⁸³ It provides that family land includes land on which the ordinary residence of a family is situated, land from which the family derives sustenance, or land recognized by custom as family land. Every

⁷⁷ Succession Act (n 2 Above), Sec 22.

⁷⁸ As Above, Sec 23.

⁷⁹ As Above, Sec 2.

⁸⁰ As Above, Sec 199.

⁸¹ As Above.

⁸² [2022] Civil Appeal No.0100 of 2015.

⁸³ Land Act (n 1 Above), Sec. 39.

spouse has a right to access and live on family land, regardless of whether they have a proprietary interest in the land. A spouse also has the right to give or withhold consent to any transaction (sale, mortgage, transfer, lease) involving the family land⁸⁴. In *Bonney M. Katatumba v. Shumuk*,⁸⁵ the court held that the sale of a family home without the spouse's consent is null and void. While security of occupancy is strong, it is generally tied to legal marriage. In *Hajji Musa Kigongo v. Olive Kigongo*,⁸⁶ it was held that long-term cohabitation (26 years) did not automatically confer spousal rights equivalent to legal marriage, although promissory estoppel might apply.

The Land Act also provides restrictions on transfer of family land.⁸⁷ It explains that no person can sell, exchange, pledge, mortgage, or make a gift of family land, or enter into a contract to do any of these things, without the prior written consent of the spouse. In Mortgage Act⁸⁸ reinforces that in cases of customary land owned by a family, the land may only be mortgaged with the consent of the spouse(s) and children. In the case of *Namatoru v Bukenya*⁸⁹ it was reinforced that transactions lacking the mandatory spousal consent are invalid, particularly concerning the matrimonial home. These restrictions also apply to land on which children reside. Any transaction conducted without the necessary spousal consent is invalid. Transfers without this consent are void, even if the purchaser is in good faith.⁹⁰ Case law emphasizes rigorous due diligence, holding that transactions lacking spousal consent are invalid, with courts often favouring the security of family occupancy. In *Sir John Bageire v Ausi Matovu*,⁹¹ the court emphasized that buyers must conduct thorough investigations, not just of the land title, but of the sellers and their family status to ensure no third-party interests exist.

This law also provides for gender equality in land management to ease the process of separation between spouses.⁹² The Land Act requires that women be represented on land management bodies like land commission,⁹³ district land boards⁹⁴ and area land committees⁹⁵ to ensure their interests are considered.⁹⁶ The law also provides for customary land protection.⁹⁷ Decisions regarding

⁸⁴ As Above, Sec. 39.

⁸⁵ [2014] UGHCEBD 5.

⁸⁶ [2015] HCCS No. 295 (Land Division).

⁸⁷ Land Act (n 1 Above), Sec. 40.

⁸⁸ Mortgage Act Cap 239, Sec.7(6).

⁸⁹ [2024] Miscellaneous Application 2870.

⁹⁰ Land Act (n 1 Above), Sec. 40 (4).

⁹¹ [1996] Civil Appeal No. 07.

⁹² Land Act (n 1 Above), Sec. 47(4).

⁹³ As Above, Sec. 47(4).

⁹⁴ As Above, Sec. 58(4).

⁹⁵ As Above, Sec. 66(2).

⁹⁶ As Above, Sec. 47(4).

⁹⁷ As Above, Sec. 27.

customary land must not deny women, children, or persons with disabilities access to, ownership, or use of any land, and any such decision is invalid if it violates these rights. While the Land Act provides strong ‘security of occupancy’ (right to stay), it is often criticized for lacking a mandatory ‘co-ownership’ clause that would provide automatic shared legal title for spouses.

2.5.4 The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263

This law functions as a procedural bridge for small estates, but it relies on the Succession Act for substantive property rights while governing the distribution rules for small estates. For instance, a surviving spouse who was separated from the deceased at the time of death is no longer automatically barred from inheriting.⁹⁸ However, separation does not disqualify a spouse if: the surviving spouse was away for an approved course of study and the deceased person was the one who caused the separation or left the household.⁹⁹ In the case of *Nalumansi vs. Jolly Kasande*,¹⁰⁰ it recognizes that a separated spouse has an interest in the estate if they contributed (financially or otherwise) to the acquisition of the property. The Act aligns with constitutional mandates for equality (Articles 31, 32, and 33) of the Constitution of Uganda. The law further provides both men and women have equal rights to apply for the letter of administration of a small estate.¹⁰¹ It is a criminal offense to evict a surviving spouse or child from the residential holding, punishable by a fine or imprisonment.¹⁰² To support marginalized groups (often women in small estate contexts), the Act simplifies the legal process: decentralized jurisdiction, Magistrate Courts handle these cases, making justice more accessible and affordable. Standardized forms reduce the need for expensive legal representation.¹⁰³

2.5.5 The Administrator General Act Cap 264

This Act includes provisions that protect property rights and promote gender equality in the administration of deceased estates. The law has shifted from automatically disqualifying separated spouses to a more nuanced approach. Under Section 26 of the Succession Act, a separated spouse is generally disqualified from inheriting unless the deceased was the one who caused the separation or if the spouse was away for approved studies. A court may declare that a separated spouse is entitled to a proportion of property that was jointly acquired before the separation occurred. The separation of parents does not affect the rights of children to benefit from the estate of the

⁹⁸ The Administration of Estate (Small Estates) (Special Provisions) Act Cap 263, Sec.2.

⁹⁹ Succession Amendment Act (n 2 Above), Sec.26.

¹⁰⁰ [2019] (*Civil Application 29*) 2019 UGSC 2.

¹⁰¹ The Administration of Estate (Small Estates) (Special Provisions) (n 110 above), Sec.10.

¹⁰² As Above, Sec.9.

¹⁰³ As Above, Sec.2.

deceased parent.¹⁰⁴ The Administrator General cannot dispose of (sell) estate property without the written consent of the surviving spouse and lineal descendants.¹⁰⁵ The principal residential home (matrimonial home) is protected and does not form part of the estate for general distribution. It is held in trust for the surviving spouse and children.¹⁰⁶ It is a criminal offense to evict or attempt to evict a surviving spouse or child from their residential holding, punishable by up to seven years in prison or a heavy fine.¹⁰⁷

When disposing of property to settle debts, the Administrator General must give the first option to purchase to the beneficiaries (often the widow or children).¹⁰⁸ Agents of the Administrator General can take possession of property immediately to prevent it from being ‘grabbed’ or intermeddled with by relatives before formal administration begins¹⁰⁹

The Administrator General (AG) holds a duty to secure, manage, and distribute estates.¹¹⁰ The AG is empowered to take possession of property to protect it. The 2021 Amendment Act stipulates that the AG shall only dispose of estate property if it is beneficial to the estate, necessary to cater for the basic needs of the surviving spouse and children, or to settle debts. The Act mandates that the AG must give the first option to purchase the estate property to a beneficiary. Any disposal of property in contravention of these protections (e.g., selling without consulting the spouse) is void. The AG or their agent is not personally liable for actions taken *bona fide* in the performance of their duties. However, if they sell goods belonging to a third party (e.g., a separated spouse who truly owns the property) while aware of that ownership, they must pay the proceeds to the actual owner.

The Constitution of Uganda (Article 31) and the Law of Succession require equal rights for men and women in marriage and upon its dissolution. The AG's Act aligns with these principles: generally, shift away from patriarchal preferences, ensuring that the surviving spouse (regardless of gender) is recognized as a key beneficiary and stakeholder. Although the search results did not provide a specific case name, the principles in *FEO v ACO*¹¹¹ suggest that the courts protect the rights of widows against intermeddling. The AG is bound to protect the matrimonial

¹⁰⁴ The Administrator General Act Cap 264, Sec.4.

¹⁰⁵ As Above, Sec.5.

¹⁰⁶ As Above, Sec.12.

¹⁰⁷ As Above, Sec.11.

¹⁰⁸ As Above, Sec.16.

¹⁰⁹ As Above, Sec.8.

¹¹⁰ As Above, Sec.6.

¹¹¹ [2024] Matrimonial Cause E006 of 2023) [2024] KEHC 14889 (KLR).

home. The AG's duties are interpreted as gender-neutral, focusing on the 'surviving spouse' rather than just a widow or widower.

In cases of separation, for a spouse to claim property held by the AG, they must prove their contribution (monetary or non-monetary) to the acquisition of that property, consistent with principles in *Ambayo v. Aserua*.¹¹² A 'former spouse' (divorced) is generally not entitled to the same rights in intestacy as a 'surviving spouse' (married at the time of death). A court may revoke a grant made to the Administrator General if they fail to perform their duty, such as failing to file an inventory or neglecting the rights of beneficiaries.

2.5.6 The Estate of Missing Persons (Management) Act Cap 265

The law provides a legal framework for the management of the property of individuals who have disappeared and for the maintenance of their dependents. The Act focuses on preserving the estate for the benefit of the family and eventual return of the missing person. A spouse (defined as a wife or husband) is considered a 'dependent relative' if they were wholly or substantially dependent on the missing person. The court may appoint a manager specifically to ensure the maintenance of dependent relatives from the estate. Any relative, including a spouse, may apply for a court order to manage the estate if the person has been missing for at least six months.¹¹³ This law explicitly exempts a spouse or lineal descendant from the offense of 'intermeddling' if their actions were for the purpose of preserving the estate before a formal manager is appointed. If the missing person reappears, the court makes an order revesting the property back to them.

The Act does not explicitly detail different property rights for 'separated' spouses versus those currently living together. Instead, it relies on the definition of a 'dependent relative'—if a separated spouse was still wholly or substantially dependent on the missing person at the time of disappearance, they may still qualify for maintenance from the estate.¹¹⁴ The law also helps in protecting matrimonial property as was utilized in the case of *Julius Rwabinumi v Hope Bahimbisomwe*¹¹⁵. Although not directly under the Missing Persons Act, this Supreme Court of Uganda decision established a crucial precedent for spouses. The court ruled that upon divorce (or by extension, separation), a spouse is entitled to share in property acquired during the marriage, even if they did not make a direct financial contribution to its acquisition. This reinforces the

¹¹² [2022] Civil Appeal No. 0100 of 2015.

¹¹³ The Estate of Missing Persons (Management) Act Cap 265, Sec. 8.

¹¹⁴ As Above, Sec. 19.

¹¹⁵ [2009] SCCA No.1.

protection of the property rights of women (separated spouses) whose spouses might have gone missing.

Section 9 of the Act, criminalizes the act of taking possession or interfering with the property of a missing person without the manager's permission. This protects the spouse and children from unlawful eviction or seizure of property by in-laws.¹¹⁶ In *Medadi Fredrick Ongwen v. Estate of the Late Cissy Bazanya*,¹¹⁷ a businessman, Medadi Fredrick Ongwen, was remanded to Kirinya Prison in Jinja over allegations of intermeddling with the estate of his deceased wife, Cissy Bazanya. Ongwen was charged with managing the deceased's properties and forging documents following a legal dispute over the estate over a missing owner. This case underscores the strict enforcement of the act, which makes it a criminal offense for anyone, including a spouse, to manage an estate without authorization. In the case of *Katende & Others v. Katende*.¹¹⁸ Although often cited in succession, this High Court case reinforces that unauthorized dealings with estate property (where formal grants are missing) constitute intermeddling.

2.5.7 Probates (Resealing) Act Cap 266.

This primarily facilitates the recognition and resealing of foreign grants of probate or letters of administration in Uganda. While it does not specifically outline detailed provisions for separated spouses, it incorporates protections through its intersection with the Succession Act and constitutional requirements for gender equality. The 2021 Amendment to the Probates (Resealing) Act aimed to align the Act with the Constitution of Uganda and the Succession Act, ensuring that administration of estates is non-discriminatory on the basis of sex. The Act, as amended, ensures that the law applies equally to men and women.¹¹⁹ Furthermore, Section 3 of the Act provides that a foreign grant can only be resealed if the law under which it was granted is not contrary to Ugandan laws, including those relating to the protection of spouses. This connects to the Matrimonial Property Act (Kenya, cited in the context of East African, but relevant to the legal principles in the region), which protects the interest of a spouse (including in a polygamous marriage) in a matrimonial home, preventing its alienation without consent. Without this, foreign grants are not automatically enforceable, as highlighted in *Shanti Devi Manek v. Hasmukhbhai Jasani*

¹¹⁶ The Estate of Missing Persons (Management) Act (n 164 above), Sec. 9.

¹¹⁷ Civil Appeal No. 1582 of 2023.

¹¹⁸ HCCS 160/2021.

¹¹⁹ The Probates (Resealing) Act Cap 266, Sec. 3.

and Others,¹²⁰ where the court noted a foreign grant only acts as evidence of appointment, not conclusive authority

The law indicates that the High Court must be satisfied that proper procedures are followed before resealing. The 2021 amendment ensures that ‘probate’ or ‘letters of administration’ include instruments from other countries that align with Ugandan law, ensuring that the rights of survivors (widows/widowers) are not bypassed. Under the broader, amended Successions laws (which the Act must conform to), any person who attempts to evict a spouse (or separated spouse in some contexts) or dependents from the residential holding commits an offense. The Court may require that adequate security be given for the payment of debts due from the estate, which can be utilized to protect the interests of a separated spouse who is a creditor of the estate. In essence, the Probates (Resealing) Act (Cap 266) works with local legislation to ensure that foreign-granted, gender-biased, or discriminatory property allocations are not blindly enforced in Uganda if they violate the rights of surviving spouses (separated or otherwise) to their matrimonial property

Although not directly a ‘resealing’ case, *Shanti Devi Manek v. Hasmukhbhai Jasani and Others*¹²¹ illustrated that foreign grants are not automatically conclusive without proper verification, opening the door for local courts to ensure fairness. Furthermore, broader succession case law has declared customary practices that disinherit women (primogeniture) as unconstitutional, aligning with the spirit of modern probate laws.

2.5.8 Public Trustee Act Cap 267

This primarily governs the administration of estates and trusts where no other person is willing or able to act as a trustee. While the Act itself is a procedural law rather than a primary family law statute, its provisions intersect with the rights of separated spouses and gender equality. In jurisdictions like Kenya, the Public Trustee has the power to pay money out of the capital or income of a ‘missing person’s’ property for the benefit of a spouse or dependant. This provides a safety net for spouses who might otherwise lose access to family resources during a separation caused by disappearance. The Act allows the Public Trustee to transfer property from small estates (e.g., those valued less than 2,000 shillings in Uganda) directly to a mother or father for the maintenance and education of a minor beneficiary¹²². Modern revisions of the Act typically use gender-neutral language (e.g., ‘him or her’) regarding the Public Trustee’s powers and the

¹²⁰ [2020] HCCS 160/2021.

¹²¹ As above.

¹²² Public Trustee Act Cap 267, Sec.3

beneficiaries they serve, reflecting a shift toward gender equality. Any ‘interested party’ can apply to the court for the appointment of the Public Trustee, ensuring that both men and women have equal legal standing to seek professional management of trust property.¹²³ In the case of *Kasozzi v. Mulindwa*,¹²⁴ it was emphasized the fiduciary duty of trustees (similar to the Public Trustee's role) to act in good faith and with accountability, which protects beneficiaries, including spouses, from mismanagement of shared property.

2.5.9 Trustees Act Cap 270

This act provides a framework for managing property, including trusts that can protect the interests of spouses and children. While not specifically addressing matrimonial separation, it allows trustees to use income from trust property for the maintenance, education, or benefit of beneficiaries, including during a beneficiary's infancy or for maintenance. The Act provides that the trustees may apply income from trust property for the maintenance or benefit of beneficiaries. Trustees can hold property for children (infants), with the authority to manage assets for their benefit, ensuring, for example, that funds are available for their education or maintenance. The act also provides mechanisms for separating property ownership from its beneficial use, which can be utilized to shield assets from creditors or in estate planning, though it is not a direct substitute for matrimonial property division. While the Trustees Act facilitates trust management, broader Ugandan law (Constitutional Articles 21, 31, 33) guarantees equality between men and women in property ownership and during/after marriage, with courts increasingly recognizing direct and indirect contributions to property. In reference to the case of *Mayambala v Mayambala*:¹²⁵ This case showed that a spouse can establish an ownership share in the matrimonial home based on their contributions, even if they aren't the legal title holder or a trustee.

2.6 Conclusion

Although Uganda has adopted the above international and national framework, the protection of property rights of separated spouses during success remain hanging. This is associated with the fact that several implications in Succession Act in Section 26 appear to disqualify separated spouses from taking any interest in the estate if they were separated from the deceased ‘as a member of the same household’ at the time of death. Secondly, the existing principal law focuses on the physical, functional separation of households rather than just legal divorce. A spouse who left the

¹²³ As Above), Sec.4.

¹²⁴ [1975] HCB 103.

¹²⁵ [1998] Divorce Cause No. 3) [1998] UGHC 16.

matrimonial home, or is living apart for a significant period, may lose their rights, even if the marriage was never formally dissolved.

Thirdly, if a spouse is separated, they must prove that they were not responsible for the separation, or that the separation was due to the deceased's actions, to inherit. If the survivor left willingly, they may be excluded. Fourthly, separated spouses seeking to claim interest in an intestate's estate must apply to court for a declaration allowing them to inherit within six months of the death of the intestate. Fifth, even if a court allows a separated spouse to inherit, they may only be entitled to a portion of the property acquired *before* the separation, not the entire estate. Sixth, the protection is not automatic since the court has the discretion to determine what constitutes 'good cause' for a separated spouse to inherit, creating uncertainty.

Lastly, if a deceased spouse left a valid will, they have broad discretion over their property. However, the new law requires a testator to provide for a spouse, but this is less stringent than the protections for spouses living together. These and others form the basis of the next chapter.

CHAPTER THREE

THE CONSTITUTIONALITY OF THE SUCCESSION ACT IN PROTECTION OF PROPERTY RIGHTS OF SEPARATED SPOUSES

3.1 Introduction

3.2 The Succession Act and protection of property rights of separated spouses in Uganda

3.3 The Constitutional Provisions on protection of property rights of separated spouses in Uganda

3.4 The inconsistencies of succession act on protection of property rights of separated spouses in Uganda

3.5 Conclusion

3.0 Introduction

The management of estates, especially after death, is essential in ensuring the orderly transfer of property and assets. In Uganda, the legal framework governing estate and succession management is contained primarily in the Succession Act, Cap. 268 which has undergone significant developments in recent years. It is worthwhile to note that the Succession Act Cap 268 emerged to fill the gaps which were envisaged in Succession Act Cap 162, so as it can align with the aspirations of the people, the Act still had similarities to the previous Succession Act, which had its gaps and anomalies.

However, despite the reviews and subsequent amendment of the Succession Act, the extent to which this act addresses the protection of property rights of separated spouses remains in question. This is because the restriction in Section 26 of the Succession Act, which automatically deprives a separated spouse of inheritance rights,¹ operates in tension with the broader constitutional mandate in Article 26 that protects individual property rights and the right to equitable sharing of matrimonial property upon the dissolution of marriage.² This chapter dwells on understanding the prevailing provisions in Succession Act and the Constitution of Uganda geared towards safeguarding the property rights of separated spouses, as well as, observable inconsistencies.

¹ Succession Act Cap 268, Sec. 26(1).

² Constitution of the Republic of Uganda 1995, Art 26(1).

3.1 The Constitutional Provisions on Protection of Property Rights of Separated Spouses in Uganda

The 1995 Constitution of Uganda guarantees gender equality and protects property rights for spouses during and upon dissolution of marriage (separation/divorce). The Constitution guarantees the right of every person, including women, to own property either individually or in association with others.³ This is interpreted in conjunction with Articles 21 (equality), 31 (rights in marriage), and 33 (rights of women) to invalidate discriminatory succession practices and protect women's property rights. This is the primary authority for fair division of property upon separation.⁴ It prohibits discrimination based on sex and guarantees equality before the law.⁵ The Constitution guarantees the right of every person, including women, to own property either individually or in association with others.⁶ Article 26 also empowers the state to take affirmative action to redress historical imbalances against women.⁷ In *Mayambala v. Mayambala*⁸ where the court established that a wife's non-monetary contribution (homemaking, childcare) entitles her to a share of the matrimonial property, recognizing her right to property even if she did not directly pay for it.

The courts have increasingly used the above provisions to strike down customary and statutory laws that deny women access to, or ownership of, family property upon the death of a spouse. For instance, in *Julius Rwabinumi v. Hope Bahimbisomwe*.⁹ The Supreme Court of Uganda, interpreting constitutional provisions echoing ICCPR standards, reversed lower court rulings to establish that matrimonial property should be divided fairly, taking into account both monetary and non-monetary contributions (such as homemaking). The court emphasized that marriage does not automatically entitle a spouse to 50% of all property, but rather an equitable share based on contributions. In *Kintu v Kintu*,¹⁰ the court recognized that contributions to matrimonial property include domestic work and homemaking, which must be considered in property distribution during separation and succession. Furthermore, in *Law Advocacy for Women in Uganda v. Attorney General*¹¹ where Constitutional Court ruling declared several sections of the Succession Act

³As Above.

⁴ As Above, Art 31(1).

⁵ As Above, Art 21.

⁶ As Above, Art 26(1).

⁷ As Above, Art 32.

⁸ 1998 HC Divorce Cause No. 3.

⁹ [2009] SCCA No.1.

¹⁰ [2001] UGHC 46. Divorce Appeal No. 135 of 1997.

¹¹ [2005] Constitutional Petition Nos. 13/2005 & 05/2006).

unconstitutional because they discriminated against women regarding inheritance. The court ruled that provisions denying widows and female children equal inheritance rights violated Articles 21(1), (2), (3), 31, and 33(6) of the Constitution. This decision directly led to the passing of the Succession (Amendment) Act, 2022. This case challenged various laws, including the Succession Act, which was discriminatory against women in inheritance. The court found that customary practices excluding women from inheriting family land are contrary to the constitution. In *Edith Nakiyingi v Melekizedeke*,¹² it was highlighted that if a spouse has contributed to the maintenance or improvement of the home, they have a beneficial interest in the property upon separation.

Relying on Constitution of Uganda, Courts have invoked Article 26 to invalidate customary practices that allow clans to take over a deceased husband's property, leaving the widow and children destitute. In *Mifumi (U) Limited and Others v AG*¹³ the Supreme Court ruled that the refund of bride price (lobola) upon dissolution of a customary marriage is unconstitutional. While the payment itself was not banned, the court found that making its refund a condition for divorce violates women's rights, treats them as chattels, and prevents them from leaving abusive marriages. In *Dima Dominic Poro v. Inyani*,¹⁴ the court ruled that although customary law is recognized, it must not violate the constitutional rights to equality (Article 21) and non-discrimination. However, in *Case v. Ruguru*¹⁵, the court held that if a couple is not legally married, a partner cannot base a claim of occupancy on the grounds of being a 'wife,' underscoring the need for either registered customary marriage or statutory marriage to activate statutory protection.

The constitution provides for co-ownership whereby a wife's contribution to matrimonial property, even if not monetary, is recognized, and she cannot be deprived of it upon succession; emphasizes equality where customary laws that prefer male heirs over female spouses or children are invalid. It also provides for residential protection where the principal residence (residential holding) of the deceased is held in trust for the spouse and children, prohibiting eviction.

3.2 The Succession Act and Protection of Property Rights of Separated Spouses in Uganda

The Succession Act Cap 268 in Uganda significantly strengthened the property rights of separated spouses by addressing historical inequalities and aligning the law with the 1995 Constitution. While

¹² [1978] HCB107.

¹³ [2014] Constitutional Appeal No. 02 (Supreme Court of Uganda).

¹⁴ [2017] UGHCCD 154.

¹⁵ [1970] 1 EA 55.

the previous law often left separated spouses, particularly women, destitute, the amended Act introduces, among other things, a, 'fault-based' approach to separation and increased protections for the matrimonial home¹⁶. In the first place, The Act significantly boosts security of tenure for spouses regarding the family home. The principal residential holding (where the couple lived) is no longer automatically part of the estate to be distributed among heirs.¹⁷ It is held in trust for the surviving spouse and children. It is now a criminal offence for any person to evict a surviving spouse (or children) from the principal residential holding, punishable by up to seven years in prison or a substantial fine.¹⁸ A testator cannot dispose of the principal residential holding in a will without making alternative reasonable accommodation for the spouse.¹⁹ The principal residential property of the deceased is now held in trust for the surviving spouse and lineal descendants. Any person who evicts them from this property commits an offense, punishable by up to seven years in prison or a fine.²⁰ The Act introduced new percentages: 20% for the spouse, 75% for lineal descendants, and 4% for dependent relatives, ensuring a more equitable distribution.²¹

The Act removes discriminatory terms and language, aligning with the Constitution to protect women and marginalized groups where it defines a spouse to mean 'husband or wife married in accordance with the laws of Uganda or in accordance with the laws of another country and recognized in Uganda as a valid marriage'.²² Administrators must obtain written consent from the spouse and lineal descendants before selling or disposing of the estate's residential property.²³ Furthermore, the definition of 'child' is broadened, allowing children of a man to inherit regardless of whether they were born within a formal marriage, providing protection for women in such relationships.²⁴

The Act provides for gift inter vivos²⁵ which can allow a spouse to gift another person or fellow spouse any given property before his or her death. This avenue is important in dealing with abuse of property rights of spouses. However, the law specifies that the donor must intend to make an immediate and irrevocable transfer of ownership to the donee. The donor must transfer possession or control of the property to the donee, which can be actual (physical handover), constructive (e.g.,

¹⁶ Succession Amendment Act (n 1 Above).

¹⁷ As Above, Sec 22.

¹⁸ As Above, Sec 265.

¹⁹ As Above, Schedule, Art. 3(1).

²⁰ As Above, Sec 22.

²¹ As Above, Sec 23.

²² As Above, Sec 2.

²³ As Above, Sec 199.

²⁴ As Above, Sec 231.

²⁵ As Above, Sec. 175.

handing over keys or a deed), or symbolic (e.g., a written instrument). The donee must accept the gift, though acceptance is typically presumed if the gift is of value unless explicitly rejected.

Once properly executed, an inter vivos gift cannot be revoked by the donor unless specific circumstances, such as fraud or lack of capacity, are proven. The donor must be at least 18 and possess testamentary capacity, meaning they understand the nature and consequences of the gift. Unlike a contract, an inter vivos gift requires no exchange of value. A transfer with payment or expectation of return is not a gift.²⁶ A case in point is the case of *Musoke v Kakooza*²⁷ where the plaintiff sued the defendant over the ownership of a motor vehicle. A dispute which arose after Kakooza took possession of a vehicle that Musoke claimed was gifted to him by his father. The vehicle had been registered in the names of Musoke's father and he alleged that his father had made a gift inter vivos of the car to him before his death. He also claimed that the father handed over both physical possession and ownership documents and that he had used the car freely thereafter, Kakooza however argued that the vehicle in question was still property of the deceased and was not validly gifted. The court held that there was no valid gift-intervivos because the essential requirements were not satisfied and laid them down as follows; intention to make a gift, delivery of the gift and acceptance by the donee. Court found that ownership of the vehicle had not been effectively transferred as there was no sufficient evidence of the father's clear intent to give him ownership and transfer title since the registration of the car remained in the father's name until his death hence no completed transfer.

Specifically, Section 26 provides that a surviving spouse who was separated from the deceased at the time of death is generally not entitled to inherit from the intestate estate.²⁸ A separated spouse may still inherit if: the separation was due to being on an approved course of study; the deceased was the one who abandoned the household and the deceased caused the separation. The court retains the power to determine, on a case-by-case basis, whether a separated spouse should still benefit, particularly if they were not at fault for the separation. In the case such as *Ambayo Joseph Waigo v Aserua Jackline*²⁹ confirms that spouses, including those in separation, are entitled to a significant share of matrimonial property, emphasizing joint contribution. In the case of *Ethel Makumbi v. Nabatanzi Maureen*,³⁰ where court affirmed that a spouse physically separated from the deceased's household is disqualified under Section 26. Furthermore, *Elizabeth Nalumansi v. Jolly*

²⁶ As Above, Sec. 175.

²⁷ [1977] HCB 90.

²⁸ Succession Amendment Act (n 1 Above).

²⁹ [2022] Civil Appeal No.0100.

³⁰ [2021] (H.C.C.S No. 841) [2024] UGHCFD 86.

*Kasande*³¹ supported the interpretation that separation is a factual matter and living apart at the time of death bars inheritance. This is further exemplified in the case of *Mbojjana vs Mbojjana*³² where it was also held that a separated spouse was not entitled to administer the estate, aligning with the principle in Section 26. *Sanyu Lwanga Musoke V Sam Galiwango*³³ relates to the protection of true beneficiaries in cases where a spouse has left the household. The key principles derived from Section 26 imply that a separated spouse generally loses the right to inherit unless they can prove the deceased caused the separation or it was due to approved study; a separated spouse can apply to the court within six months for permission to inherit, but this is not guaranteed and children of the separated spouse and the deceased (lineal descendants) still retain their inheritance rights, even if the spouse is disqualified.

The law³⁴ also provides intermeddling (unauthorized handling of estate property) is strictly prohibited and carries penalties of up to 20 million UGX in fines. Misapplying or wasting the estate's assets is an offense, and offenders can be sentenced to two years in prison or fined. Specifically, a person who intermeddles in the estate of a deceased person commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or to imprisonment for a term not exceeding ten years, or both and shall in addition to the penalty make good the loss occasioned to the estate.

In addition, a person is taken to intermeddle with the estate of a deceased person where that person, while not being the Administrator General, an agent of the Administrator General or a person to whom probate or letters of administration have been granted to by court—(a) takes possession or disposes of the property of a deceased person; or (b) does any other act which belongs to the office of the executor or executrix, or administrator or administratrix.³⁵ In the case of *Lanyer and Banker Case: Estate of Charles William Makumbi Dumba*³⁶, a lawyer, Ronald Ceaser Munyani, and a banker, David Arthur Bagambe, were charged with intermeddling with the property of the late Charles William Makumbi Dumba. The accused disposed of two acres of land belonging to the deceased's estate without authorization, even after the Supreme Court had ruled that the interest in the land belonged to the estate. This case highlights that legal professionals and third parties who assist in disposing of estate property without proper administration can face

³¹ [2015] S.C.C.A No. 10.

³² [2005] UGSC 2 (21 February 2005).

³³ [1995] (High Court Civil Suit No. 309 of 1987).

³⁴ Succession Amendment Act (n 1 Above) Sec. 265 (9) (12).

³⁵ Succession Amendment Act (n 1 Above) Sec. 265(1) & (2).

³⁶ [2024] UGHCLD 284.

criminal charges. In the case of *Matata v. Estate Property*.³⁷ The High Court affirms that a beneficiary in possession of estate land may validly dispose of their beneficial interest. The Plaintiffs argued that Matata unlawfully dealt with the estate property without letters of administration.

However, the court found that as a beneficiary with a beneficial interest, and having been in long occupation of the land, the sales did not constitute illegal intermeddling. The court clarified that while unauthorized dealing is illegal, a beneficiary who is also in legal occupation of the land might not be deemed an ‘intermeddler’ if they are not selling more than their fair share. In *Milly Namutebi v Lwanga Charles & Others*,³⁸ while this case primarily dealt with burial rights, it established crucial precedents regarding a widow's right to manage the matrimonial home and property. The deceased’s clan attempted to enforce customary rules to dictate where the husband was buried and manage his property. The widow successfully argued that she was the closest person to the husband and should decide. The court ruled that customs and traditions denying a widow the right to manage her late husband's home/property are unconstitutional, oppressive, and discriminatory.

The law further provides that notwithstanding subsection (1) a person may before grant of letters of administration or probate, take possession of the property of the deceased person for the purpose of— (a) preserving the estate of a deceased person; (b) providing for the funeral of the deceased person; (c) providing for the immediate necessities of the family of the deceased person; (d) preserving and ensuring the prudent management of the business of the deceased person, including preserving the goods of trade of the deceased person; or (e) receiving money or other funds belonging to the deceased person, and any action done under this subsection shall not amount to intermeddling.

The law provides for the duration for which a person referred to in subsection (3) may take possession of the estate of the deceased person, is three months from the date of death of the deceased person or until the grant of letters of administration or probate, whichever first occurs.³⁹ It further states that a person who takes possession of the estate of the deceased person under subsection (3) shall immediately report the particulars of the property and the action taken regarding that property to the Administrator General or the agent of the Administrator General.⁴⁰ The law provides that a person who has reason to believe that the person who has taken possession of the estate of a deceased person under subsection (3) has caused loss or damage to the estate

³⁷ [2025] UGHCLD 200.

³⁸ [2021] Civil Suit No. 518 of 2021 (UGHC Kampala).

³⁹ Succession Amendment Act (n 1 Above), Sec. 265(4).

⁴⁰ As Above, Sec. 265(5).

may seek redress from the Administrator General or his or her agent.⁴¹ In addition, a person who takes possession of the property of the deceased person under subsection (3) and causes loss or damage to the property shall be personally liable for any loss occasioned to the estate and shall make good the loss occasioned to the estate.⁴² A person who takes possession of property of a deceased person beyond the time prescribed under subsection (4) commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or to imprisonment for a term not exceeding ten years, or both.⁴³

The law further prioritizes the surviving spouse to act as the administrator of the estate, ensuring they have control over the preservation of the property.⁴⁴ In *Ethel Makumbi v Nabatanzi Maureen*,⁴⁵ the High Court reaffirmed that separation, even without a formal divorce, can strip a surviving spouse of their right to inherit from the deceased spouse's estate, particularly if they were not living together at the time of death. The amended Act provides that the residential home of the deceased spouse cannot be sold or distributed without the consent of the surviving spouse. Courts have maintained that a testator's will cannot entirely defeat the rights of a surviving spouse to the matrimonial home. The 2022 amendments and subsequent judicial interpretations have removed discriminatory provisions, ensuring equal distribution of estates among children and surviving spouses, regardless of gender. In cases of property disputes, *Ambayo v Aserua*⁴⁶ emphasized that for property to be shared, there must be evidence of direct or indirect contribution to the acquisition of that property. Courts have used their discretion to allow the late filing of inventory and accounts, focusing on the welfare of beneficiaries rather than rigid technicalities, while still enforcing the duty to account,⁴⁷ where the law imposes a duty on administrators to file an inventory within six months, with courts now strict on compliance to prevent abuse of the estate.

3.3 The Inconsistencies in Succession Act on Protection of Property Rights of Separated Spouses in Uganda

The Constitution of the Republic of Uganda guarantees the right to own property either individually or in association with others and protects citizens from unlawful deprivation of their

⁴¹ As Above, Sec. 265(6)(7).

⁴² As Above, Sec. 265(8).

⁴³ As Above, Sec. 265(9).

⁴⁴ As Above, Sec. 199(1).

⁴⁵ [2021] (H.C.C.S No. 84).

⁴⁶ [2022] Civil Appeal No.0100 of 2015.

⁴⁷ Succession Amendment Act (n 1 Above) Sec. 273(1).

property.⁴⁸ This fundamental right applies to all, including spouses, ensuring that matrimonial property acquired through joint efforts cannot be arbitrarily taken away upon the death of one partner. Despite constitutional protections, the Succession (Amendment) Act, 2022,⁴⁹ restricts a surviving spouse from inheriting from an intestate estate if, at the time of the deceased's death, they were 'separated... as a member of the same household'. While this clause aims to prevent estranged spouses from benefiting from a 'functional' exit from marriage, it often disproportionately penalizes spouses—typically women—who may have been forced out of the matrimonial home due to domestic violence, economic hardship, or abandonment, rather than a formal, legal separation.

By extinguishing the right to inherit simply based on physical separation (even if not legally divorced), Section 26 can lead to the arbitrary deprivation of property rights that the spouse helped acquire,⁵⁰ directly clashing with the protections under Article 26 of the constitution. Although the succession act allows a court to intervene if an application is made within six months, it places a heavy burden on the separated spouse to prove entitlement,⁵¹ This rigid timeframe fails to protect spouses who may be unaware of the law or lack the resources to initiate legal action quickly, thus allowing the state to potentially take over property that rightfully belongs to the spouse and children. The provision can be interpreted to undermine the constitutional mandate of equality in marriage and at its dissolution, particularly when the separation was caused by the deceased. The law may fail to recognize the non-monetary contributions (housework, farm Labor, child-rearing) of a separated spouse in acquiring matrimonial property, punishing them through disinheritance. Below are some of the major observations which makes the Succession Act inconsistent with the Constitution of Uganda.

3.3.1 Disqualification Due to Separation

The first and most important inconsistency in Succession Act is disqualifying basing on separation as evidenced in Section 26,⁵² This is deemed unconstitutional because it violates the fundamental rights of equality and non-discrimination guaranteed under the 1995 Constitution of Uganda. This is seen as discriminatory against women, who often leave the matrimonial home due to domestic violence or other justifiable reasons, not by choice.⁵³ The automatic

⁴⁸ Constitution of the Republic of Uganda (n 2 Above) Art 26.

⁴⁹ Succession Amendment Act (n 1 Above) Sec. 26.

⁵⁰ Succession Amendment Act (n 1 Above) Sec. 26(1).

⁵¹ Succession Amendment Act (n 1 Above) Sec. 26(3).

⁵² Succession Amendment Act (n 1 Above) Sec. 26(1).

⁵³ Constitution of the Republic of Uganda (n 2 Above) Art 21.

disqualification undermines the legal status of marriage, treating a separated spouse (even if not legally divorced) as a stranger to the estate.⁵⁴ It does not protect the property rights of women, often leaving them destitute after contributing to the acquisition of family property.⁵⁵ Although the law leaves a window, however, this is dependent on discretion of courts, where the courts have the discretion to allow a separated spouse to inherit if there is ‘good cause’.⁵⁶ This is synonymous with what was reported by Ocan who indicated that the Succession Act as it stands introduced significant changes to intestate succession, including strict provisions regarding separated spouses. While the Act aims to protect surviving spouses, it creates gaps that can lead to the unfair disqualification of a spouse who was physically and functionally separated from the deceased at the time of death⁵⁷.

The above is re-echoed in the case of *Makumbi v Nabatanzi & Nabatanzi & 3 Others v Nakiburara & 2 Others*.⁵⁸ The Plaintiff (Ethel Makumbi), a widow of the late Patrick Makumbi claimed that the Defendant and her children lodged a caveat against her application for Letters of Administration (Admin Cause No. 173 of 2021). The defendant unlawfully interfered with the estate. She further claimed that the Defendant and her children are not rightful beneficiaries. The defendant sought an injunction to stop the defendant from acting as a widow or from managing the estate. The Plaintiff also sought that the Defendant must account for estate dealings. Lastly, the Plaintiff sought letters of administration to administer the estate, plus general damages & costs. It should be noted that the deceased had died intestate and the named executrix in the Will never applied for probate. The defendant counterclaimed that the Plaintiff has no rights since they separated in 1995, and was compensated with UGX 40M for property.

The defendant was customarily married to the deceased, with whom they had cohabited since 2009 and formalized the marriage in 2013. The major issues before court was whether the plaintiff was entitled to Letters of Administration and who were the rightful beneficiaries. The Court found that the plaintiff, Ethel Makumbi, was not entitled to administer the estate, whether under a will or intestacy. Not only had she separated from the deceased over 25 years prior, but the will named an executor (though who failed to apply for probate). Under Section 26 of the Succession Act, a spouse who is no longer a member of the deceased’s household is disqualified from inheriting intestate. Similarly, Ruhweza expressed that the Act focuses heavily on physical

⁵⁴ As Above, Art.31.

⁵⁵ As Above, Art.33.

⁵⁶ Succession Amendment Act (n 1 Above) Sec.231-234.

⁵⁷ Interview with Justice Rapheal Ocan, Former Administrator General of Uganda, 5 May 2026.

⁵⁸ [2021] Civil Suit Nos. 84 & 15) UGHCFD 86.

cohabitation, ignoring situations where a physically separated couple maintained intertwined financial obligations, joint properties, or mutual financial support, making the separation merely administrative rather than functional⁵⁹.

The Court endorsed the interpretation in *Elizabeth Nalumansi v. Jolly Kasande*,⁶⁰ which treats separation as a factual, not merely legal issue. This case emphasized that the law looks at the substance of the family relationship at the time of death. In *Farasia v. Bonatobahemu*,⁶¹ the court illustrated the ‘archaic’ application of the old Section 30, where a first wife was barred from any interest despite her prior contributions because she had been separated from the household since 1965. The Court held that the beneficiaries of the estate are those named in the will, regardless of biological relationship. The plaintiff, not being a beneficiary, had no standing to contest the will on those grounds.

3.3.2 Physical and Functional Separation of Household/ ‘Separation in Fact’ Requirement

The Succession Law focuses on the physical, functional separation of households rather than just legal divorce. A spouse who left the matrimonial home, or is living apart for a significant period, may lose their rights, even if the marriage was never formally dissolved.⁶² Under this arrangement, a spouse who has left the matrimonial home or is living apart for a significant period may forfeit their inheritance rights to the deceased spouse's estate, even if the marriage was never formally dissolved. This means that factual separation overrides marital status because the section of this act treats separation as a factual issue—a ‘functional exit’ from the marriage—rather than just a legal one. A surviving spouse who was not living in the same household as the deceased at the time of death may be disqualified from inheriting, particularly if they left the home or were not providing spousal support. In some contexts, a separation lasting over six months is considered sufficient to extinguish matrimonial property rights. For instance, in *Makumbi v Nabatanzi & Nabatanzi & 3 Others v Nakiburara & 2 Others*,⁶³ the separation of over 25 years was significant to waive the right to property of the deceased husband. However, in *Ambayo Joseph Waigo v. Aserua Jackline*,⁶⁴ the Court of Appeal established that property division is based on the contribution to the property, not merely the length of time married or separated.

⁵⁹ Interview with Dr. Daniel Ruhweza, Senior Lecturer and Head of Department of Law and Jurisprudence, School of Law, Makerere University, on 6 May 2026.

⁶⁰ [2015] S.C.C.A No. 10.

⁶¹ [1978] HCB 224.

⁶² Succession Amendment Act (n 1 Above) Sec. 26(1).

⁶³ [2021] Civil Suit Nos. 84 & 15) UGHCFD 86.

⁶⁴ [2015] Civil Appeal No. 0100.

The physical and functional separation of households—often legally defined as the separation of a surviving spouse from the deceased at the time of death—can violate the 1995 Constitution of Uganda by limiting a spouse's, particularly a widow's, inheritance rights and undermining security of tenure. It has been demonstrated above that the Succession (Amendment) Act of 2022, which aims to align with the Constitution, separation is technically a ground for exclusion from the matrimonial home (principal residential property) and the estate, unless specific, often high-burden, conditions are met. This legal framework, particularly when strictly applied to separated spouses, contravenes Article 21 of the Constitution denounces violation on basis of discrimination and equality. This is because in Uganda, customary practices often separate women from their marital homes upon the death of a husband, a practice traditionally reinforced by law.⁶⁵

The above is synonymous with what was reported by Musoke who also showed that the law does not clearly define what physical and functional separation constitute. she noted that the Succession Act does not clearly define what constitutes functional separation beyond physical distance. It leaves room for interpretation of whether a spouse who is separated for economic reasons (working elsewhere) or due to long-term care needs (e.g., in a nursing home or with family) is 'separated'.⁶⁶

Secondly, since men are generally favoured in land ownership and control within households, separating a woman (either physically or legally) makes her vulnerable to losing property she contributed to, violating the right to equal protection under the law⁶⁷.

The physical and function separation also contravenes Article 31 and 33 of the constitution. For instance, the Constitution mandates Parliament to enact laws that protect the rights of widows and widowers to inherit property.⁶⁸ The legal separation of households often deprives widows of their right to matrimonial property, even if they contributed to its development. Secondly, even though the 2022 Act protects the principal residential holding, separation—even if caused by the deceased husband (e.g., chasing a wife away)—can legally be used to evict a spouse, thus contradicting the goal of protecting the family's home. The physical and function separation further violates Dignity and Protection from Inhuman Treatment.⁶⁹ This is because the separation, followed by inheritance claims by the deceased's family, often results in the eviction of widows and children. This acts as

⁶⁵ JD Mujuzi 'Reconciling customary law and cultural practices with human rights in Uganda.' 2020:239-56. *Obiter*. Aug 1;41(2).

⁶⁶ Interview with Diana Musoke, Private Practitioner, Family Law, Kampala, Uganda on 7 May 2026.

⁶⁷ MG Byaruhanga, 'Women's access to land in Uganda.' 2022.

⁶⁸ Constitution of the Republic of Uganda (n 2 Above) Art 31(2).

⁶⁹ As Above, Art 24.

degrading treatment that leaves women in an economically insecure position, stripping them of their home and livelihood. This is further supported by Kasibayo who adduced that the Act may fail to adequately protect a spouse who left the household due to extreme abuse, violence, or ‘constructive desertion’ by the deceased, as they might technically be viewed as the party who initiated the physical separation⁷⁰.

Although the Succession Act introduced some protection to align with the Constitution by offering exceptions to the separation rule: a spouse is not penalized if the separation was ‘approved’ (e.g., for study) or if the deceased caused the separation and the Act allows for a spouse to apply to the court to show that the separation was for a reasonable cause. However, the inherent focus on ‘physical and functional’ cohabitation still creates a loophole where separated, yet still married, women are disenfranchised, violating the constitutional guarantee of equality in marriage. This is exemplified further in the case of *Law Advocacy for Women in Uganda v. Attorney General*⁷¹ where it was declared that several sections of the Act, specifically those defining and limiting a widow's rights to the matrimonial home based on concepts of ‘separation’ or ‘customary, physical and functional’ distinctions, were unconstitutional. This landmark ruling, directly addressed how the law relating to the physical/functional separation of households discriminated against women and violated the constitutionally guaranteed right to equality.

3.3.3 Burden of Proof on the Surviving Spouse

As provided in Succession Act that if a spouse is separated, they must prove that they were not responsible for the separation, or that the separation was due to the deceased's actions, to inherit. If the survivor left willingly, they may be excluded.⁷² Based on the Succession Act, the burden of proof is placed on a separated surviving spouse to establish their right to inherit, particularly if they were not living as part of the deceased's household at the time of death. It should be noted that if a spouse was separated, the law assumes they are not entitled to inherit. The burden of proof lies on the surviving spouse to prove that they should still inherit, typically by showing that: the separation was not their fault: They did not leave willingly or act in a way that caused the breakdown of the marriage; the deceased caused the separation where by the separation was due to the actions, fault, or actions of the deceased spouse (e.g., in cases of domestic violence or abandonment). Lastly, the separation was due to approved reasons, such as being on a course of study. Notwithstanding the separation, a court may, for ‘good cause’ shown by the surviving

⁷⁰ Interview with Justice Charles Kasibayo, Former Administrator General of Uganda, 12 May 2026.

⁷¹ [2005] (Constitutional Petitions Nos. 13/2005 & 05/2006) [2007] UGCC 1.

⁷² Succession Amendment Act (n 1 Above) Sec. 26.

spouse, declare that they are entitled to inherit and vice versa. This is also noticed in the views of interviewees who ascertained that it has come routine that the burden left to the surviving spouse to prove is wide. It was noted by Byamukama who showed that there may be exceptions (e.g., if the deceased caused the separation), however, the surviving spouse often faces the heavy burden of proving in court that they were not the cause of the separation, or that the separation was forced upon them, within a tight timeframe⁷³.

The interview and provisions above can be argued to contravene several provisions of the 1995 Constitution of Uganda, primarily concerning gender equality, fair treatment, and non-discrimination. This is because the Constitution guarantees equality before the law and prohibits discrimination on grounds of sex, social or economic standing. Requiring a surviving spouse (often the widow) to prove they were not at fault for a separation disproportionately disadvantages women, who might have left the home due to domestic violence, abuse, or neglect, making them victims of discrimination in succession rights⁷⁴. This was further demonstrated by key informants who indicated that in instances of customary marriages, the surviving spouse finds it hard to prove his or her case. Ocan added that Administrator General have always had a challenge especially when it comes to customary marriage, surviving spouses tend to lack validated marriage proof...remember, they must bear the burden of proving the existence of a valid marriage. This worsens when it comes to intestate succession cases, if the marriage is not registered or, in the case of a customary marriage, if the introduction/giveaway ceremony is not corroborated by witnesses, the court may demand strict proof of the marriage...and this has stifled the overall process of justice on the side of surviving spouses⁷⁵.

The Constitution provides that men and women have equal rights during marriage and at its dissolution. Placing the onus on the spouse to prove innocence in a separation contradicts this, as it implicitly penalizes one party, typically the woman, without necessarily looking at the culpability of the deceased.⁷⁶ Thirdly, every person has the right to own property. If a spouse has contributed to the matrimonial property, denying them their share because of a separation—without considering their contribution—violates their right to property.⁷⁷ Fourthly, it also violates the right to fair hearing.⁷⁸ This is because in situations where the deceased is not alive to testify, placing the burden of proof on the surviving spouse to disprove fault (a negative proposition) can be seen as

⁷³ Interview with Jude Byamukama, Private Practitioner, Constitutional Law, Kampala, Uganda on 7 May 2026.

⁷⁴ Constitution of the Republic of Uganda (n 2 Above) Art 21.

⁷⁵ Interview with Justice Raphael Ocan, Former Administrator General of Uganda, 5 April 2026.

⁷⁶ Constitution of the Republic of Uganda (n 2 Above), Art 31.

⁷⁷ As Above, Art.26.

⁷⁸ As Above, Art.28.

an unjust procedure, making it difficult to secure their rights to the estate, even if they were not at fault for the separation. Lastly, it undermines the protection of vulnerable persons.⁷⁹ This was further exemplified by key informants who indicated the presence of properties acquired before marriage and disputed paternity of children also affect surviving spouses when it comes to prove their case. It was noted that there is an issue of properties acquired before marriage. In instances where the deceased acquired property before the marriage, the surviving spouse may need to prove they made substantial contribution to its development or maintenance to have a claim on it and this tends to elongate the process. This issue can be elaborated by the law instead of relying on case law and discretions of judges which keeps varying⁸⁰. Zahara reported that they have witnessed an issue of disputed paternity of children when claiming for their shares. This has always shifted the burden on a surviving spouse to prove that the children are biological or adopted, particularly if not formally registered⁸¹.

The Constitution calls for the protection of women and the elimination of customs that are against their welfare. By creating a ‘guilty until proven innocent’ scenario regarding separation, the Act potentially violates the dignity and welfare of widows. This means that even though, the Succession (Amendment) Act, 2022 was designed to bring the old law into conformity with the Constitution by repealing previous discriminatory sections. However, the specific procedural burden regarding separated spouses remains a point of contention and is frequently tested in the High Court Family Division regarding whether it aligns with constitutional rights. For instance, in the case of *Elizabeth Nalumansi v. Jolly Kasande*,⁸² the Court affirmed that separation is a *factual* issue, not just a legal one. This means that if a spouse has ‘functionally exited’ the marriage, they may lose inheritance rights under Section 26, even without a formal court decree of separation. In *Law Advocacy for Women in Uganda v. Attorney General*⁸³: This foundational case ruled that sections of the old Succession Act that discriminated against women regarding inheritance were unconstitutional. While the 2022 Act aims to fix this, if the ‘separation’ clause is applied unfairly, it could lead to new litigation under this precedent. The above is further echoed by key informants who showed difficult to prove such burden due to existence of in-laws. It was noted challenge of in-laws or clan members is to claim that the property, particularly land, with a mentality that they belong to the family clan rather than

⁷⁹ As Above, Art.33.

⁸⁰ Interview with Justice Rapheal Ocan, Former Administrator General of Uganda, 5 May 2026.

⁸¹ Interview with Dr Zahara Nampewo, Deputy Dean School of Law, Makerere University, on 10 May 2026.

⁸² [2015] S.C.C.A No. 10 of 2015.

⁸³ [2005] (Constitutional Petitions Nos. 13/2005 & 05/2006) [2007] UGCC 1.

the deceased, requiring the widow to prove that her husband was the rightful owner or that she contributed to its acquisition⁸⁴.

It is evident from key informants that a surviving spouse's right to occupy the residential holding has always been challenged on grounds. If in-laws claim the spouse remarried (before distribution) or brought 'dishonour' to the home (e.g., changing its usage), which has always shifted the burden to the spouse to disprove this to maintain their rights.⁸⁵ Ruhweza added that with multiple homes of the deceased, it becomes challenging to the surviving spouses to prove and this makes it inconsistent with the existing principal legislation (Succession Act)⁸⁶. While the Succession (Amendment) Act 2022 protects the matrimonial home, a spouse may be required to prove that a specific property was the actual 'principal residential holding' or matrimonial home if the deceased had multiple homes, especially if they were not living together at the time of death. In many cases, they fail to prove and end up losing.⁸⁷

3.3.4 Time Limit for legal Action

The Succession Act further provides that separated spouses seeking to claim interest in an intestate's estate must apply to court for a declaration allowing them to inherit within six months of the death of the intestate.⁸⁸ This provision was designed to prevent automatic disinheritance of a spouse who was living apart from the deceased at the time of death, while still protecting the estate from estranged partners. This thus gives the court the discretion to allow a separated spouse to inherit if they show 'good cause'. This time limit requirement potentially contravenes Constitutional provisions regarding non-discrimination, equality of spouses, and property rights. This restriction, which often interprets 'separated' as factual rather than legal separation, creates a time-bound, burdensome process for separated spouses—frequently women—compared to those still in the household, violating principles of equality before the law.⁸⁹ The Constitution guarantees equality between men and women, including equal rights during marriage and at its dissolution. By imposing a stringent, time-sensitive barrier on separated spouses (who are often women in abusive

⁸⁴Interview with Nyeko Joseph, Ag. Deputy Administrator General, Department of Succession and Estate Management on 13 May 2026.

⁸⁵Interview with Bernadette Bakkidde (Board Member), FIDA Uganda on 11 May 2026.

⁸⁶Interview with Dr. Daniel Ruhweza, Senior Lecturer and Head of Department of Law and Jurisprudence, School of Law, Makerere University, on 6 May 2026.

⁸⁷Interview with Nyandria Stella, Ag. Deputy Administrator General, Department of Public Trustee and Children's Affairs on 10 May 2026.

⁸⁸ Succession Amendment Act (n 1 Above) Sec. 26(3).

⁸⁹ Constitution of the Republic of Uganda (n 2 Above) Art 21.

or estranged marriages), the law may unfairly disadvantage them compared to non-separated spouses, violating Article 21 (equality and non-discrimination) and Article 31 (rights of spouses).

The above is further ascertained by key informants who indicated that there is a significant effect of time limit in observance of the property rights which must be enjoyed by surviving spouses. It was noted from one of the study participants saying that in Uganda, the time limit for legal action significantly affects the enjoyment of property rights by surviving spouses, as delays have always led to property grabbing by in-laws, estate mismanagement, or the forfeiture of rights under the Limitation Act⁹⁰.

Furthermore, the requirement implies a potential forfeiture of interest in the estate if the application is not made within six months, infringing upon a surviving spouse's constitutional right to property.⁹¹ As reflected in the case of *Makumbi v Nabatanzi & Nabatanzi & 3 Others v Nakiburara & 2 Others*,⁹² the court interpretations treated separation as a 'factual' issue rather than a 'legal' one. In *Kaybul v. Kaybul*,⁹³ the High Court (Family Division) ruled that desertion (a form of separation) is not defined by mere physical separation, but by a withdrawal from the responsibilities and obligations of marriage. In *Elizabeth Nalumansi v. Jolly Kasande & Ors*,⁹⁴ while a Supreme Court case, this is the binding authority applied by the High Court regarding separation in property disputes. It established that for a spouse to be disqualified from inheriting, it is enough that they were separated *in fact* (no longer living as one household) at the time of the intestate's death, even without a formal court decree. The court focuses on whether the marital, conjugal, and household relationship had ceased, rather than the existence of a legal document.

The above is consistent with a big number of study participants indicated how time limit opens up several challenges which ends of affecting the property rights of surviving spouse. It was echoed that the law protects the matrimonial home, and survivors can stay there until they die, remarry, or leave, mitigating the impact of time limits for that specific property.⁹⁵ If a spouse contests an administration application, they have six months to file a suit, or the caveat lapses, potentially allowing administrators to alienate the property.⁹⁶ It was also found out that there is also a lacuna

⁹⁰ Interview with Nyeko Joseph, Ag. Deputy Administrator General, Department of Succession and Estate Management on 13 May 2026.

⁹¹ Constitution of the Republic of Uganda (n 2 Above), Art 26.

⁹² Civil Suit Nos. 84 & 15 of 2021) [2024] UGHCFD 86.

⁹³ [2016] Divorce Cause No. 133) [2020] UGHCFD 7.

⁹⁴ [2015] *J.C.C.A No. 10 of 2015*.

⁹⁵ Interview with Justice Charles Kasibayo, Former Administrator General of Uganda, 12 May 2026.

⁹⁶ Interview with Justice Rapheal Ocan, Former Administrator General of Uganda, 5 May 2026.

when it comes to recovery of personal property. In practice, claims regarding movable property of a deceased person generally cannot be brought after 12 years⁹⁷.

The interviewees further mentioned that the failure to act within the time, it comes to affects the management of the estate and loss of assets which belongs to the spouse. It was acknowledged that another challenge with such limitations, under the Succession Amendment Act 2022, letters of administration for intestate succession are typically valid for two years, within which the administrator must distribute the estate. Failure to act within this period, in many times leads to mismanagement and loss of assets for the spouse.⁹⁸ Ocan added that the Limitation Act prohibits the filing of suits to recover land after 12 years from the date the cause of action accrued (e.g., when the spouse is forced out).⁹⁹

The above implies that a spouse who left due to domestic violence, but without a formal court separation, must still rush to court within six months to prove their right to inherit, often without legal representation, which can be seen as arbitrary and unfair treatment. The strict six-month limitation period (likely referring to the deadline for such court applications under the amended Act) may restrict access to justice for vulnerable, uninformed, or impoverished separated spouses who may not be aware of the strict timelines within the Succession Act.¹⁰⁰ In essence, this provision is argued to maintain patriarchal, customary-style disadvantages against women, contradicting the progressive and non-discriminatory spirit of the 1995 Constitution¹⁰¹.

3.3.5 Limitation on Amount Recoverable

Even if a court allows a separated spouse to inherit, they may only be entitled to a portion of the property acquired *before* the separation, not the entire estate. The Succession Act introduced a one-year limit to apply for probate after death and a two-year limit for administration, aimed at protecting beneficiaries from slow, inefficient administration.¹⁰² In Uganda, the limitation on the amount and time for recovering property or debts from a deceased person's estate is primarily governed by the Limitation Act (Cap 290).¹⁰³ Similarly, the Limitation Act provides that no arrears of interest in respect of a judgment debt or a mortgage/charge can be recovered after six

⁹⁷ Interview with Dr Zahara Nampewo, Deputy Dean School of Law, Makerere University, on 10 May 2026.

⁹⁸ Interview with Bernadette Bakkidde (Board Member), FIDA Uganda on 11 May 2026.

⁹⁹ Interview with Justice Rapheal Ocan, Former Administrator General of Uganda, 5 May 2026.

¹⁰⁰ P Mugisa 'A critical analysis of the law relating to fraud cases in adoption proceedings in Uganda: a case study of the High Court Family Division' (Doctoral dissertation, Kampala international University, School of Law).

¹⁰¹ AL Kafumbe 'Women's rights to property in marriage, divorce, and widowhood in Uganda: The problematic aspects.' 2010:199-221. Human Rights Review. 2010 Jun;11(2).

¹⁰² Succession Amendment Act (n 1 Above) Sec.240.

¹⁰³ Limitation Act Cap 290, Sec. 20.

years from the date the interest became due.¹⁰⁴ It should be noted that the succession act provides that probate or letters of administration are now valid for a maximum of two years (extendable by court). However, the applications for maintenance out of the estate must generally be made within six months of the grant of representation¹⁰⁵. However, the six-year limitation period does not apply to actions by a beneficiary to recover trust property from a trustee in cases of fraud or fraudulent breach of trust.¹⁰⁶ In addition, the Administrator General is not personally liable for goods sold in the course of administration unless they had actual notice that the goods did not belong to the deceased, or acted with gross negligence.¹⁰⁷

The limitations on the amount recoverable under the Succession Act is found to contravene the Constitution of Uganda primarily because they promote gender discrimination, violated the rights of women, and failed to provide equitable distribution of property upon intestacy. This remain contrary the ruling in *Law Advocacy for Women in Uganda v. Attorney General*,¹⁰⁸ which sought to ensure that there is equal treatment even in inheritance and do away with the rigid and low-percentage distribution formulas for widows undermined the right to a fair share of the estate. The issue of time and amount recoverable was further reflected in *Ambayo v Aserua*,¹⁰⁹ in which the Court of Appeal clarified that marriage does not guarantee an automatic 50:50 share of matrimonial property. Instead, the court established that a spouse's share depends on their contribution, including non-monetary contributions (homemaking, caretaking), which should be valued based on comparable market services. The country has remained without a matrimonial property act but rather relying on judicially made laws.

The key informants in this study introduced the subjective test of ‘fit and proper’ has affecting the enjoyment of property rights of the surviving spouses. It was noted that while the 2022 Act prioritizes the spouse as administrator, the Administrator General must determine they are a ‘fit and proper person’. This subjective test can lead to administrative delays or denial of control.¹¹⁰ the Act mandates spouse/descendant consent for disposal of estate property. However, if consent is deemed ‘unreasonably withheld, the administrator can petition for court intervention, reducing the spouse’s veto power¹¹¹. Applications for probate/administration must be filed within one year

¹⁰⁴ As Above, Sec. 20 & 22.

¹⁰⁵ As Above, Sec. 32.

¹⁰⁶ As Above, Sec. 20 & 22.

¹⁰⁷ Administrator General’s Act, Sec. 3.

¹⁰⁸ [2005] (Constitutional Petitions Nos. 13/2005 & 05/2006) [2007] UGCC 1.

¹⁰⁹ [2022] Civil Appeal No. 0100/2015, Uganda - 2022/2025.

¹¹⁰ Interview with Nyandria Stella, Ag. Deputy Administrator General, Department of Public Trustee and Children’s Affairs on 10 May 2026.

¹¹¹ Interview with Diana Musoke, Private Practitioner, Family Law, Kampala, Uganda on 7 May 2026.

of death, creating urgency that can be missed due to mourning, ignorance of the law, or lack of resources.¹¹²

3.3.6 Discretionary Judicial Power

The protection provided to a surviving spouse by the Succession Act is not automatic. The court has the discretion to determine what constitutes ‘good cause’ for a separated spouse to inherit creating uncertainty.¹¹³ Specifically, Section 26(1) provides that a surviving spouse who was separated from the deceased at the time of death (not part of the same household) is generally disqualified from inheriting. However, the ‘uncertainty’ arises from a proviso that allows a separated spouse to still inherit if the court, using its discretion, finds ‘good cause’. However, the Succession Act does not explicitly define what constitutes ‘good cause’. This leaves the interpretation entirely to the discretion of individual judges or magistrates. What one judge considers a justified reason for separation (e.g., escaping abuse, working in another town), another might consider a total abandonment of marital obligations.

Since ‘good cause’ is not codified, the court must look at the facts of each case, leading to inconsistency in decisions. For example, the court might find ‘good cause’ if the separation was forced by the deceased, was due to poverty, or if the spouse was away for education/medical reasons. Secondly, the court might find no ‘good cause’ if the separation was due to infidelity, long-term abandonment, or if the spouse had effectively created a new, separate life, even without a formal divorce. This concurs with what was reported by key informants who also showed that discretion of courts has entangled the observance of property rights on the side of surviving spouses. It was noted that although the Act provides that a spouse separated from the deceased at the time of death generally loses their interest in the estate. However, court has the discretion to allow a separated spouse to inherit if they deem it justified (e.g., if the deceased caused the separation)¹¹⁴.

The phrase ‘Notwithstanding subsection (1), a court may for good cause... declare that subsection (1) shall not apply’ means the court can override the general rule. This high level of subjectivity makes it difficult for legal practitioners to advise clients on their likelihood of success, as the outcome depends heavily on which judge hears the case. This is further exemplified in the interview conducted with Ruhweza who indicated that the broad discretion regarding ‘fit and

¹¹² Interview with Jude Byamukama, Private Practitioner, Constitutional Law, Kampala, Uganda on 7 May 2026.

¹¹³ Succession Amendment Act (n 1 Above) Sec. 26(2).

¹¹⁴ Interview with Justice Charles Kasibayo, Former Administrator General of Uganda, 12 May 2026.

proper person' and 'separation' can be abused, leading to long legal battles, delayed inheritance, and insecurity, especially for women in strained marriages.¹¹⁵

The primary rule aims to protect the estate from being claimed by someone who was not sharing in the burdens and benefits of the household at the time of death. The 'good cause' exception is designed to act as a safety valve for fair, compassionate, or just outcomes, but it simultaneously weakens the primary rule, causing conflict. The application to show 'good cause' must be made within six months after the death of the intestate. The uncertainty is compounded by the fact that if a separated spouse misses this deadline, they lose their right to argue for their inheritance, regardless of how justified their separation was. For the spouse, therefore, they cannot know for sure if they are considered 'separated' or if their reasons will be deemed 'good cause' while for the estate, it remains vulnerable to claims from separated partners, delaying final distribution of assets. In practice, the court is shifting towards a substantive rather than formalistic approach, looking at whether the marriage was functionally dead or merely geographically separate, but the lack of a clear definition for 'good cause' remains a major source of legal uncertainty.

In comparison, the statement that 'the court has the discretion to determine what constitutes 'good cause' for a separated spouse to inherit, creating uncertainty¹¹⁶ in Succession Act touches upon key constitutional principles regarding equity, legal certainty, and protection of rights. While the 2022 Amendment Act aimed to make the Succession Act more inclusive and in line with the Constitution, this specific discretionary power can be argued to contravene the Constitution of Uganda. In the first place, it violates the right to equal treatment.¹¹⁷ The Constitution guarantees equality before the law and prohibits discrimination. If 'good cause' is interpreted differently by different judges, one separated spouse might be allowed to inherit while another in a similar situation is disinherited. This inconsistent application creates unequal treatment before the law.

In addition, the Section 26(2) breaches of legal certainty and fair hearing.¹¹⁸ The Constitution guarantees a fair hearing and, implicitly, a predictable legal framework. 'Good cause' is a subjective, vague term, often referred to as a 'legal standard' rather than a rule. Without strict guidelines, it creates uncertainty, making it difficult for individuals to know their rights, violating principles of legal certainty. The Constitution further protects the right to own property.¹¹⁹ If a spouse who was

¹¹⁵ Interview with Dr. Daniel Ruhweza, Senior Lecturer and Head of Department of Law and Jurisprudence, School of Law, Makerere University, on 6 May 2026.

¹¹⁶ Succession Amendment Act (n 1 Above) Sec. 26(2).

¹¹⁷ Constitution of the Republic of Uganda (n 2 Above) Art 21.

¹¹⁸ As Above, Article 44.

¹¹⁹ As Above, Article 26.

separated—perhaps due to abuse or neglect by the deceased—is denied inheritance because a court does not find ‘good cause’ in their specific situation, it could be seen as an arbitrary deprivation of property rights. Similarly, the Constitution calls for equal rights for spouses during marriage and at its dissolution.¹²⁰ Discretionary, unpredictable, or strict interpretations of ‘good cause’ for a separated spouse could undermine the rights of the surviving spouse, particularly in scenarios where the deceased caused the separation. Lastly, any provision, including the ‘good cause’ clause, that creates arbitrary or discriminatory outcomes (e.g., allowing a separated spouse who abandoned the family to inherit due to broad discretion) can be challenged as being inconsistent with the Constitution.¹²¹

Section 26(2) of the Amended Act thus, does attempt to provide guidelines, stating the court can consider if the separation was caused by the deceased or if the spouse was on an approved study course. However, the residual discretion, which requires a spouse to apply within six months and prove ‘good cause,’ is what creates the legal uncertainty often highlighted as potentially unconstitutional or unfairly subjective. As already decided in *Law Advocacy for Women in Uganda v. Attorney General*¹²², the court previously ruled that provisions restricting women's inheritance were discriminatory and inconsistent with Articles 21 and 33 of the Constitution.

The above, are further amplified by what key informants reported that administrators must seek consent from spouses and children before disposing of estate property. Yet, if consent is unreasonably withheld, the court can permit the sale, potentially overriding the spouse's objection¹²³. The court has the discretion to validate a page of a will that does not bear the testator's name or address which puts the properties at a risk on the side of surviving spouse.¹²⁴

3.3.7 Non-ratification of Hague Convention on the Law Applicable to Matrimonial Property Regimes (HCLAMPR) 1978

Uganda as a country has not ratified to the Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes. This non-ratification, combined with the lack of a comprehensive domestic statute on matrimonial property, significantly affects the protection of property rights for separated spouses. The non-ratification is presumed to have affected the broadness of Succession Act especially when it comes to protection of property rights of separated

¹²⁰ As Above, Article 31.

¹²¹ As Above, Art.2.

¹²² [2005] (Constitutional Petitions Nos. 13/2005 & 05/2006) [2007] UGCC 1.

¹²³ Interview with Nyeko Joseph, Ag. Deputy Administrator General, Department of Succession and Estate Management on 13 April 2026.

¹²⁴ Interview with Bernadette Bakkidde (Board Member), FIDA Uganda on 11 May 2026.

spouses during succession. Under the Hague Convention, the law applicable to a couple's property can automatically update if they change residence or nationality.¹²⁵ Without it, international couples in Uganda face complex and often unpredictable outcomes because there is no unified international standard to determine which country's law applies to their assets.

The Convention allows spouses to designate which law governs their property regime (e.g., through a prenuptial agreement).¹²⁶ Additionally, because Uganda lacks both the Convention and a specific national Matrimonial Property, property division depends heavily on evolving case law. This leads to unpredictability, as different judges may apply different formulas for 'equitable sharing'. This is evident with the case of *Julius Rwabinumi v. Hope Bahimbisomwe*¹²⁷ which was based largely on what transpired in *Kintu v Kintu*.¹²⁸ The Supreme Court of Uganda, reversed lower court rulings to establish that matrimonial property should be divided fairly, taking into account both monetary and non-monetary contributions (such as homemaking). The court emphasized that marriage does not automatically entitle a spouse to 50% of all property, but rather an equitable share based on contributions. In *Kintu v Kintu*,¹²⁹ the court recognized that contributions to matrimonial property include domestic work and homemaking, which must be considered in property distribution during separation and succession. These positions later shifted from 'equality' to 'contribution', i.e. in *Ambayo Joseph Waigo v. Aserua Jackline*,¹³⁰ have shifted away from an automatic 50/50 split. Courts now require proof of direct or indirect contribution (monetary or non-monetary) to determine a spouse's share.

While courts in Uganda increasingly recognize 'unpaid care and domestic work', the lack of a standardized legislative framework (like that provided by the Convention) makes it difficult to quantify these contributions accurately, often leaving women at a disadvantage. In some cases, courts have even ruled that a husband paying for a wife's education can reduce her claim to property, viewing the education as a form of prior 'payment' for her domestic work, such as in *Ambayo Joseph Waigo v Aserua Jackline*¹³¹.

¹²⁵ HCLAMPR 1978, Art.3.

¹²⁶ As Above, Art.11.

¹²⁷ [2009] SCCA No.1.

¹²⁸ [2001] UGHC 46. Divorce Appeal No. 135 of 1997.

¹²⁹ [2001] UGHC 46. Divorce Appeal No. 135 of 1997.

¹³⁰ [2022] Civil Appeal No. 100 of 2015; UGCA 272.

¹³¹ [2022] Civil Appeal No. 100 of 2015; UGCA 272.

3.3.8 Non-Ratification of Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons (HCLASEDP) 1989

The non-ratification of the Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons in Uganda creates legal uncertainty for separated spouses, primarily by leaving their property rights subjected to domestic laws that often privilege habitual residence and marriage subsistence over equitable distribution. While the Succession Act improved protections, the lack of an international, harmonized framework (like the Hague Convention) poses specific risks. For instance, under current succession law, if a spouse is separated from the deceased as a member of the same household for over six months, they are generally disqualified from inheriting intestate,¹³² Without a treaty that harmonizes international standards on ‘separation,’ a separated spouse, particularly one living abroad or separated for a long period, may lose property rights,¹³³

The Hague Convention provides clear, predictable rules for which country’s laws apply to a deceased’s estate, prioritizing the deceased’s habitual residence or nationality. Without this, a separated spouse in a cross-border scenario (e.g., Ugandan living in a foreign country) risks having their property rights determined by conflicting laws, which can lead to complex litigation,¹³⁴ The Hague Convention framework would allow for a ‘*professio juris*’ (choice of law) to protect the estate. In contrast, domestic law may not adequately recognize a separated spouse’s indirect financial contributions to matrimonial property, often looking only at the ‘member of the same household’ status,¹³⁵ While the Succession (Amendment) Act 2022 allows a court to grant a separated spouse a share upon application within six months, it requires proving the separation was not intentional or that they were not the cause, which is a high, costly burden,¹³⁶

For separated spouses with assets located outside Uganda, the absence of a ratified international treaty makes it difficult to secure their share of the estate, as the foreign jurisdiction may not recognize Ugandan intestacy laws. However, it is noted that the Succession (Amendment) Act, does contain provisions meant to protect spouses—even those who have separated—if they can show that the separation was for a good cause or if they apply to the court within six months. Nonetheless, non-ratification keeps the process within a complex, often patriarchal, local framework rather than an internationally recognized one¹³⁷.

¹³² Succession Amendment Act (n 1 Above) Sec.26.

¹³³ HCLASEDP 1989, Art. 3(1).

¹³⁴ As Above, Art. 3(2).

¹³⁵ As Above, Art. 4.

¹³⁶ Succession Amendment Act (n 1 Above) Sec.26(3).

¹³⁷ HCLASEDP (n 133 Above), Art. 5.

3.4 Conclusion

Based on Succession Act of 2022 and relevant Constitutional Court rulings, the constitutionality of Section 26(1) of the Succession Act remains in question. This is because it states that ‘a surviving spouse of an intestate shall not take any interest in the estate of the intestate if, at the death of the intestate the surviving spouse was separated from the intestate as a member of the same household’. This automatically contravenes Article 26 (1) of the Constitution of Uganda which states that ‘every person has a right to own property either individually or in association with others.’ This has implied that Section 26(1) fails on ground of right to equality, non-discrimination (Article 21), and the dignity of women (Article 33). This is because the Article appears to disqualify separated spouses from taking any interest in the estate if they were separated from the deceased ‘as a member of the same household’ at the time of death.

Secondly, the existing principal law focuses on the physical, functional separation of households rather than just legal divorce. A spouse who left the matrimonial home, or is living apart for a significant period, may lose their rights, even if the marriage was never formally dissolved. Thirdly, if a spouse is separated, they must prove that they were not responsible for the separation, or that the separation was due to the deceased’s actions, to inherit. If the survivor left willingly, they may be excluded. Fourthly, separated spouses seeking to claim interest in an intestate's estate must apply to court for a declaration allowing them to inherit within six months of the death of the intestate. Fifth, even if a court allows a separated spouse to inherit, they may only be entitled to a portion of the property acquired *before* the separation, not the entire estate. Sixth, the protection is not automatic since the court has the discretion to determine what constitutes ‘good cause’ for a separated spouse to inherit, creating uncertainty.

Lastly, if a deceased spouse left a valid will, they have broad discretion over their property. However, the new law requires a testator to provide for a spouse, but this is less stringent than the protections for spouses living together. The next chapter dwells on exploring the extent by which the article resonates with global and regional best practices which exist for the protection of property rights of separated spouses during succession.

CHAPTER FOUR

GLOBAL AND REGIONAL BEST PRACTICES ON PROTECTION OF PROPERTY RIGHTS OF SEPARATED SPOUSES DURING SUCCESSION

4.1 Introduction

4.2 Analysis of the Selected Jurisdictions

4.2.1 The United States of America

4.2.2 The United Kingdom

4.2.3 India

4.2.4 South Africa

4.2.5 Kenya

4.3 Emerging Issues

4.4 Conclusion

4.1 Introduction

The protection of property rights for surviving spouses is a complex area of law, frequently involving the intersection of statutory regulations, cultural norms, and personal, often contentious, family dynamics. While many legal systems aim to protect surviving spouses from destitution, significant challenges arise due to differences in marital regimes and the conflict between statutory law and customary practices. Specifically, under intestate succession—where a person dies without a will—is often characterized by the intersection of statutory law, deeply ingrained patriarchal traditions, and, in some regions, inadequate legal frameworks. Despite improvements in many jurisdictions (such as the Succession Amendment Act 2022 in Uganda), significant challenges remain that often leave widows, in particular, economically insecure and vulnerable to property grabbing. In many communities, especially rural areas, customary law prohibits women from inheriting property upon widowhood. Clan members may disregard statutory protections, appointing an heir (often a son) who takes control of the property, leaving the widow at their mercy. In some jurisdictions, intestate laws only recognize a small portion of the estate for the

widow, which undermines equality, clan members or relatives often take over the property before letters of administration are granted, treating the assets—including those jointly acquired—as solely belonging to the deceased's clan. This Chapter presents a comparative analysis of Uganda's succession law with other selected jurisdictions, examining the legal frameworks, time limits for legal action, limitations in the amount recoverable and mitigation measures. By comparing Uganda's laws with global best practices and other countries' experiences, this study identifies the gaps, challenges, and opportunities from which conclusions can be drawn to offer suggestions for improvement for Uganda in the next Chapter.

4.2 Analysis of Selected Jurisdictions

For a long time in history, the issue of protecting property rights of surviving spouses has been curtailed by several legal challenges globally. This is why the protection of property rights for surviving spouses in intestate succession varies significantly, ranging from absolute ownership to limited life interests depending on the jurisdiction.¹ Moradipoor² ascertained that while Western jurisdictions often focus on statutory legacies and equal division, African and Asian jurisdictions frequently balance statutory law with customary practices, which can sometimes weaken a widow's rights. In USA, generally, intestate laws favour the surviving spouse, often granting them the entire estate if there are no children, or a significant portion (e.g., 50%) if children exist. Community property states (e.g., California) treat the spouse as having an automatic 50% stake in marital assets.³ Mishra⁴ shows that in UK, under the Administration of Estates Act 1925, a spouse is entitled to a 'statutory legacy' (a fixed sum) plus personal chattels, with the remainder divided between the spouse and children. In South Africa, the Intestate Succession Act, 1987 (Act 81 of 1987) governs this area, usually prioritizing the surviving spouse and children. The spouse inherits either a minimum amount (currently R250,000) or a child's share, whichever is greater, ensuring a foundational level of protection.⁵ In India, however, succession is primarily governed by personal laws (Hindu Succession Act, Indian Succession Act for Christians/Parsis), which have evolved to grant women stronger property rights. A Hindu widow inherits equally alongside children and the mother of the deceased. However, the system is complex, and in some, scenarios, joint family

¹ RF Storrow, 'Family Protection in the Law of Succession: The Policy Puzzle', 2019:11-98. *Ne. UL Rev.*

² S Moradipoor, 'Comparative Study of Family Law Systems in East and West', 2025: 497-505. *Advanced Journal of Management, Humanity and Social Science*. 2025;1(8).

³ TES Poppe, 'Married, with Children at Death.' 2022:47. *ACTEC Law Journal* (23):2.

⁴ A Mishra, 'Vicissitudes of Women's Inheritance Right—England, Canada and India at The Dawn Of 21st Century', 2016:481-508. *Journal of the Indian Law Institute*.

⁵ T Mahlaela, 'A comparative study of the impact of technology on testate succession in South Africa', 2023. Doctoral dissertation.

property rules can complicate a spouse's claim.⁶ In Kenya, the Law of Succession Act (LSA) of 1981 governs intestate succession, but it faces challenges in protecting widows due to conflicting customary practices and the 2013 Matrimonial Property Act.⁷ The subsequent sub-sections provide the aspects and factors based upon which property rights of surviving spouses are protected in the selected countries focusing on how the law and institutions have addressed interstate succession for separated spouses. Specific attention has been accorded to US, UK, India, South Africa and Kenya.

4.2.1 The United States of America

Remarkably, intestate succession in the U.S. has evolved from strict English common-law, which favoured lineal descendants and land primogeniture, to a system heavily prioritizing the surviving spouse and egalitarian distribution. Succession modern laws, driven by the Uniform Probate Code (UPC),⁸ focus on the 'conduit theory'—assuming the deceased would want the spouse to inherit and provide for children

4.2.1.1 Non-Automatic Disqualification Because Of Separation

Although US lacks a general law but rather primarily governed by individual state statutes, generally, a spouse is not automatically disqualified from inheriting property solely due to separation. A legally married spouse, even if estranged or living apart, is still considered a 'surviving spouse' entitled to inherit if the deceased spouse dies without a will. In California for instance, whether a separated spouse is disqualified from inheriting via intestate succession depends critically on whether the separation is formal (legal) or informal (physical separation). The California Probate Code⁹ provides for disqualification of a spouse in formal separation, while an informal separation does not automatically do so. It provides that, a surviving spouse is entitled to inherit community property and a portion of separate property.¹⁰ Generally, if the marriage has not been legally dissolved, the surviving spouse is still considered a 'spouse'. A final judgment of legal separation (distinct from just moving out) can sever property rights. When a marriage is formally separated by a court judgment, the spouses are considered legally separated, and the surviving spouse is often not entitled to inherit under intestate laws. However, simply living apart (physical

⁶ A Mishra, 'Breaking silence: Christian women's inheritance rights under Indian Succession Act, 1925', 2014:1-30. *Chotanagpur Law Journal*. 9(9).

⁷ Fila AE, Kiage PO, Musembi CN. Partition in Life and in Death: Intestate Succession after the Matrimonial Property Act, 2013. 2025:135. *E. Afr. LJ*.

⁸ UPC 1990, Sec 2-120.

⁹ California Probate Code 1990, Sec 78.

¹⁰ As Above, Sec 6401(a).

separation) without a court judgment does not terminate the marriage or the spouse's legal status as an heir under intestacy law. This is exhibited in the case of *Estate of Lahey*¹¹ held that a judgment of legal separation, which divides property, severs the marital property rights, including the ability of a spouse to inherit via intestacy. Similarly, in *re Marriage of Norviel*,¹² it was resolved that for property division purposes, the court may look to whether there was a 'complete and final separation' (both parties intended to end the marriage and acted on that intent). The law further provides that if the couple is separated but still maintains an 'intimate spousal relationship' or has not finalized a formal separation, the surviving spouse may still inherit, as shown in scenarios where living apart was due to non-marital factors. However, this right is not absolute and can be revoked under specific state legal frameworks or through voluntary agreements. For instance, in the case of *re Estate of Petelle*,¹³ the court held that a separation agreement in which both parties waived 'all' rights in the property of the other, without specifically mentioning inheritance, was enough to disqualify a spouse from inheriting under intestacy rules. Furthermore, in *Estate of Lahey*¹⁴ (1999), it was determined that a formal legal separation judgment, which adjudicated all property rights, effectively severed the right of the separated spouse to inherit through intestacy. However, in *State v Smith*,¹⁵ Michigan law provides that a spouse who is wilfully absent, deserts, or fails to support the deceased spouse for more than a year is disqualified from inheritance.

4.2.1.2 'Separation in Fact' Requirement

It has also been established that physical or functional separation of a household does not automatically disqualify a surviving spouse from inheriting property rights under intestate succession (when there is no will), provided the couple is still legally married at the time of death in USA. While USA is a community property state where separated spouses generally retain inheritance rights, a formal legal separation judgment can sever these rights. In California, the Probate Code¹⁶ provides that a surviving spouse excludes someone whose marriage was dissolved or annulled. A mere physical or functional separation (living apart, separate finances) does not terminate the right to inherit. The Probate Code provides that if no will exists, a legally married spouse inherits 100% of the community property and a portion of separate property.¹⁷ However, while physical separation does not trigger disqualification, a formal, court-ordered legal separation

¹¹ [1999] 76 Cal. App. 4th 1056.

¹² [2002] 102 Cal. App. 4th 1152.

¹³ [2020] 195 Wash.2d 661, 462 P.3d 848.

¹⁴ [1999] 76 Cal. App. 4th 1056.

¹⁵ [2015] 300 Mich. App. 50, 800 N.W.2d 10.

¹⁶ California Probate Code (n 2 Above), **Sec 78**.

¹⁷ Probate Code 1990, Sec 6401.

judgment does. In the case of *Estate of Labey*,¹⁸ it was confirmed that a judgment of legal separation is treated similarly to a divorce, cutting off intestate inheritance rights. In *re Marriage of Norviel*,¹⁹ it was reinforced that only a formal judgment, not just a physical separation, severs the right to inherit.

In the United States therefore, intestate succession law generally relies on legal marital status rather than the physical or functional state of the relationship. However, this is not absolute, and case law indicates a trend toward examining whether a ‘separation agreement’ or ‘behaviour-based’ actions indicate a waiver of rights. In most US jurisdictions, if spouses are separated but not legally divorced, they are still considered ‘surviving spouses’ for purposes of intestate succession as seen in *re Marriage of Norviel*,²⁰ and *Estate of Labey*²¹ above. However, if the physical separation is accompanied by a formal, written separation agreement, courts are likely to disqualify the spouse if the agreement contains a waiver of rights. In *Belenski v. Jefferson County*,²² the Court found that a separation agreement that explicitly waives ‘all’ marital rights by definition waives the right to inherit from a deceased spouse's estate, even if a final divorce decree was not yet issued. In some states, it goes beyond legal status to ‘emotional fault’ or bad behaviour, though this is rare in pure intestate cases unless it aligns with ‘slayer statutes’ or abandonment. Conclusively, without a divorce or a signed waiver of rights, a separated spouse in the US remains a legal heir, often to the detriment of other heirs. The law does not automatically ‘know’ that a marriage has functionally ended without a formal legal document, such as a divorce decree or separation agreement, being filed.

4.2.1.3 Burden of Proof on the Surviving Spouse

The intestate succession law in US generally puts the initial ‘Onus Probandi’ on the surviving spouse to establish their status as a legal spouse at the time of the decedent's death. While surviving spouses have high priority and often inherit the entire estate and they must prove the validity of the marriage which existed before separation with the deceased. However much the law varies by state but generally grant the surviving spouse the highest priority in inheriting the deceased's probate estate. To qualify as a surviving spouse, the individual must have been legally married to the deceased person at the time of death.²³ The burden is on the survivor to provide evidence of

¹⁸ [1999] 76 Cal. App. 4th 1056.

¹⁹ [2002] 102 Cal. App. 4th 1152.

²⁰ As Above.

²¹ [1999] 76 Cal. App. 4th 1056.

²² [2016] 186 Wn.2d 452, 378 P.3d 176.

²³ Probate Code (n 17 above), **Sec 78**.

this marriage if it is challenged by other potential heirs (e.g., children or siblings). In states that recognize common-law marriage, the proponent must prove the existence of the marriage—including intent to be married—by a preponderance of the evidence.²⁴ If the couple was separated or in the process of divorce, a judge may require evidence to determine if the legal marriage still existed for purposes of inheritance.²⁵ In community property states, the surviving spouse owns 50% of the community property automatically, but may have to prove that specific assets were indeed community property. In States like California, the burden of proof in intestate succession—does not uniformly rest on the surviving spouse, but rather follows specific, statutory presumptions regarding the nature of the property. While the surviving spouse is prioritized by law, they often bear the burden of proving that specific assets are community property if they are titled only in the decedent's name or if they are claiming property that was acquired in a non-community property state. Assets acquired during marriage are presumed to be community property. Therefore, if a spouse claims an asset in the estate is community property, they may not need to prove it initially; the burden falls on others to prove it is *separate* property.²⁶ The Evidence Code²⁷ explains that if an asset is titled in the decedent's name alone, a conflict arises. Historically, this title presumption could override the community presumption. However, in *re Brace*²⁸ it was clarified that for property acquired after 1975, the community property presumption prevails over the title presumption. If a spouse claims an asset is community property (even if in the decedent's name), they must often 'trace' the funds used to purchase that asset back to community earnings, which requires extensive documentation. Additionally, according to *Marriage of Dadashian*,²⁹ when a spouse controls or manages property after separation or death, they have the burden to show what happened to that property. In *Estate of Lensch*,³⁰ the court established that the burden of proof rests with the party who would benefit from survivorship, regardless of who filed the petition. In summary, while the law heavily favours the surviving spouse in intestate succession, they bear the burden of proving their legal standing if that status is challenged.

4.2.1.4 Time Limit for Legal Action

United States succession law imposes strict time limits for a surviving spouse to claim property rights under intestacy. While a surviving spouse generally has priority to inherit, failure to act within

²⁴ UPC (n 1 Above), **Sec 2-120**.

²⁵ As Above.

²⁶ Family Code, Sec.760.

²⁷ Evidence Code, Sec. 662.

²⁸ [2020] 9 Cal. 5th 903, 470 P.3d 15, 266 Cal. Rptr. 3d 298.

²⁹ [2024] 102 Cal.App.5th 392.

³⁰ [2009] 177 Cal.App.4th 667.

specific statutory windows—typically ranging from a few months to a year after death or the opening of probate—can result in the forfeiture of inheritance rights or the inability to contest the distribution of assets. The law provides that claims against an estate, including those by a spouse to claim an elective share (if the intestacy is partial) or to challenge the administration of the estate, are subject to short limitations. For instance, in some jurisdictions, a claim must be brought within six months to a one-year period following the appointment of a personal representative.³¹ While there is no strict deadline for opening probate, delaying it can lead to issues, and once the process starts, the court expects administration to move forward, often requiring claims within a few months.³² The law also speaks about escheatment—that if a surviving spouse waits too long and fails to claim assets, the estate may ultimately escheat to the state.³³ For example, in Florida, while a spouse may have time to reclaim assets, after a certain point i.e. 10 years in some cases, the state's rights to the property become absolute. Most states require a surviving spouse to outlive the decedent by a set period, typically 120 hours (5 days), to inherit via intestacy.³⁴ In cases where spouses fail to act, courts have held that rights can be lost to ensure the estate can be distributed to other beneficiaries. In exceptional circumstances, such as fraud or concealment of assets, courts may allow a surviving spouse to bring a claim after the statutory deadline has passed. In the case of *Estate of Roccamonte v United States*³⁵ highlights that even common-law spouses might be entitled to shares, but they are still bound by the same probate timelines for asserting their claims. In *Cowan v Foreman*³⁶, however, courts criticized the use of 'standstill agreements' (private agreements to extend time limits), reinforcing that the 6-month limitations period (similar in UK/US contexts) is rigid and belongs to the court, not the parties. In case where the decedent dies with a homestead property, the surviving spouse receives a 'life estate.' However, the spouse has the right to elect to take an undivided one-half interest as a tenant in common instead. This election must be made within 6 months of the decedent's death.³⁷ This was evident in *Samad v. Pla*³⁸ where it was resolved that failure to file this election within the six-month deadline constitutes a waiver, and the spouse is left with only a life estate.

³¹ UPC (n 1 Above), Sec.3-803.

³² Arizona Revised Statutes Sec.14-3803

³³ Florida Statute, Sec.732.106.

³⁴ UPC (n 1 Above), Sec.3-803.

³⁵ 808 A.2d 838 (N.J. 2002) or 174 N.J. 381.

³⁶ [2019] EWCA Civ 1336.

³⁷ Florida Statute (n 33 above), Sec.732.401(2)(b).

³⁸ [2019] 267 So.3d 476 (Fla. App.).

4.2.1.5 Limitation on Amounts Recoverable

In US, intestate succession law generally protects the surviving spouse by granting them the largest share of the estate including California Probate Code, New York EPTL, or the Uniform Probate Code adopted by some states. However, there are significant legal limitations on the amount a surviving spouse can recover, particularly when the decedent leaves behind children from a previous relationship or other heirs, or in states that follow specific, non-uniform, or community property rules. The law provides that the spouse is not guaranteed 100% of the estate if there are children from a prior marriage.³⁹ In this case, if the decedent has children who are not the children of the surviving spouse, the spouse typically receives a flat sum (e.g., \$150,000–\$225,000) plus 50% of the remaining estate. For example, if a spouse and children survive, the spouse receives the first \$50,000 and 50% of the residue, with the rest going to the children.⁴⁰ In California, if there are children from a prior marriage, the spouse may be limited to 50% or even 33% of the separate property. If there are no children, but the decedent leaves parents, some states limit the spouse to a portion of the estate rather than the whole.⁴¹ In community property states (e.g., Texas, California), the surviving spouse only inherits the decedent's 50% share of community property, not the entire property. Currently, statutes often treat non-probate transfers (life insurance, joint bank accounts) as advancements on the spouse's share, reducing the total amount the spouse receives from the probate estate.⁴² This is demonstrated in the case of *Estate of Leslie*.⁴³ Courts frequently deal with disputes over whether property is community or separate, which directly impacts the 'limitation' on the spouse's share. If property is deemed separate, the spouse receives less (if kids exist) than if it is deemed community. However, in *Estate of Lima*.⁴⁴ California Probate Code § 6402.5 (part of the intestate scheme) prevents 'ancestral property' (property from a previously deceased spouse) from automatically going entirely to the new surviving spouse, limiting their inheritance to prevent it from passing to a new spouse's family instead of the original family.

4.2.1.6 Discretionary Judicial Power

The law in US provide limited, rather than broad, judicial discretion when a surviving spouse seeks to inherit property. While the law aims to protect the surviving spouse by giving them priority, judicial discretionary power is usually confined to interpreting ambiguous situations (e.g.,

³⁹ UPC (n 1 Above), Sec 2-102.

⁴⁰ New York (EPTL 4-1.1).

⁴¹ Pennsylvania (20 Pa.C.S. § 2102).

⁴² Utah Code § 75-2-102.

⁴³ [1984] 37 Cal.3d 186, 207 Cal.Rptr. 561, 689 P.2d 133.

⁴⁴ [1964] 37 Cal.Rptr. 404, 225 Cal.App.2d 396.

determining the validity of a marriage, common-law status, or whether a separation constituted abandonment). Intestate succession statutes (such as those based on the Uniform Probate Code - UPC) set a specific formula for distribution. In most states, the surviving spouse is the first priority to inherit, often receiving the entire estate if there are no children, or a significant share if children exist.⁴⁵ In California, the exact percentage a surviving spouse inherits based on the existence of other heirs (children, parents, siblings).⁴⁶ Courts cannot deviate from the statutory formula merely because they believe it is unfair. The law is designed to fulfill the presumed intent of the deceased, not the judge's view of equity. For instance, in *Lawrence v. Chater*,⁴⁷ it was established that the judge discretion is limited within the predetermined amount given. However, judicial discretion is primarily exercised in specific, legally recognized exceptions: for instance, if a separation or divorce was pending, a judge has the discretion to rule on whether the surviving spouse is still considered a 'legal spouse'.⁴⁸ In states recognizing it, a judge must determine if the couple met the burden of proof (cohabitation, mutual intent). A judge may exercise discretion to disqualify a spouse who abandoned the deceased or failed to support them. Courts rarely 'grant' extra property to a spouse beyond what the statute provides, but rather use their discretion to ensure the spouse is not unfairly disqualified or that they receive their share of the 'marital partnership'. In *Estate of Roccamonte v United States*,⁴⁹ the court demonstrated discretion by recognizing a common-law spouse's right to a share of the estate, despite the lack of a formal marriage ceremony. Under state laws, such as in New York, a court has the discretion to determine if a spouse's separation from the deceased constituted abandonment, which would disqualify them from inheriting intestate. While not purely discretionary, courts sometimes use the concept of 'marital property' to award a spouse their half-share, especially in community property states, treating the inheritance as a matter of property rights rather than intestacy rules.

4.2.2. United Kingdom

Intestate succession in the UK (primarily England and Wales) has evolved from medieval, land-focused, and patriarchal rules into a modern, statutory framework emphasizing protection for spouses and civil partners. The Administration of Estates Act 1925 (AEA 1925) modernized the system, with major updates in 2014 boosting surviving spouse entitlements.

⁴⁵ UPC (n 1 Above), Sec 2-102.

⁴⁶ California Probate (n 2 Above), Sec.6401.

⁴⁷ [1996] 516 U.S. 163.

⁴⁸ UPC (n 1 Above), Sec 2-102.

⁴⁹ 808 A.2d 838 (N.J. 2002) or 174 N.J. 381.

4.2.2.1 No Direct Disqualification in case Separation

In UK, separation does not automatically disqualify a spouse or civil partner from inheriting property rights under intestacy rules, provided the marriage has not been legally dissolved by a Final Order (divorce).⁵⁰ If a couple separates informally (without a court order) and one dies without a will, the surviving spouse is still entitled to inherit the same as a married spouse.⁵¹ In *Re Estate of Singh (deceased)*,⁵² it was illustrated that even where a marriage has broken down, the court acknowledges the special, strong status of a spouse. The case shows that separated spouses can even use the 1975 Act to claim 'reasonable financial provision' if the intestacy rules do not provide enough, or if a will disinherits them. However, a decree of judicial separation specifically changes the inheritance rules. If a spouse dies intestate while a decree of judicial separation is in force, the surviving spouse is treated as if they had already died. Therefore, they do not inherit under intestacy rules.⁵³

According to Inheritance and Trustees' Powers Act (2014),⁵⁴ all personal possessions, a statutory legacy (a fixed sum, currently £322,000 as of 2023) and one half of the remaining estate (if there are children) or the entire estate (if there are no children) goes to the surviving spouse. Secondly, separation does not affect the 'right of survivorship' if a property is held as beneficial joint tenants.⁵⁵ Upon death, the home passes automatically to the surviving spouse, regardless of the separation. To prevent this, separated spouses must sever the joint tenancy to become tenants in common, which allows their share to pass under their own will or intestacy laws. For instance, in *Kinch v Bullard*,⁵⁶ a notice of severance is effective even if it is intercepted or destroyed by the other party before they read it, provided it was properly served. This shows that merely separating or separating and not informing the other party does not destroy the right of survivorship; it requires formal notice. In *Williams v Hensman*,⁵⁷ it was established that severance can occur in three ways: (1) acting on one's own share, (2) mutual agreement, or (3) a course of dealing indicating the parties treated the property as a tenancy in common. Mere separation is not sufficient under this case unless it fits these criteria.

⁵⁰ AEA 1925, Sec.46 (1).

⁵¹ As Above, Sec.46 (1)(i).

⁵² [2023] EWHC 55 (Fam).

⁵³ Matrimonial Causes Act 1973, Sec.17&18.

⁵⁴ Inheritance and Trustees' Powers Act 2014, Sec. 1.

⁵⁵ AEA (n 50 above), Sec.3(4).

⁵⁶ [1999] 1 WLR 423.

⁵⁷ [1861] 70 ER 862.

4.2.2.2 Physical and Functional Separation of Household

Under UK law, physical and functional separation of a household does not automatically disqualify a married spouse or civil partner from inheriting property rights under intestacy rules.⁵⁸ A spouse remains entitled to inherit until the marriage is formally dissolved by a final order of divorce or annulment. The act dictates that a surviving spouse is the primary beneficiary. If the deceased leaves a spouse and children, the spouse takes the first £322,000 (as of 2023), all personal possessions, and half of the remaining estate.⁵⁹ If no children exist, the spouse inherits the entire estate. The law recognizes a person as a spouse if they were legally married at the time of death. Separation, regardless of duration, does not alter this status. If spouses are merely living apart but remain married, the separated spouse retains full inheritance rights. If a court has granted a decree of judicial separation, the law treats the separated spouse as having predeceased the deceased, meaning they do *not* inherit under intestacy rules. If a separated spouse is left nothing due to a will, or is dissatisfied with their share under intestacy, they can apply for ‘reasonable financial provision’.⁶⁰ The law therefore looks for legal, not physical, separation.⁶¹ For instance, a spouse who was estranged (estranged, living in a separate home, no communication) still has a legal claim to the estate, overriding other relatives, unless they are divorced. If the home is owned as joint tenants, it passes automatically to the survivor, regardless of separation. If owned as tenants in common, the deceased's share is distributed by intestacy laws, which includes the separated spouse.⁶² In addition, while a deed of separation might contain a clause renouncing inheritance rights, these can sometimes be challenged. However, for intestate purposes, only a legal divorce or judicial separation is definitive.⁶³ In *Thomas Sismey v Marissa Salandron*⁶⁴ it was highlighted that even if a separation/divorce settlement is formally signed, it can be litigated to examine whether it was a ‘collusive’ transaction and whether the 1975 Act's requirement for reasonable financial provision can override. In claims under the 1975 Act, the court considers the length of the marriage, the contributions to the family, and what the spouse might have received in a divorce. Even if separation was long-term, a spouse may still receive a portion if they can show financial need. For instance, in *Kaur v Estate of Karnail Singh*⁶⁵ Although this involved a Will rather than pure intestacy, the High Court case highlighted that a separated spouse who was completely excluded

⁵⁸ AEA (n 50 above), Sec.46 (1).

⁵⁹ AEA (n 50 above), Sec.46.

⁶⁰ Inheritance (Provision for Family and Dependents) Act 1975, Sec.1(1)(a).

⁶¹ As Above.

⁶² AEA (n 50 above), Sec.3(4).

⁶³ Inheritance (Provision for Family and Dependents) Act (n 60 above), Sec.1(2).

⁶⁴ [2021] 10 WLUK 372.

⁶⁵ [2023] EWHC 403 (Fam).

from a will could successfully claim a significant portion of the estate. The court considered the long marriage and the fact that, but for the death, a divorce court would likely have divided assets equally. In another case of *Kars v Brown & Others*,⁶⁶ it was confirmed that a former spouse can still bring a claim under the Inheritance Act 1975, even when excluded by the strict intestacy rules. If the separated spouses own a home as beneficial joint tenants, the property automatically passes to the survivor, regardless of the intestacy rules. However, if the tenancy has been severed to tenants in common (a common step during separation), the deceased's share passes under intestacy rules, but the survivor's entitlement can be challenged under the 1975 Act.

4.2.2.3 Burden of Proof on the Surviving Spouse

UK succession law does not generally place a heavy burden of proof on a surviving spouse to prove their entitlement to inherit property under intestacy rules.⁶⁷ However, the spouse must prove they meet specific legal criteria regarding the validity of the marriage and survivorship, and the burden of proof shifts to them if they claim against the estate under specific circumstances. For instance, if a person dies intestate (without a valid will), the rules of intestacy dictate how the estate is distributed. The surviving spouse or civil partner has the highest priority. The Act stipulates that if there are no children, the spouse inherits the entire estate. If there are children, the spouse inherits personal chattels, a 'statutory legacy' (currently £322,000 for deaths on/after 26 July 2023), and 50% of the remaining estate.⁶⁸ The spouse must demonstrate they were legally married or in a civil partnership at the time of death. A 'common law marriage' is not recognized. If the spouse was legally separated (via a judicial separation decree), they are treated as having predeceased the intestate, thus losing their entitlement.

The surviving spouse must prove that a spouse must survive the intestate by at least 28 days to inherit.⁶⁹ If it is uncertain who died first, the 'commorientes' rule does not apply; rather, each is presumed to have predeceased the other, destroying the spouse's claim. If the home was owned as 'joint tenants,' it passes automatically via survivorship, not intestacy. If held as 'tenants in common,' only the deceased's share passes under intestacy, requiring the spouse to prove the nature of the tenancy. The burden of proof typically lies with whoever is challenging the status quo, but the spouse may have to prove certain facts. For instance, in cases where the marriage is questioned (e.g., foreign, invalid, or customary marriages), the burden is on the surviving spouse

⁶⁶ [2026] EWHC 31 (Fam).

⁶⁷ AEA (n 50 above), Sec.46 (1).

⁶⁸ AEA (n 50 above), Sec.46 (1) (i).

⁶⁹ Law Reform (Succession) Act 1995, Sec.1(1).

to prove the validity of the marriage to inherit. In *Busi v Busi*,⁷⁰ the claimant had to prove she was validly divorced from her first husband to establish a valid marriage to the deceased. If the spouse claims for more than the intestacy rules allow, or if they were separated and challenging that separation, they must prove their ‘need’ under the Inheritance (Provision for Family and Dependents) Act 1975.⁷¹ In contentious cases involving foreign assets, the claimant (including a spouse) must prove the deceased was domiciled in England and Wales to the civil standard of ‘balance of probabilities’ like how it was exhibited in the case of *Mastaka v Midland Bank Executor and Trustee Co Ltd*.⁷² In general, the UK law actively favours the surviving spouse in intestacy, reducing their need to ‘prove’ their right to inherit, provided the marriage was legal and they survived the 28-day period. The burden of proof primarily rests on the spouse to establish the *status* of the marriage, rather than the right to the assets themselves.

4.2.2.4 Time limit for legal action

The law in UK does not impose a strict ‘time limit’ for a surviving spouse to *initially* inherit under the intestacy rules.⁷³ However, there are significant legal time limits regarding property rights, challenging the distribution, and making additional claims under the Inheritance (Provision for Family and Dependents) Act 1975.⁷⁴ The law provides that a surviving spouse or civil partner must survive the deceased by 28 days to inherit under intestacy rules. If they die within this period, they are treated as having predeceased the intestate, and they do not inherit.⁷⁵ If they survive 28 days, the spouse inherits all personal chattels, a statutory legacy (currently £322,000 for deaths on/after 6 Feb 2020), and a share of the residue. Where the estate includes a dwelling house in which the surviving spouse was residing, they have a right to require the personal representatives to ‘appropriate’ the house in satisfaction of their interest.⁷⁶ This must be done by written notice within 12 months of the grant of representation.

If a spouse feels they have not been adequately provided for under the intestacy rules, or if they need to bring a legal action to claim their rights, any application for an order for financial provision must be made within six months from the date of the grant of representation (letters of administration).⁷⁷ The court has discretion to allow a claim after this six-month deadline, but it is

⁷⁰ [2019] ZALAC 68.

⁷¹ Inheritance (Provision for Family and Dependents) Act (n 60 above), Sec.1(1)(a).

⁷² [1941] 1 All E.R. 236.

⁷³ AEA (n 50 above), Sec.46 (2A).

⁷⁴ Inheritance (Provision for Family and Dependents) Act (n 60 above), Sec.3(2).

⁷⁵ Law Reform (Succession) Act (n 69 above), Sec.1(1).

⁷⁶ Intestates’ Estates Act 1952, Sec.5.

⁷⁷ Inheritance (Provision for Family and Dependents) Act (n 60 above), Sec. 4.

not guaranteed and requires permission. For instance, in the case of *Re Salmon*⁷⁸ it was confirmed that if the delay is the fault of the applicant, the court is unlikely to grant an extension, reinforcing the strict nature of the 6-month limit. Similarly, in *Bhusate v Patel & Or*,⁷⁹ a crucial case demonstrating that an extension can be granted even after a very long delay (25 years in this case) if the applicant was 'powerless' and the estate had not been fully distributed. In *Berger v Berger*,⁸⁰ it was confirmed that the criteria for extending time: merits of the claim, promptness after the deadline, and whether the estate has already been distributed. It is thus clear that while a spouse's entitlement to inherit is not 'lost' immediately, they must act within 6 months of the Grant of Letters of Administration to enforce their rights if they are being denied their share or need to make a claim for further provision.

4.2.2.5 Limit on Amount Recoverable

The law does impose limitations on the amounts a surviving spouse or civil partner can inherit if the deceased leaves behind direct descendants (issue). These limitations are designed to balance the needs of the surviving spouse with the inheritance rights of children. The law provides that the amount a surviving spouse inherits depends on whether the deceased left children, grandchildren, or great-grandchildren ('issue'). If there are no children, the surviving spouse/civil partner inherits the entire residuary estate (everything after debts/expenses). In this case, there is no upper limitation.⁸¹ If there are children or remoter descendants, the spouse is limited to: Personal Chattels (All personal belongings); Statutory Legacy (A fixed net sum of money, increased to £322,000 for deaths on or after 26 July 2023). Half of any remaining estate (the residue) after the £322,000 is paid. The other half is split equally among the children.⁸² The 'limitation' is that the spouse does not inherit the whole estate automatically; they must share it with the children if the total estate value exceeds £322,000 plus personal chattels.⁸³ for instance, *Bhusate v Patel*,⁸⁴ it was highlighted that even 25 years after a death, a surviving spouse can claim under the 1975 Act if the strict intestacy rules left them with inadequate provision, particularly if children from a previous relationship (or the estate administrator) prevented the sale of the house.

Another practical limitation relates to how property is held. If the spouse and the deceased were joint tenants (common for family homes), the property passes automatically to the survivor,

⁷⁸ [1981] Ch. 167.

⁷⁹ [2019] EWHC 470 (Ch).

⁸⁰ [2013] EWCA Civ 1305.

⁸¹ Inheritance and Trustees' Powers Act 2014, Sec.1.

⁸² AEA (n 50 above), Sec.46 (1).

⁸³ Inheritance and Trustees' Powers Act (n 81), Sec.1.

⁸⁴ [2019] EWHC 470 (Ch).

regardless of intestacy rules, and does not count towards the £322,000 limit. However, court discretion can always come in play as evidenced in *Dingmar v Dingmar*,⁸⁵ the court looked at the valuation of assets, with subsequent reforms (ITPA 2014) clarifying that the court has discretion to value the deceased's share in a property, generally at the date of the hearing. If they were tenants in common, the deceased's share falls into the intestacy rules. In *Burgess v Rawnsley*,⁸⁶ it was established that a mutual agreement to sever (or a 'course of dealing') is sufficient to convert a joint tenancy into a tenancy in common. This is also extended in *Re Drapers Conveyance*⁸⁷ is often cited regarding the severance of joint tenancies to tenancies in common, illustrating that a formal application for a sale of property can constitute a severance, bringing the share into the deceased's estate.

4.2.2.6 Discretionary Judicial Power

UK succession law provides judicial discretionary powers to adjust the property rights of a surviving spouse under intestacy primarily through the Inheritance (Provision for Family and Dependents) Act 1975.⁸⁸ While the Administration of Estates Act 1925⁸⁹ (as amended by the Inheritance and Trustees' Powers Act 2014) sets strict statutory formulas for distributing assets, the 1975 Act acts as a safety net allowing the court to override these rules if they fail to provide 'reasonable financial provision' for the survivor.⁹⁰ The law provides that a surviving spouse can apply to the court if the intestacy rules (or a will) do not make 'reasonable financial provision'.⁹¹ The court considers what it is reasonable for a spouse to receive, regardless of whether it is required for their maintenance. This is often interpreted as a higher standard than for other claimants (i.e. children or cohabitants).⁹² If a claim is successful, the court holds wide powers to alter the statutory distribution,⁹³ including the lump sum payments (ordering a specific sum from the estate), property transfer (transferring property (such as the matrimonial home) directly to the surviving spouse), settlement of property (ordering property to be settled for the benefit of the spouse) and varying trusts (the court can alter the statutory trusts created under the intestacy rules).

While not a mandatory formula, courts often consider what the spouse would have received upon a hypothetical divorce on the day the deceased died. As noted in *Kaur v Estate of Karnail Singh &*

⁸⁵ [2006] EWCA Civ 92.

⁸⁶ [1975] 1 Ch 429.

⁸⁷ [1969] 1 Ch 486.

⁸⁸ Inheritance (Provision for Family and Dependents) Act (n 77 above), Sec. 4.

⁸⁹ AEA (n 50 above), Sec.46.

⁹⁰ Inheritance (Provision for Family and Dependents) Act (n 77 above), Sec. 1, 2, &3.

⁹¹ Inheritance (Provision for Family and Dependents) Act (n 77 above), Sec. 1(1).

⁹² Inheritance (Provision for Family and Dependents) Act (n 77 above), Sec. 1(2)(a).

⁹³ Inheritance (Provision for Family and Dependents) Act (n 77 above), Sec. 2.

Ors,⁹⁴ this provides a benchmark of fairness, though it is ‘neither a ceiling nor a floor’. Under the Administration of Estates Act 1925, a spouse has the right to require the personal representative to ‘appropriate’ the matrimonial home towards their share, giving the court discretion in how to handle this asset during administration. In *Re Krubert*,⁹⁵ the court confirmed that spousal claims are not restricted to mere maintenance, but may include capital provision that reflects their status as a spouse. The court can also use its discretion to treat the deceased's share of a joint tenancy as part of the ‘net estate’ for the purpose of making financial provision, if it is ‘just in all the circumstances’.⁹⁶

In summary, the UK legal framework provides a strict default (Intestacy Rules), but the 1975 Act provides significant judicial discretionary power to override this default, aiming for a ‘fair and reasonable’ outcome, with a particular focus on the spouse's needs and contributions.

4.2.3 India

Intestate succession in India has evolved from diverse, customary, and gender-biased religious laws toward a more uniform, codified, and gender-equal system. Key milestones include the Indian Succession Act, 1925 for Christians/Parsis, and for Hindus, the 1956 Act.

4.2.3.1 Non-Disqualification Due to Separation

The Indian law specifically the Hindu Succession Act, 1956, separation (judicial or otherwise) does not disqualify a spouse from inheriting property through intestate succession.⁹⁷ As long as the marriage is not legally dissolved by a decree of divorce at the time of death, the spouse remains a Class I heir.⁹⁸ A wife (or husband) is a primary Class I heir. Separation does not alter this status.⁹⁹ Previously, a widow who remarried was disqualified. The amendment removed this, and separation was never a ground for disqualification under the new law.¹⁰⁰ Disqualification is limited to murder of the deceased, abetting such murder, or conversion. Separation or desertion is not listed.¹⁰¹ The law provides that a separated spouse is still a spouse until divorce.¹⁰² This is illustrated in *Thankam vs Rajan*,¹⁰³ it was pronounced that ‘The wife continues to be the wife till the marital tie is broken

⁹⁴ [2023] EWHC 304 (Fam).

⁹⁵ [1977] (vLex United Kingdom).

⁹⁶ Inheritance (Provision for Family and Dependents) Act (n 77 above), Sec. 9.

⁹⁷ Hindu Succession Act 1956, Sec.8.

⁹⁸ As Above, Schedule Class 1.

⁹⁹ As Above, Schedule Class 1.

¹⁰⁰ As Above, Sec 24.

¹⁰¹ As Above, Sec 24-28.

¹⁰² As Above, Sec.8.

¹⁰³ [1992] A.S. No. 471.

by a decree...'. Thus, simple separation does not disqualify a wife. The law further provides that a wife has the right to reside in the shared household, which often includes a separated wife claiming right to stay in the husband's house.¹⁰⁴ It was also resolved in *Om Prakash v. Radhacharan*,¹⁰⁵ the Supreme Court held that if a wife inherits property from her husband (or father-in-law) and dies intestate and childless, that property will revert to the heirs of the husband, not her own parents.

4.2.3.2 Spousal Physical and Functional Separation of Household

Physical or functional separation of a household does not disqualify a spouse from inheriting property in India.¹⁰⁶ The law primarily base inheritance on legal marriage, only disinheriting in cases like murder, not for separation. A wife is a Class I heir, entitled to inherit property, and is recognized as a full owner, not limited by separation.¹⁰⁷ Section 25 only disqualifies a person who commits or abets the murder of the deceased. The law governs Christians and interfaith marriages under the Special Marriage Act.¹⁰⁸ It provides specific, fixed shares for spouses (e.g., 1/3 if children survive) regardless of living arrangements.¹⁰⁹ Legal separation or physical separation does not automatically equate to divorce. Only a legal divorce terminates the marital status required to disqualify a spouse. The determining factor is the subsistence of a legal marriage at the time of death. As long as the marriage is valid, the spouse remains an heir. There is no provision in the Hindu Succession Act that voids inheritance rights due to 'functional separation' (living apart). Disqualification is strictly limited to legal grounds, such as committing murder of the deceased, as seen in *Janak Rani Chadha v the State*,¹¹⁰ where the husband was disqualified for murdering his wife. However, a spouse who lives separately, even for an extended period, remains a legal 'wife' or 'husband' until a formal decree of divorce is granted. In *Thankam vs Rajan*,¹¹¹ it confirmed that separation does not break the marital tie; only a legal divorce does. In cases where a couple lives together, courts have often presumed a valid marriage (e.g., *Tulsa v. Durghatiya*),¹¹² granting the woman the status of a wife for inheritance purposes, highlighting that the law favours the legal presumption of marriage over the physical reality of separation. Physical and functional separation of a household thus is not a valid ground for disqualification from inheritance under Indian intestacy laws. A separated spouse remains a 'wife' or 'husband' until a divorce is legally finalized.

¹⁰⁴ Protection of Women from Domestic Violence Act 2005, Sec.17.

¹⁰⁵ [2009] 15 SCC 66.

¹⁰⁶ Hindu Succession Act (n 97 above), Sec.25.

¹⁰⁷ As above, Schedule Class 1.

¹⁰⁸ Special Marriage Act 1954, Sec.21.

¹⁰⁹ As Above.

¹¹⁰ [2007] AIR DEL 107.

¹¹¹ [1992] A.S. No. 471.

¹¹² [2008] 4 SCC 520.

4.2.3.3 Burden of Proof on the Surviving Spouse

In India, surviving spouse (widow/widower) are classified generally as a top-priority heir in intestate succession. However, the burden of proof lies on the surviving spouse to establish the validity of their marriage if it is challenged by other legal heirs, as this relationship is the foundation of their inheritance right.¹¹³ The legal framework and relevant case law indicate that while the law favours the spouse, evidentiary requirements for proving the marital relationship often fall on them. If a Hindu male dies intestate, the widow is a Class I heir, taking property simultaneously with children and the mother. If a Hindu female dies intestate, her husband is a primary heir.¹¹⁴ In instances when a relationship (marriage) is questioned, the opinion of persons having special knowledge is relevant.¹¹⁵ If a marriage is denied by others, the surviving spouse must provide proof (marriage certificate, witnesses, or evidence of long-term cohabitation) to establish their status as the legal heir.¹¹⁶

Similar provisions apply to Christians and others under this Act, where the widow is entitled to a portion of the estate (or all, if no lineal descendants exist).¹¹⁷ In *Jayachandran vs. Valsala*,¹¹⁸ the court held that a marriage must be proven valid to claim inheritance rights. Under Section 24 of the Hindu Succession Act, a widow who re-married before the succession opened could be disqualified.¹¹⁹ In *Smt. Tej Kaur & Others*,¹²⁰ the High Court upheld that if a widow's chastity or the legality of the marriage is challenged, it must be proved as it is a condition precedent to inheritance. However, in *Seema vs Ashwani Kumar*¹²¹ it was made that marriage registration is compulsory, making the marriage certificate the standard evidence. When a husband purchases property in his wife's name, the law presumes it is for her benefit, making it her absolute property. Upon her death, her heirs (including children) inherit it. If the husband's heirs claim it was a *benami* transaction (purchased by the husband for himself), the burden of proof lies on those alleging it was *benami* (the husband's heirs), not the wife or her children. The burden of proof to establish the legal relationship of a 'surviving spouse' rests with the spouse. However, once a valid marriage or long-term cohabitation is proven, the statutory presumption strongly favours the spouse under Indian intestate succession laws.

¹¹³ Hindu Succession Act (n 97 above), Sec.15.

¹¹⁴ As Above, Sec.8.

¹¹⁵ Indian Evidence Act 1872, Sec. 50.

¹¹⁶ As Above, Sec. 114.

¹¹⁷ As Above, Sec.33&42.

¹¹⁸ [2016] (2) KHC 177.

¹¹⁹ Hindu Succession Act (n 97 above), Sec.24.

¹²⁰ [1979] No. 2774.

¹²¹ [2008] 1 SCC 180.

4.2.3.4 Time limit for legal action

In India, the succession laws generally do not place a specific, rigid time limit on a surviving spouse to claim their share in intestate property, but they must act within a reasonable period, typically three years from when the right to sue accrues (e.g., when the right is denied or succession opens), as guided by the Limitation Act, 1963.¹²² While rights are immediate under the Hindu Succession Act, 1956, inordinate, unexplained delays can result in losing the right to claim the property. Under Section 8 and 14 of Hindu Succession Act, a widow inherits an equal share (as a Class I heir) immediately upon the husband's death, and this becomes her absolute property. There is no limitation period specified within the Act itself for this inheritance.¹²³ While the right to inherit is inherent, the right to *sue* for possession of property in case of dispute is generally governed by this Act. A suit for declaration or possession usually has a limitation period of 3 years from when the cause of action arises, such as when the spouse's rights are denied or when another heir wrongfully takes possession.¹²⁴ The Indian Succession Act, 1925, and personal laws (like the Hindu Succession Act, 1956), when a person dies without a will, their property immediately vests in the legal heirs, including the spouse.¹²⁵

While the right to the property exists, any legal action (suit) to recover possession of immovable property from someone wrongfully holding it must be filed within 12 years from when the possession becomes adverse to the spouse.¹²⁶ It should be noted that the law does not force a widow to partition property immediately. However, if other heirs refuse to share the property, she must initiate legal action within a reasonable timeframe (typically 3 years from denial).¹²⁷ A surviving spouse's right to property is absolute and arises immediately on the death of the intestate spouse. There is no 'expiry date' on inheriting the property itself. However, if the spouse needs to take legal action to recover or assert their share against other legal heirs, they must do so, generally, within three years of the cause of action arising.¹²⁸

In cementing the above narrative, *Tulasamma v. Vaddeboyina Sesha Reddy*¹²⁹ established that if a widow acquired property in lieu of maintenance (a pre-existing right), it becomes her absolute property under Section 14(1). The Court held that even if a woman was not in physical possession

¹²² Limitation Act 1963, Schedule, Art.113.

¹²³ Hindu Succession Act (n 97 above), Sec.14.

¹²⁴ Limitation Act (n 122 above), Schedule, Art.113.

¹²⁵ Hindu Succession Act (n 97 above), Sec.8.

¹²⁶ Limitation Act (n 122 above), Schedule, Art.65.

¹²⁷ As above, Schedule, Art.113.

¹²⁸ Hindu Succession Act (n 97 above), Sec.8 & 14(1).

¹²⁹ [1977] AIR SC 194.

of the property, if she had a legal right to it (e.g., maintenance), her right is not lost simply because she did not sue immediately. In *Sangili v. Jeyakodi*,¹³⁰ the Supreme Court discussed the limitation for a partition suit. The Court held that limitation for partition does not start until the paternity or heirship is specifically denied, rejecting adverse possession claims if there was no ‘ouster’ (active exclusion) of the legal heir. However, in the case of *Eramma v. Veerupana*,¹³¹ it was interpreted that ‘possession’ under Section 14(1). The Supreme Court clarified that if a widow is not in possession of the property at all, and is not entitled to possession, she cannot claim the benefit of absolute ownership under Section 14(1). This implies that a widow must be in actual or constructive possession (or at least have the right to possess) at the time of the Act, or she must take action to recover it within the limitation period. In *Lachhman v. Thunia (Himachal Pradesh HC)*,¹³² it was reaffirmed that succession opens on actual death, and rights to property only fully accrue at that moment.

4.2.3.5 Limit on the Amount Recovered by Surviving Spouse

There is no upper monetary limit on the amount a surviving spouse inherits via intestate succession. The law grants absolute ownership of property to the surviving spouse (widow/widower), removing traditional ‘limited estate’ restrictions. However, inheritance can be impacted by coparcenary structures (Section 6) or specific devolution rules for inherited property.¹³³ The Hindu Succession Act indicates that this is the foundational provision that transformed a woman's ‘limited estate’ (right to only income) under old Hindu law into an absolute estate (full ownership). Any property possessed by a female Hindu, whether acquired before or after the Act, is held by her as absolute owner and not as a limited owner.¹³⁴ The Hindu Succession Act defines the general rules of succession for a male Hindu dying intestate. The widow is a Class I heir, entitled to an equal share along with children and the mother, with no cap on value.¹³⁵ The Act governs the succession of a female Hindu dying intestate.

While generally progressive, section 15(2) provides a special rule: property inherited by a female Hindu from her parents reverts to them, and from her husband/father-in-law reverts to the husband's heirs if she dies without children.¹³⁶ In *Kalawatiba v Soiryabai*,¹³⁷ it was established that

¹³⁰ [2024] SA(MD).199/2023.

¹³¹ 1966 AIR SC 1879.

¹³² [1972] AIR HP 69.

¹³³ As above, Sec.6.

¹³⁴ As Above, Sec.14(1).

¹³⁵ As Above, Sec.8.

¹³⁶ As Above, Sec.15.

¹³⁷ (1991) 3 SCC 410.

the rights of a female Hindu are significantly expanded under Section 14, removing old restrictions. The law operates on shares (etc.) rather than absolute amounts. If the estate is worth ₹100 crore, the spouse inherits their share of that value without restriction.¹³⁸ The only limitation on the *type* of property is in Section 15(2), where, if a widow dies without issue, property inherited from her husband returns to his heirs rather than her own family.

4.2.3.6 Court Discretion

Indian succession law generally does not provide significant judicial discretionary powers to alter the fixed shares of a surviving spouse in intestate succession. It instead, acts as a statutory, mandatory, and inflexible framework that defines exact percentages or shares for the spouse. The law states that the role of the court is to apply the law as written, not to redistribute property based on equitable discretion or the specific financial needs of the spouse, unless there is an ambiguity or a claim of disqualification.¹³⁹ If a Hindu male dies intestate, the property devolves equally among Class I heirs, which includes the widow, children, and mother. The court cannot give the widow more than her equal share.¹⁴⁰ Specifically, it dictates that the distribution of property among Class I heirs should be per capita, meaning the widow, sons, and daughters take equal shares.¹⁴¹ Furthermore, property of a female Hindu dying intestate goes to her husband and children simultaneously. If she dies without issues, property inherited from her husband goes back to his heirs.¹⁴² A widow becomes the absolute owner of any property inherited, but the *share* she inherits is determined strictly by the class of heir she belongs to.¹⁴³

The law also provides fixed shares. If there are lineal descendants (children), the widow takes 1/3, and 2/3 goes to descendants. If there are no children but kindred, she gets 1/2.¹⁴⁴ A special provision that gives the widow the first ₹5,000 (if the estate is small) or a charge on the estate, but this is a *statutory right*, not a discretionary power of the court. A husband inherits from his wife in the same manner as a widow from her husband. In the case of *Om Prakash v. Radhacharan*,¹⁴⁵ the Supreme Court, interpreting Section 15 of the Hindu Succession Act, held that a childless Hindu widow's self-acquired property devolves upon her husband's heirs, even if they had neglected her, and not on her parents. The court noted that it was bound by the statutory rules of succession

¹³⁸ Hindu Succession Act (n 97 above), Sec.8.

¹³⁹ As Above, Sec.8.

¹⁴⁰ As above.

¹⁴¹ As above, Sec.10.

¹⁴² As Above, Sec.15 & 16.

¹⁴³ As above, Sec.8.

¹⁴⁴ As Above, Sec.33 & 33A.

¹⁴⁵ [2009] 15 SCC 66.

rather than equitable considerations. Similarly, in the case of *Kamal Anant Khopkar vs Union of India*.¹⁴⁶ While acknowledging that the provisions of the Hindu Succession Act are sometimes inequitable (specifically regarding childless widows), the Supreme Court noted that any changes must come from Parliament, not through judicial discretion. In *Sampathkumari v. M. Lakshmi Ammal*.¹⁴⁷ The Court clarified that Section 14(1) of the Hindu Succession Act 1956 converted limited estates of women into absolute estates, but the share of the widow was determined by the law as it stood at the time of succession. However, in *Mrs. Estrida Lucy Janet Vaz v. Nil*.¹⁴⁸ The Karnataka High Court stated that, under the Indian Succession Act 1925, if a son dies intestate leaving a wife and children, the mother does not have a legal right to a share. The court emphasized that the statute must be applied strictly and, when a spouse and children exist, the mother is excluded.

Under Section 33 of the Indian Succession Act, if the court finds ‘cause to exclude the widow’ from administering the estate, it may do so, but this does not affect her *beneficial interest* (her share) in the property. If a spouse is found guilty of murder or abetting the murder of the deceased (Section 25, Hindu Succession Act), the court can disqualify them. Courts exercise discretion in calculating the ‘net value’ of the estate (deducting debts) under Section 33A of the Indian Succession Act to determine the widow's share.

In conclusion, Indian succession law for intestacy is structured to be automatic and formulaic, leaving little room for a judge to deviate from the prescribed shares of a surviving spouse.

4.2.4 South Africa

In South Africa, interstate succession has evolved from 17th-century Dutch Roman-Dutch law, focusing narrowly on blood relationships, into a unified, constitutional system via the Intestate Succession Act 81 of 1987. Key changes include the inclusion of spouses, adopted children, and the dismantling of discriminatory customary primogeniture, ensuring gender equality and protection for all, particularly in the post-Apartheid era. Below are some of the salient features constituting the protection of property rights of surviving spouses during succession.

¹⁴⁶ [2022] (Civil) No. 1517/2018.

¹⁴⁷ AIR 1963 Mad 50, or (1961) 2 Mad LJ 387.

¹⁴⁸ 2024 HC-KAR In the High Court of Karnataka at Bengaluru.

4.2.4.1 Enjoyment of Property Rights During Separation

In South African law, a spouse is not disqualified from inheriting property under intestate succession simply due to separation. Separation (living apart) does not legally dissolve a marriage; only a final decree of divorce or the death of a spouse terminates the marriage, thus preserving the surviving spouse's status as an heir.¹⁴⁹ Specifically, the law provides that if a person dies intestate, the 'surviving spouse' inherits either the entire estate (if no descendants) or a child's share (if descendants exist).¹⁵⁰ The Act does not define 'spouse' to exclude separated individuals. The legal, binding marriage remains in force until formally dissolved by a court. This was also resolved in *Alexa v Alexa*¹⁵¹ where it was confirmed that marriage is terminated by death or divorce. Separation is not a legal substitute for divorce. Furthermore, the legal separation, without a final divorce order, does not affect the matrimonial property regime (e.g., in or out of community of property). Therefore, the separated spouse is still considered the 'surviving spouse' at the time of death.¹⁵² The surviving spouse inherits in terms of the Act (either the whole estate or a child's share). If a separated spouse is disinherited through a will or, in cases of intestacy, receives less than their 'reasonable maintenance needs,' they can claim against the estate for support in terms of the Maintenance of Surviving Spouses Act 27 of 1990.¹⁵³ In the case of *Bhe v Magistrate, Khayelitsha*,¹⁵⁴ the Constitutional Court held that the Intestate Succession Act must be interpreted to include all valid marriages, including monogamous and polygamous customary unions, as well as spouses married under religious rites (Muslim/Hindu). However, the *Wills Act* 7 disqualifies a former spouse if they divorce within three months of the death, this applies to *testate* (with a will) scenarios. If no will exist, the Intestate Succession Act still favours the legal spouse, even if separated.¹⁵⁵ In conclusion thus, a separated spouse remains entitled to inherit under South African law, unless a final decree of divorce was granted before the deceased's passing.

4.2.4.2 Physical and Functional Separation of Household by Spouses

In South African law, physical and functional separation of a household does not disqualify a spouse from inheriting under intestate succession, provided the marriage was not legally dissolved by divorce. The Intestate Succession Act 81 of 1987 ('the Act') makes no provision for the 'separation of bed and board' or functional separation to negate the inheritance rights of a

¹⁴⁹ Intestate Succession Act 81, Sec.1(1)(a).

¹⁵⁰ As Above, Sec.1(1)(c).

¹⁵¹ [2022] ZACC 17.

¹⁵² Intestate Succession Act (n 149 above), Sec.1.

¹⁵³ Maintenance of Surviving Spouses Act 27 of 1990, Sec.3.

¹⁵⁴ [2005] (CCT 49/03) ZACC 17.

¹⁵⁵ Wills Act 7 1953, Sec. 2B.

surviving spouse. The Act stipulates that if a person dies intestate, the surviving ‘spouse’ is entitled to inherit. The Act defines a spouse as someone in a valid marriage under the Marriage Act 25 of 1961, the Recognition of Customary Marriages Act 120 of 1998, or a union recognized under the Civil Union Act.¹⁵⁶ The Act focuses on the legal existence of the marriage at the time of death (*dies cedit*), not the quality of the relationship. If a couple is separated but has not obtained a final decree of divorce, the marriage is still in existence. Consequently, a separated spouse remains the legal next of kin. This is fastened by the Constitutional Court ruling in *Bwanya v Master of the High Court*,¹⁵⁷ the definition of ‘spouse’ now includes partners in a permanent life partnership who had assumed reciprocal duties of support, even if separated, provided the relationship intended to be permanent. The court maintained that only a formal divorce terminates the inheritance rights of a spouse under the Act. A spouse who moved out, lived with someone else, or was separated for years can still inherit if no divorce was finalized. While not technically intestate, *J W v Williams-Ashman NO and others*¹⁵⁸ highlighted that even if a will exists, a former spouse is only disqualified if they were divorced within three months of the death. If the separation never resulted in a divorce, the spouse inherits.¹⁵⁹ It was highlighted further that even if a couple is separated (physically), they are considered spouses until the court dissolves the marriage. In addition, the Financial Services Tribunal held in *K v S*¹⁶⁰ that separation for 23 years did not disqualify a widow, as she was still legally married.

4.2.4.3 Burden of Proof on the Surviving Spouse

The burden of proof in succession law in South Africa generally lies with the party claiming an inheritance, which includes the surviving spouse having to prove the validity of their marriage to the Master of the High Court or in court. While the *Intestate Succession Act 81 of 1987* prioritizes surviving spouses as heirs, they must establish their legal status as a spouse, particularly in the case of customary or unregistered marriages.¹⁶¹ The burden of proof requires the surviving spouse to demonstrate that a valid legal relationship existed at the time of the deceased's death. Proof is typically a marriage certificate.¹⁶² Under the *Recognition of Customary Marriages Act 120 of 1998*,¹⁶³ a marriage must be registered. If unregistered, the survivor faces a heavy burden to prove the

¹⁵⁶ Intestate Succession Act (n 149 above), Sec.1(1).

¹⁵⁷ [2021] ZACC 51.

¹⁵⁸ [2020] (16108/19) ZAWCHC 27.

¹⁵⁹ Wills Act 7 (n 155 Above), Sec. 2B.

¹⁶⁰ [2021] Case No. PFA 72.

¹⁶¹ Intestate Succession Act (n 149 above), Sec.1(1).

¹⁶² Civil Proceedings Evidence Act 25, Sec.18.

¹⁶³ Recognition of Customary Marriages Act 120, Sec.4.

marriage existed. In *Smit v The Master of the High Court*,¹⁶⁴ the court demonstrated that even if a marriage existed, the spouse can be disqualified for misconduct, shifting the focus to whether the spouse *deserves* to inherit. It was reinstated that unregistered customary spouses often have to bear the cost and onus of proving their marriage to the Master to prevent other relatives from inheriting.

Recent developments in case law have expanded the definition of ‘spouse’ to include life partners in permanent, intimate, and reciprocal relationships, but this places a significant burden of proof on the survivor. The Constitutional Court rulings in cases regarding the *Intestate Succession Act* and *Maintenance of Surviving Spouses Act* (e.g., *Paixão v Road Accident Fund*)¹⁶⁵ mean that a ‘surviving spouse’ now includes a partner in a permanent life partnership with a reciprocal duty of support. The surviving partner must prove the partnership was stable, intimate, permanent, and entailed a reciprocal duty of support (i.e., that they were treated as ‘married’ in all but name). The burden however is lower because the spouse is automatically entitled to 50% of the joint estate as it is their own property, not just an inheritance. If a person alleges the surviving spouse is disqualified (e.g., killed the deceased), the burden of proof shifts to the person making the accusation. Therefore, while the law is designed to protect spouses, the burden of proof is placed on the surviving spouse to prove they meet the strict legal requirements for that status, especially in unregistered, customary, or non-traditional relationships.

4.2.4.4 Time limit for legal action

Based on South African law and relevant jurisprudence, there is no strict, short-term statutory time limit preventing a surviving spouse from inheriting under intestate succession, provided the claim is made before the estate is formally finalized and distributed. However, the Maintenance of Surviving Spouses Act 27 of 1990, which allows a spouse to claim maintenance if the inheritance is insufficient, does impose a time limit, and overall administration laws require prompt reporting of the estate. Under the Intestate Succession Act 81 of 1987, a surviving spouse is the primary heir, inheriting the greater of a ‘child’s share’ or a statutory amount (currently R250,000).¹⁶⁶ There is no explicit ‘expiry date’ for a spouse to claim their share of the inheritance, but the estate must be reported to the Master of the High Court within 14 days of death.¹⁶⁷ If the estate is fully distributed (final Liquidation and Distribution account approved and paid out), it becomes very

¹⁶⁴ [2022] 4 All SA 146 (WCC) / [2022] ZAWCHC 56.

¹⁶⁵ [2012] (6) SA 377 (SCA).

¹⁶⁶ Intestate Succession Act (n 149 above), Sec.1(1)(c)(i).

¹⁶⁷ Administration of Estates Act 66, Sec.7.

difficult for a spouse to reclaim assets. Therefore, the practical limit is the duration of the administration process (often 6-12 months)¹⁶⁸.

If the intestate inheritance is insufficient to provide for the spouse's reasonable maintenance needs, they have a claim against the estate under the Maintenance of Surviving Spouses Act 27 of 1990. Section 2(3) of this Act stipulates that a claim for maintenance must be filed before the estate is distributed.¹⁶⁹ In the case *Van Heerden v Minister of Justice*¹⁷⁰ confirms that a surviving spouse—including those in unions recognized by Asiatic religions (Hindu marriages)—can claim maintenance, but they must do so within a reasonable time during the administration process. Furthermore, in *Daniels v Campbell and Others*,¹⁷¹ the court held that the term 'spouse' in the Intestate Succession Act and the Maintenance of Surviving Spouses Act includes partners in a marriage recognized under Muslim and Hindu rites. This decision broadened the rights of surviving spouses in religious marriages to claim intestate inheritance, without imposing a special time limit different from others. In *Bhe v Magistrate, Khayelitsha*,¹⁷² it was declared that the customary law of succession (which often excluded women) unconstitutional, mandating that all intestate estates be governed by the Intestate Succession Act, which protects the surviving spouse. *Laubscher NO v Duplan*,¹⁷³ in a case regarding the revocation of wills, the court highlighted that the legal system aims to protect the legitimate, lawful spouse from being disinherited, reinforcing that a spouse's claim should be honoured if made before finalization. While a surviving spouse in a Hindu marriage (recognized under South African law) does not have a strict 'deadline' (like 30 or 60 days) to claim their statutory inheritance, they must act before the executor distributes the assets and closes the file. The law favours prompt action, ideally within a few months of the death, to ensure the inheritance is not lost.

4.2.4.5 Limitation on Amount Received by the Surviving Spouse

South African succession law places a specific, formulaic limitation on the amount a surviving spouse can inherit under intestate succession when the deceased is also survived by descendants (children). The limitation is not a fixed ceiling on the total value but a, statutory formula designed to balance the interests of the surviving spouse with those of the deceased's children. While separation does not disqualify a spouse, it does not mean they inherit everything. If the deceased

¹⁶⁸ As Above, Sec.35.

¹⁶⁹ Maintenance of Surviving Spouses Act (n 153 above), Sec.2(3).

¹⁷⁰ [2004] ZACC 3; 2004 (6) SA 121 (CC); 2004 (11) BCLR 1125 (CC).

¹⁷¹ [2004] ZACC 14.

¹⁷² [2004] ZACC 17.

¹⁷³ [2016] ZACC 44.

and the separated spouse were married in community of property, the surviving spouse is automatically entitled to 50% of the joint estate by virtue of the marriage, not the Act. The remaining 50% (the deceased's share) is then distributed according to the Intestate Succession Act.¹⁷⁴ The law provides that if there are no descendants, the spouse inherits the entire estate. However, if the deceased is survived by a spouse and descendants, the spouse inherits the greater of: a 'Child's Share' (The net estate divided by the number of children + 1); a Statutory Amount (Currently fixed at R250,000). In polygamous marriages, in the case of multiple spouses (recognized under the Reform of Customary Law of Succession Act), the 'spouse's share' is divided equally among the wives, with each wife guaranteed a minimum share of R250,000, or a child's share if that is greater.¹⁷⁵

The 'child's share' formula acts as a limit because it ensures that the surviving spouse does not inherit the entire estate if there are children, while still guaranteeing them a portion that is at least equal to what each child receives. In the case of *Bhe v Magistrate, Khayelitsba*,¹⁷⁶ the Constitutional Court held that the African Customary Law rule of male primogeniture (which excluded women from inheriting) was unconstitutional. The court mandated that all intestate estates now devolve according to the Intestate Succession Act, providing for spouse/descendant protections and the share they deserve as per the Act. Furthermore, while not part of inheritance *per se*, a spouse whose intestate share is insufficient can claim 'reasonable maintenance needs' against the estate if they are not financially independent.¹⁷⁷ In conclusion, the limitation is structured to ensure that a spouse is not left destitute (minimum R250,000) but cannot automatically take the entire estate if children are present, ensuring a distribution that includes the next of kin.

4.2.4.6 Discretionary judicial power

South African succession law provides a set formula for distribution rather than broad judicial discretion, aiming for legal certainty and equality. However, Constitutional Court rulings have introduced flexibility, allowing courts to interpret the law to prevent unfair outcomes in specific scenarios. The Intestate Succession Act¹⁷⁸ dictates the following, leaving little room for subjective judicial deviation on *how* to split assets. For instance, where there is only a spouse, she or he inherits everything. The spouse inherits the greater of R250,000 or a 'child's share' (total estate divided by number of children + spouse). In recognized customary marriages, spouses share the 'spouse's

¹⁷⁴ Intestate Succession Act (n 149 above), Sec.1(1)(c).

¹⁷⁵ Intestate Succession Act (n 149 above), Sec.1(1)(c)(i).

¹⁷⁶ [2004] ZACC 17.

¹⁷⁷ Maintenance of Surviving Spouses Act (n 153 above), Sec.2(1) &2(3).

¹⁷⁸ Intestate Succession Act (n 149 above), Sec.1(1)(c).

portion' equally. In marriage in community of property, the survivor keeps 50% (their share of the joint estate), and only the deceased's 50% is divided by the Act. In *Bhe v Magistrate, Khayelitsha*,¹⁷⁹ the Act is applied in a way that allows courts to divide estates equally among multiple wives in polygamous unions. The law gave courts discretion to accept documents as wills even if they don't comply with all formalities (e.g., if a person intended to make a will but died before formalizing it), but this is technically in the domain of *testate* (with a will) rather than *intestate* (without a will) law.¹⁸⁰ However, this shows the legislative move towards allowing judges to give effect to the deceased's intention to prevent unfairness.

In conclusion, South African law does not generally provide judges with discretion to alter the mathematical, statutory distribution of assets to a surviving spouse in an *intestate* scenario. The formula in Act 81 of 1987 is strict. However, judicial discretion exists through constitutional Interpretation (expanding the definition of 'spouse' to include life partners and religious marriages; in maintenance claims (exercising discretion under the Maintenance of Surviving Spouses Act to secure a share, even if it deviates from strict intestacy rules) and correcting unfairness (Customary law and previous statutory exclusions are often corrected by courts to ensure the spouse is not left destitute).

4.2.5 Kenya

The law on intestate succession in Kenya has evolved from diverse, predominantly patriarchal customary laws during the pre-colonial and colonial eras to a unified, statutory framework under the amended Law of Succession Act Cap 160 in 2021. It now aims to protect spouses and children equally, regardless of gender or marital rank, incorporating constitutional rights to gender equality and property.

4.2.5.1 Non-Automatic Disqualification Due to Separation

Under Kenyan law, separation of spouses—without a formal decree of divorce—does not automatically disqualify a spouse from inheriting property rights under intestate succession. The Law of Succession Act (Cap 160) focuses on the legal existence of the marriage at the time of death rather than the physical cohabitation of the spouses.¹⁸¹ Under the Marriage Act 2014¹⁸² and Section 3 of the Law of Succession Act (LSA), a 'spouse' is someone in a valid, subsisting marriage.

¹⁷⁹ [2004] ZACC 17.

¹⁸⁰ Law of Succession Amendment Act 43, Sec. 3(g).

¹⁸¹ As Above, Sec. 3(5).

¹⁸² Marriage Act 2014, Sec.3.

Separation does not constitute divorce, and thus, a separated spouse remains legally married and eligible to inherit. A surviving spouse, including a separated one, is entitled to personal/household effects and a life interest in the net estate.¹⁸³ Spouses are considered dependents regardless of whether they were maintained by the deceased, distinguishing them from former (divorced) spouses who may need to prove dependence.¹⁸⁴ A widow's life interest terminates upon remarriage, not upon separation.¹⁸⁵ In *re Estate of Fredrick Rephas Omukoko (Deceased)*,¹⁸⁶ it was affirmed that a separated wife is still a 'wife' entitled to inherit, distinct from a divorced spouse. In *FEO v ACO*¹⁸⁷ confirmed that the status of 'widow/widower' relies on the marriage subsisting at the time of death. Courts have held that separation does not invalidate a spouse's interest in the matrimonial home.

While separated spouses inherit, divorced spouses (former wives) do not automatically inherit under intestacy, though they may claim as dependents. A separated wife in a polygamous union remains part of a 'house' entitled to a share.¹⁸⁸ As per 2021 amendments, proving a valid, albeit separated, marriage is necessary for inheritance. A separated spouse in Kenya is not disqualified from inheriting under intestate succession. The legal test is the existence of a valid marriage, not cohabitation.

4.2.5.2 'Separation in Fact' Requirement

Under Kenyan law, physical and functional separation of a household does not automatically disqualify a spouse from inheriting property rights under intestate succession. The Law of Succession Act (Cap 160) focuses on the legal status of the marriage rather than the physical proximity or cohabitation of the spouses at the time of death.¹⁸⁹ A separated spouse remains a legal spouse and, therefore, a rightful heir to the intestate estate. Only a divorced spouse loses automatic rights to the intestate estate. The mere fact that the deceased and the surviving spouse were living apart ('separation in fact') does not negate the spousal status. In polygamous situations, even if a wife lived in a separate household, she is still considered a 'household' under the law and is entitled to a share of the estate.¹⁹⁰ A widow's life interest terminates if she remarries, but her status as a wife at the time of death is not disqualified by prior separation. Kenyan courts have consistently

¹⁸³ Law of Succession Act (n 180 above), Sec. 35 & 36.

¹⁸⁴ As Above, Sec. 29.

¹⁸⁵ As Above, Sec. 36.

¹⁸⁶ [2025] eKLR.

¹⁸⁷ [2024] KEHC 14889.

¹⁸⁸ Law of Succession Act (n 180 above), Sec. 40.

¹⁸⁹ As Above, Sec. 3(5).

¹⁹⁰ As Above, Sec. 40.

ruled that the absence of physical cohabitation does not sever the legal right to inheritance. In *re Estate of Fredrick Rephas Omukoko (Deceased)*,¹⁹¹ the High Court noted that a separated spouse is entitled to the intestate's estate, whereas a divorced spouse is not. However, in 'Mpango wa Kando' (Secret Lovers), the Law of Succession Act protects women in long-term, functional unions (even if not formally married) to inherit, provided they can prove they were recognized as wives, reinforcing that, in intestate succession, it is the *relationship* and *dependency* that matters, not necessarily the formal household structure.¹⁹²

While physical separation does not automatically disqualify a spouse, the inheritance rights can be reduced or varied, if the separated spouse was not being maintained by the deceased at the time of death, they may still claim as a dependant, but the court may reduce their share based on lack of dependency.¹⁹³ In summary, under Kenyan intestacy law, a spouse remains a spouse regardless of physical separation. The 'separation of household' does not cause disqualification; only a legal divorce or death of the spouse does

4.2.5.3 Burden of Proof on the Surviving Spouse

The Law of Succession Act prioritizes the surviving spouse in intestate succession. However, the law places a significant burden of proof on the surviving spouse to establish the validity of their marriage, particularly in cases of unregistered customary marriages. The principle of 'he who alleges must prove' applies, shifting the burden to the spouse to substantiate their status as a legitimate dependent.¹⁹⁴ The most common point of contestation arises when a surviving spouse's marriage is not registered.¹⁹⁵ The Marriage Act, 2014,¹⁹⁶ recognizes marriages that are not registered but are based on 'presumed marriage' (cohabitation for over two years as husband and wife). In the Supreme Court case of *Mary Nyambura Kangara v Paul Ogari Mayaka*,¹⁹⁷ the court laid down strict criteria for establishing a presumed marriage, placing the onus on the party alleging it. The claimant must show capacity to marry, consent, long cohabitation, and general reputation as husband and wife to the outside world. In *re Estate of Peter Kiplangat Koech – Deceased*,¹⁹⁸ the court noted that the Petitioner (claimed second wife) had the burden to prove her marriage to the deceased through evidence of payment of dowry or other customary rites. In cases of polygamy, the surviving spouse

¹⁹¹ [2025] eKLR.

¹⁹² Law of Succession Act (n 180 above), Sec. 3(5).

¹⁹³ As Above, Sec. 26.

¹⁹⁴ As Above, Sec. 29.

¹⁹⁵ Evidence Act Cap 80, Sec.107.

¹⁹⁶ Marriage Act 2014, Sec.7.

¹⁹⁷ [2023] KESC 2.

¹⁹⁸ [2025] eKLR.

must prove they belong to a distinct ‘house.’ The law states that where an intestate was polygamous, the estate is divided among the ‘houses’ according to the number of children in each house, with each surviving wife added as a unit.¹⁹⁹ The spouse must prove they constitute a valid house, usually by proving their marriage was recognized, to avoid being excluded from the distribution.

Traditionally, the law required surviving spouses (particularly widows) to prove they were being ‘maintained’ by the deceased to qualify as a dependant. However, this has changed.²⁰⁰ In the landmark ruling of *Mungai v Attorney General*,²⁰¹ the High Court declared unconstitutional the provision (Section 29(c)) that required spouses/dependants to prove dependency to inherit. Now, a spouse does not have to prove they were supported financially by the deceased; proving the marriage status is sufficient. When a surviving spouse is the administrator of the estate, they hold a fiduciary duty. Section 45 prohibits intermeddling with the deceased’s property without a grant.²⁰² In *In re Estate of Bernard Kilonzo Katiku (Deceased)*,²⁰³ the court applied Section 107 of the Evidence Act, noting that anyone asserting a legal right to property in an estate must prove how that property was acquired. If a spouse claims a property was jointly owned, the burden is on them to prove it.

In summary, while the law aims to protect the surviving spouse (giving them first priority to apply for a grant,²⁰⁴ the burden of proof is absolutely on the surviving spouse to prove the existence of a valid marriage. Once the marriage (or presumed marriage) is proven, the law protects their right to a life interest (or absolute ownership of personal effects).

4.2.5.4 Limitation for a Legal Action

Under Kenyan Law of Succession Act (Cap 160), there is no strict, absolute time limit (limitation period) for a surviving spouse to initiate legal action to claim inheritance in an interstate succession. However, the law imposes mandatory procedural steps and practical time limits on the administration of the estate, which, if ignored, can severely affect the spouse's rights. Unlike contractual or tort cases, where a strict 3-to-6-year limit applies, the Limitation of Actions Act does not generally apply to the right of a beneficiary to claim their share in a succession matter.²⁰⁵

¹⁹⁹ Law of Succession Act (n 180 above), Sec. 40.

²⁰⁰ As Above, Sec. 29.

²⁰¹ [2025] *Petition E416 of 2023* KEHC 8544 (KLR).

²⁰² Law of Succession Act (n 180 above), Sec. 45.

²⁰³ [2023] KEHC 3992 (KLR).

²⁰⁴ Law of Succession Act (n 180 above), Sec. 66.

²⁰⁵ Limitation of Actions Act (n 180 above) Sec.20(1).

In *Re Estate of Kiptugen Chepkwony (Deceased)*,²⁰⁶ courts have held that a petition for letters of administration can be filed at any time, even years after the death, provided there is no prejudice to other beneficiaries or bona fide purchasers. Although there is no ‘expiry date’ for the right to inherit, the following provisions encourage timely action: 6-Month Rule (Confirmation of Grant)²⁰⁷ which implies that an application for confirmation of the grant of letters of administration should be made at least 6 months after the initial grant. An administrator (often the spouse) has a legal duty to complete the administration within 6 months, or such longer time as the court allows²⁰⁸ (Section 73). If a spouse fails to take out letters of administration and starts acting as if they own the property, they might be accused of intermeddling or, conversely, might not be able to stop others from doing so.²⁰⁹

While the law does not explicitly bar a late application, Kenyan courts have established that a doctrine of laches and estoppel, whereby if a spouse waits an unreasonably long time (e.g., 20+ years) and other beneficiaries have built their lives on the assumption that the property was shared differently, the court may refuse to interfere with the status quo, even if the spouse was technically entitled to the property. On the side of estoppel, if a spouse acquiesces to a certain distribution for a very long time, they may be stopped from claiming a different share later. The law further provides that a spouse is entitled to personal/household effects absolutely and a life interest in the residue of the net intestate estate (i.e., they can use the property, but not sell it without court permission). This life interest does not disappear due to time.²¹⁰ If a widow remarries, her life interest in the intestate property ends. The Law of Succession (Amendment) Act 2021 reinforced that only legally married spouses (recognized under the Marriage Act) can inherit, removing long-term cohabitantes from the definition of ‘dependant’. In *Tau Katungi -v- Margrethe Katungi & Another*²¹¹ it was clarified that the surviving spouse’s life interest is a trust held for the children, and any, even long-delayed, application to disturb this trust must be justified, particularly to protect the children’s ultimate inheritance. In *re Estate of Ngaruhiya Kamau (Deceased)*,²¹² it was emphasized that while a spouse has a life interest, this interest must be managed carefully, and unreasonable delay in administering the estate can invite court intervention if children’s interests are neglected.

²⁰⁶ [2021] eKLR.

²⁰⁷ Law of Succession Act (n 180 above), Sec. 71.

²⁰⁸ As Above, Sec. 73.

²⁰⁹ As Above, Sec. 45.

²¹⁰ As Above, Sec. 35 & 40.

²¹¹ [2014] eKLR.

²¹² [2025] eKLR.

In summary, a surviving spouse in Kenya has strict time limit to start the succession process. For instance, in *re Estate of the Late Ndolo Kioko Musyimi (Deceased)*²¹³, enhances 6-Month Window and the Doctrine of Laches. The doctrine of laches prevents claimants from sleeping on their rights. If parties could contest an estate indefinitely, administrators could distribute assets or settle debts only to have a late challenger upend the process years later. Over time, witnesses pass away, memories fade, and documents are lost. Enforcing structured timelines ensures that disputes are litigated while evidence is fresh, making it fairer for all competing beneficiaries to substantiate their positions. It is thus recommended that they should file within 6-12 months to ensure proper management of the estate and avoid legal disputes. Delays, while not automatically fatal, can lead to the ‘doctrine of laches’ being applied if other heirs are prejudiced

4.2.5.5 Limit on Amount Recoverable

Kenyan succession law places significant limitations on the property rights of a surviving spouse under intestacy. While the surviving spouse is a primary beneficiary, their entitlement is generally limited to a life interest in the residue of the estate rather than absolute ownership, and this right is subject to termination upon remarriage for widows.²¹⁴ Under Section 35, the surviving spouse is entitled to personal and household effects absolutely, plus a life interest in the residue of the net intestate estate. The children hold the remainder interest, meaning they inherit the property after the spouse dies.²¹⁵ Under Section 36, the spouse receives personal/household effects absolutely, plus the first Kshs. 10,000 (or 20% of the residue, whichever is greater), and a life interest in the remainder.²¹⁶ Section 40 dictates that the estate is divided among the ‘houses’ based on the number of children, with each widow added as a unit. Each widow inherits a life interest in the property of her respective house.²¹⁷ A critical limitation is that a widow's life interest terminates if she remarries another person. A surviving spouse has a limited power to appoint (give) parts of the capital to the children during her lifetime, but this is a restricted power.²¹⁸

Kenyan courts have thus interpreted the above provisions to create a strict separation between the spouse's right to *use* the property and the children's right to *inherit* it. In *Tau Katungi v. Margrethe Katungi & Another*,²¹⁹ the court explained that a life interest confers a limited right, not absolute ownership. The spouse cannot sell the property without the consent of the children or the court.

²¹³ [2026] KEHC 9445 (KLR) (Succession Cause E600 of 2022).

²¹⁴ Law of Succession Act (n 180 above), Sec. 35, 36 & 40.

²¹⁵ As Above, Sec. 35.

²¹⁶ As Above, Sec. 36.

²¹⁷ As Above, Sec. 40.

²¹⁸ As Above, Sec. 35(2).

²¹⁹ [2014] eKLR.

The courts often act as trustees for children. In *Loice Wanjiku Kagunda v Julius Gacheru Mwangi*,²²⁰ it was noted that the spouse holds the property in trust for the children, and the children's right to the property crystallizes upon the death or remarriage of the spouse. While the statute restricts the spouse, recent jurisprudence, such as in *Re Estate of Ainea Masinde Walubengo*,²²¹ reflects a desire to ensure the distribution, even under strict laws, is equitable and considers the actual contributions of the widows. Therefore, under Kenyan law, a surviving spouse does not automatically inherit all property absolutely; they are deemed to hold the majority of it in trust for the children, with their enjoyment limited to their lifetime (or until remarriage for a widow).

4.2.5.6 Court Discretion in Intestate Succession Matters

Kenya's law of succession provides limited judicial discretionary powers in intestate succession, prioritizing strict statutory formulas designed to protect the surviving spouse's immediate livelihood while securing the ultimate capital ownership for the children. The court's primary discretion lies in managing, rather than altering, the statutory distribution, particularly when adjusting the 'life interest' to absolute ownership in specific circumstances. The Law of Succession Act (LSA) limits judicial discretion in favor of mandatory rules. It provides that surviving spouses receive personal/household effects absolutely and a life interest in the residue. This interest ends upon remarriage or death, allowing usage but typically restricting sale without court approval.²²² Spouses may allocate capital to children, but if this power is abused, the court has the discretion to intervene and vary distribution based on the beneficiaries' needs and conduct.²²³ Division is strictly based on 'houses,' counting each wife as a unit.²²⁴ Courts can order additional provision if the statutory share is inadequate for a dependant.²²⁵

Courts interpret these provisions to balance immediate spousal protection with the eventual inheritance rights of children. In *Mulungye v Kisangi & another*²²⁶ it was confirmed that a life interest prevents destitution, with children's rights crystallizing only after the spouse's life interest terminates. It was further provided that courts cannot alter statutory distribution ratios without written consent. However, while the spouse holds a life interest, the court maintains authority to

²²⁰ [2020] Civil Appeal 14.

²²¹ [2017] KEHC 1356 (KLR) (5 October 2017).

²²² Law of Succession Act (n 180 above), Sec. 35 & 36.

²²³ As Above, Sec. 35(4).

²²⁴ As Above, Sec. 40.

²²⁵ As Above, Sec. 26.

²²⁶ [2025] eKLR.

intervene if the property is mismanaged. Ultimately, judicial discretion is high regarding the oversight of estate management but low regarding the mandatory, statutory allocation of shares.²²⁷

4.2.5.7 Matrimonial Property Act

In Kenya, intestate succession is also governed by Matrimonial Property Act (MPA) 2013. While the Law of Succession Act does not formally incorporate the Matrimonial Property Act, recent judicial trends have increasingly used the MPA to protect surviving spouses during intestate succession. The law defines ‘matrimonial property’ as the matrimonial home, household goods, and any other property jointly owned and acquired during marriage. It vests ownership based on the contribution (monetary or non-monetary) of each spouse.²²⁸ The Constitution of Kenya²²⁹ mandates spousal equality during and at the dissolution of marriage. Courts now debate whether ‘dissolution’ includes death, allowing matrimonial property rights to be settled before the remaining estate is distributed under succession law. The Matrimonial Property Act has helped surviving spouses—particularly widows—by providing a mechanism to ‘ring-fence’ their share of property before it enters the general pool for distribution among other heirs. This means that spouses can claim a share of property by proving domestic work, childcare, or farm work, even if the property is registered solely in the deceased's name.²³⁰

The MPA provides that property acquired during marriage in one spouse's name is rebuttably presumed to be held in trust for the other, allowing survivors to claim a 50% share based on this beneficial interest.²³¹ Section 8 of the MPA protects the first wife's interest in property acquired before subsequent marriages, ensuring it is not diluted by later wives during estate distribution.²³² In the case of *JOO v MBO*.²³³ The Supreme Court of Kenya affirmed that while equality is a principle, property division is not automatically 50:50; a survivor must prove their contribution to claim a specific share. In *re Estate of MM (Deceased)*.²³⁴ Justice Gikonyo held that matrimonial property rights do not die with a spouse. He ruled that courts should first set aside the surviving spouse's share (based on contribution) before subjecting the remainder to succession laws. While in *FEO v ACO*²³⁵ it was highlighted the ongoing legal conflict, with some judges

²²⁷ Law of Succession Act (n 180 above), Sec. 35(4).

²²⁸ MPA 2013, Sec.6.

²²⁹ The Constitution of Kenya 2010, Art 45(3).

²³⁰ MPA 2013, Sec.2,7 & 14.

²³¹ As Above, Sec.14.

²³² As Above, Sec.8.

²³³ [2023] KESC 4 (KLR) (27 January 2023).

²³⁴ [2020] eKLR.

²³⁵ [2024] eKLR.

arguing that matrimonial property claims must be litigated during the spouse's lifetime and cannot be raised within a succession cause.

4.3 Emerging Issues

The dynamics in succession law in differing jurisdiction gives best practices which exist for the protection of property rights of separated spouses during succession, especially when compared to that of Uganda. Below are the salient issues which have arisen.

4.3.1 Non-Automatic Disqualification due to Separation

Unlike the Succession Act in Uganda,²³⁶ which provides that ‘A surviving spouse of an intestate shall not take any interest in the estate of the intestate if, at the death of the intestate the surviving spouse was separated from the intestate as a member of the same household’, the selected jurisdictions in US, UK, India, South Africa and Kenya, separation does not automatically disqualify a spouse or civil partner from inheriting property rights under intestacy rules, provided the marriage has not been legally dissolved. For instance, in UK, a Final Order (divorce)²³⁷ is considered. If a couple separates informally (without a court order), the surviving spouse is still entitled to inherit the same as a married spouse.²³⁸ In *Re Estate of Singh (deceased)*,²³⁹ it was illustrated that even where a marriage has broken down, the court acknowledges the special, strong status of a spouse. The case shows that separated spouses can claim ‘reasonable financial provision’ if the intestacy rules do not provide enough. However, a decree of judicial separation specifically changes the inheritance rules. If a spouse dies intestate while a decree of judicial separation is in force, the surviving spouse is treated as if they had already died. Therefore, they do not inherit under intestacy rules²⁴⁰. In Kenya, the Law of Succession Act (Cap 160) focuses on the legal existence of the marriage at the time of death rather than the physical cohabitation of the spouses.²⁴¹ Under the Marriage Act 2014²⁴² and Section 3 of the Law of Succession Act (LSA), a ‘spouse’ is someone in a valid, subsisting marriage. Separation does not constitute divorce, and thus, a separated spouse remains legally married and eligible to inherit. A surviving spouse, including a separated one, is entitled to personal/household effects and a life interest in the net estate.²⁴³ Spouses are considered

²³⁶ Succession Act Cap 268, Art.26(1).

²³⁷ AEA (n 50 above), Sec.46 (1).

²³⁸ AEA (n 50 above), Sec.46 (1)(i).

²³⁹ [2023] EWHC 55 (Fam).

²⁴⁰ Matrimonial Causes Act (n 53 above), Sec.17&18.

²⁴¹ Law of Succession Act (n 180 above), Sec. 3(5).

²⁴² Marriage Act 2014, Sec.3.

²⁴³ Law of Succession Act (n 180 above), Sec. 35 & 36.

dependents regardless of whether they were maintained by the deceased, distinguishing them from former (divorced) spouses who may need to prove dependence.²⁴⁴ A widow's life interest terminates upon remarriage, not upon separation.²⁴⁵ In *re Estate of Fredrick Rephas Omukoko (Deceased)*,²⁴⁶ it was affirmed that a separated wife is still a 'wife' entitled to inherit, distinct from a divorced spouse. However, in South Africa, the *Wills Act 7* disqualifies a former spouse if they divorce within three months of the death, this applies to *testate* (with a will) scenarios. If no will exist, the Intestate Succession Act still favors the legal spouse, even if separated.²⁴⁷ In conclusion thus, it has emerged that a separated spouse remains entitled to inherit, unless a final decree of divorce was granted before the deceased's passing. This is contrary to what was reported by study participants who largely agreed that the Succession Act automatically disqualifies a surviving spouse to enjoy his or her property rights during succession.

4.3.2 Physical and Functional Separation of Household

It further emerged that although Ugandan Succession Act²⁴⁸ bases on physical and function separation of households by separated spouses not to benefit on the property of the deceased spouse during succession, other jurisdictions differ from this stance. It has been established in all reviewed jurisdictions that physical or functional separation of a household does not automatically disqualify a surviving spouse from inheriting property rights under intestate succession, provided the couple is still legally married at the time of death. In USA, the Probate Code²⁴⁹ provides that a surviving spouse excludes someone whose marriage was dissolved or annulled. A mere physical or functional separation (living apart, separate finances) does not terminate the right to inherit. In UK, if spouses are merely living apart but remain married, the separated spouse retains full inheritance rights. If a court has granted a decree of judicial separation, the law treats the separated spouse as having predeceased the deceased.²⁵⁰ The law therefore looks for legal, not physical, separation.²⁵¹ For instance, a spouse who was estranged (estranged, living in a separate home, no communication) still has a legal claim to the estate, overriding other relatives, unless they are divorced. If the home is owned as joint tenants, it passes automatically to the survivor, regardless of separation. If owned as tenants in common, the deceased's share is distributed by intestacy laws,

²⁴⁴ As Above, Sec. 29.

²⁴⁵ As Above, Sec. 36.

²⁴⁶ [2025] eKLR.

²⁴⁷ Wills Act 7 (n 155 Above), Sec. 2B.

²⁴⁸ Succession Act (n 235 above), Art.26(1).

²⁴⁹ California Probate Code (n 2 Above), **Sec 78**.

²⁵⁰ Inheritance (Provision for Family and Dependents) Act (n 60 above), Sec.1(1)(a).

²⁵¹ As Above.

which includes the separated spouse.²⁵² In India, legal separation or physical separation does not automatically equate to divorce. The determining factor is the subsistence of a legal marriage at the time of death. As long as the marriage is valid, the spouse remains an heir. There is no provision in the Hindu Succession Act that voids inheritance rights due to ‘functional separation’ (living apart). Disqualification is strictly limited to legal grounds, such as committing murder of the deceased, as seen in *Janak Rani Chadha v the State*,²⁵³ where the husband was disqualified for murdering his wife. However, a spouse who lives separately, even for an extended period, remains a legal ‘wife’ or ‘husband’ until a formal decree of divorce is granted. In *Thankam vs Rajan*,²⁵⁴ it confirmed that separation does not break the marital tie; only a legal divorce does. In cases where a couple lives together, courts have often presumed a valid marriage (e.g., *Tulsa v. Durghatiya*),²⁵⁵ granting the woman the status of a wife for inheritance purposes, highlighting that the law favours the legal presumption of marriage over the physical reality of separation. Physical and functional separation of a household thus is not a valid ground for disqualification from inheritance under Indian intestacy laws. A separated spouse remains a ‘wife’ or ‘husband’ until a divorce is legally finalized.

4.3.3 Burden of Proof on the Surviving Spouse

Unlike Uganda,²⁵⁶ USA²⁵⁷ and India which put a high burden of proof to the surviving spouse to prove their spousal right.²⁵⁸ This slightly differs from other jurisdictions which puts less or no burden of proof to the surviving spouse to prove their property rights. In USA, the law generally puts the initial ‘Onus Probandi’ on the surviving spouse to establish their status as a legal spouse at the time of the decedent's death. Just like in Uganda; to qualify as a surviving spouse, the individual must have been legally married to the deceased person at the time of death.²⁵⁹ The Evidence Code²⁶⁰ explains that if an asset is titled in the decedent's name alone, a conflict arises. However, in *re Brace*²⁶¹ it was clarified that for property acquired after 1975, the community property presumption prevails over the title presumption. If a spouse claims an asset is community property (even if in the decedent’s name), they must often ‘trace’ the funds used to purchase that asset back to community earnings, which requires extensive documentation. In India, the burden

²⁵² AEA (n 50 above), Sec.3(4).

²⁵³ [2007] AIR DEL 107.

²⁵⁴ [1992] A.S. No. 471.

²⁵⁵ [2008] 4 SCC 520.

²⁵⁶ Succession Act (n 235 above), Sec.26(3).

²⁵⁷ UPC 1990, **Sec** 2-120.

²⁵⁸ Succession Act (n 235 above), Sec.26(3).

²⁵⁹ Probate Code 1990, **Sec** 78.

²⁶⁰ Evidence Code, Sec. 662.

²⁶¹ [2020] 9 Cal. 5th 903, 470 P.3d 15, 266 Cal. Rptr. 3d 298.

of proof lies on the surviving spouse to establish the validity of their marriage if it is challenged by other legal heirs, as this relationship is the foundation of their inheritance right.²⁶² The legal framework and relevant case law indicate that while the law favours the spouse, evidentiary requirements for proving the marital relationship often fall on them. For instance, if a Hindu male dies intestate, the widow is a Class I heir, taking property simultaneously with children and the mother. If a Hindu female dies intestate, her husband is a primary heir.²⁶³ In instances when a relationship (marriage) is questioned, the opinion of persons having special knowledge is relevant.²⁶⁴ If a marriage is denied by others, the surviving spouse must provide proof (marriage certificate, witnesses, or evidence of long-term cohabitation) to establish their status as the legal heir.²⁶⁵

This is not the case in UK, where the law does not generally place a heavy burden of proof on a surviving spouse to prove their entitlement to inherit property under intestacy rules.²⁶⁶ However, the spouse must prove they meet specific legal criteria regarding the validity of the marriage and survivorship, and the burden of proof shifts to them if they claim against the estate under specific circumstances. In *Busi v Busi*,²⁶⁷ the claimant had to prove she was validly divorced from her first husband to establish a valid marriage to the deceased. If the spouse claims for more than the intestacy rules allow, or if they were separated and challenging that separation, they must prove their ‘need’ under the Inheritance (Provision for Family and Dependents) Act 1975.²⁶⁸ In general, the UK law actively favours the surviving spouse in intestacy, reducing their need to ‘prove’ their right to inherit, provided the marriage was legal and they survived the 28-day period. In South Africa, the burden of proof in succession law remains low though it demands the surviving spouse having to prove the validity of their marriage to the Master of the High Court or in court. Under the *Recognition of Customary Marriages Act 120 of 1998*,²⁶⁹ a marriage must be registered. If unregistered, the survivor faces a heavy burden to prove the marriage existed. In *Smit v The Master of the High Court*,²⁷⁰ the court demonstrated that even if a marriage existed, the spouse can be disqualified for misconduct, shifting the focus to whether the spouse *deserves* to inherit. It has thus emerged that though burden of proof is important, however, it can bar a certain section of spouses

²⁶² Hindu Succession Act (n 97 above), Sec.15.

²⁶³ As Above, Sec.8.

²⁶⁴ Indian Evidence Act 1872, Sec. 50.

²⁶⁵ As Above, Sec. 114.

²⁶⁶ AEA (n 50 above) Sec.46 (1).

²⁶⁷ [2019] ZALAC 68.

²⁶⁸ Inheritance (Provision for Family and Dependents) Act (n 60 above), Sec.1(1)(a).

²⁶⁹ Recognition of Customary Marriages Act 120, Sec.4.

²⁷⁰ [2022] 4 All SA 146 (WCC) / [2022] ZAWCHC 56.

to lose their property rights, hence, the burden needs to either shift to the other party or remains low for a surviving spouse.

4.3.4 Time Limit for Legal Action

Unlike the Ugandan Succession Act which limits time for legal action on the side of surviving spouse to six months after the death of the intestate spouse,²⁷¹ in other global and regional jurisdiction, the time limit is not expressly defined and where it is defined, it impliedly gives a chance and discretion on the side of the courts to go above 6 months. For instance, in USA, the time ranges from a few months to a year after death or the opening of probate.²⁷² While there is no strict deadline for opening probate, delaying it can lead to issues, and once the process starts, the court expects administration to move forward, often requiring claims within a few months.²⁷³ This was evident in *Samad v. Pla*²⁷⁴ where it was resolved that failure to file this election within the six-month deadline constitutes a waiver, and the spouse is left with only a life estate. In UK, there is no strict ‘time limit’ for a surviving spouse to *initially* inherit under the intestacy rules.²⁷⁵ However, there are significant legal time limits regarding property rights, challenging the distribution, and making additional claims under the Inheritance (Provision for Family and Dependents) Act 1975.²⁷⁶ Where the estate includes a dwelling house in which the surviving spouse was residing, they have a right to require the personal representatives to ‘appropriate’ the house in satisfaction of their interest.²⁷⁷ This must be done by written notice within 12 months of the grant of representation. If a spouse feels they have not been adequately provided for under the intestacy rules, or if they need to bring a legal action to claim their rights, any application for an order for financial provision must be made within six months from the date of the grant of representation (letters of administration).²⁷⁸ For instance, in the case of *Re Salmon*²⁷⁹ it was confirmed that if the delay is the fault of the applicant, the court is unlikely to grant an extension, reinforcing the strict nature of the 6-month limit. Similarly, in India, the succession laws generally do not place a specific, rigid time limit on a surviving spouse to claim their share in intestate property, but they must act within a reasonable period, typically three years from when the right to sue accrues (e.g., when the right is denied or succession opens), as guided by the

²⁷¹ Succession Act (n 235 above), Sec.26(3).

²⁷² UPC 1990, Sec.3-803.

²⁷³ Arizona Revised Statutes Sec.14-3803.

²⁷⁴ [2019] 267 So.3d 476 (Fla. App.).

²⁷⁵ AEA (n 50 above) Sec.46 (2A).

²⁷⁶ Inheritance (Provision for Family and Dependents) Act (n 60 above), Sec.3(2).

²⁷⁷ Intestates’ Estates Act 1952, Sec.5.

²⁷⁸ Inheritance (Provision for Family and Dependents) Act (n 60 above), Sec. 4.

²⁷⁹ [1981] Ch. 167.

Limitation Act, 1963.²⁸⁰ For instance, in *Sangili v. Jeyakodi*,²⁸¹ the Supreme Court discussed the limitation for a partition suit. The Court held that limitation for partition does not start until the paternity or heirship is specifically denied, rejecting adverse possession claims if there was no ‘ouster’ (active exclusion) of the legal heir. Amendment

Congruently, even in Kenyan Law of Succession Act (Cap 160), there is no strict, absolute time limit (limitation period) for a surviving spouse to initiate legal action to claim inheritance in an interstate succession. The Limitation of Actions Act does not generally apply to the right of a beneficiary to claim their share in a succession matter.²⁸² In *Re Estate of Kiptugen Chepkwony (Deceased)*,²⁸³ courts have held that a petition for letters of administration can be filed at any time, even years after the death, provided there is no prejudice to other beneficiaries or bona fide purchasers. Although there is no ‘expiry date’ for the right to inherit, the following provisions encourage timely action: 6-Month Rule (Confirmation of Grant)²⁸⁴ which implies that an application for confirmation of the grant of letters of administration should be made at least 6 months after the initial grant. In summary, while a surviving spouse in Kenya has no strict time limit to start the succession process, they should file within 6-12 months to ensure proper management of the estate and avoid legal disputes. Delays, while not automatically fatal, can lead to the ‘doctrine of laches’ being applied if other heirs are prejudiced. It has thus emerged that though time limit is important to guard against doctrine of laches and estoppel, however, this needs to remain open or go above 6months limit.

4.3.5 Limitation on Amounts Recoverable

It has emerged that all jurisdiction has limitations on the amount recoverable by a surviving spouse. The difference, however, arises on how they arrive on the share of the surviving spouse. Whereas in Uganda, the succession act authorizes the surviving spouse to take no more than— (a) a proportion of the property of the intestate that he or she is entitled to under section 23; or (b) a proportion of the property that was acquired before the surviving spouse separated from the intestate as a member of the same household.²⁸⁵ However, in US, succession law generally protects the surviving spouse by granting them the largest share of the estate including California Probate Code, New York EPTL, or the Uniform Probate Code adopted by some states.²⁸⁶ However, if the

²⁸⁰ Limitation Act (n 122 above), Schedule, Art.113.

²⁸¹ [2024] SA(MD).199/2023.

²⁸² Limitation of Actions Act Cap 22, Sec.20(1).

²⁸³ [2021] eKLR.

²⁸⁴ Law of Succession Act (n 180 above), Sec. 71.

²⁸⁵ Succession Act (n 235 above), Sec.26(4).

²⁸⁶ UPC (n 1 Above), Sec 2-102.

decedent has children who are not the children of the surviving spouse, the spouse typically receives a flat sum (e.g., \$150,000–\$225,000) plus 50% of the remaining estate. This is demonstrated in the case of *Estate of Leslie*.²⁸⁷ Courts frequently deal with disputes over whether property is community or separate, which directly impacts the ‘limitation’ on the spouse's share. If property is deemed separate, the spouse receives less (if kids exist) than if it is deemed community. In India, however, there is no upper monetary limit on the amount a surviving spouse inherits. The law grants absolute ownership of property to the surviving spouse (widow/widower), removing traditional ‘limited estate’ restrictions. However, inheritance can be impacted by coparcenary structures (Section 6) or specific devolution rules for inherited property.²⁸⁸ In South Africa, if the deceased and the separated spouse were married in community of property, the surviving spouse is automatically entitled to 50% of the joint estate by virtue of the marriage, not the Act. The remaining 50% (the deceased's share) is then distributed according to the Intestate Succession Act.²⁸⁹ The law provides that if there are no descendants, the spouse inherits the entire estate. However, if the deceased is survived by a spouse and descendants, the spouse inherits the greater of: a ‘Child’s Share’ (The net estate divided by the number of children + 1); a Statutory Amount (Currently fixed at R250,000). In polygamous marriages, in the case of multiple spouses (recognized under the Reform of Customary Law of Succession Act), the ‘spouse's share’ is divided equally among the wives, with each wife guaranteed a minimum share of R250,000, or a child's share if that is greater.²⁹⁰ In Kenya, surviving spouse does not automatically inherit all property absolutely; they are deemed to hold the majority of it in trust for the children, with their enjoyment limited to their lifetime (or until remarriage for a widow). In *Loice Wanjiku Kagunda v Julius Gacheru Mwangi*,²⁹¹ it was noted that the spouse holds the property in trust for the children, and the children's right to the property crystallizes upon the death or remarriage of the spouse. Therefore, in all jurisdictions, the calculations are provided in relation to the amount to be recovered by the surviving spouse.

4.3.6 Discretionary Judicial Power

The succession act in Uganda provides a wider discretion to judges in regard to determining complex events in line with realization of property rights of the surviving spouses,²⁹² this leaves a huge room for abuse of property rights of a surviving spouse. This is not the case in other

²⁸⁷ [1984] 37 Cal.3d 186, 207 Cal.Rptr. 561, 689 P.2d 133.

²⁸⁸ Hindu Succession Act (n 97 above), Sec.6.

²⁸⁹ Intestate Succession Act (n 149 above), Sec.1(1)(c).

²⁹⁰ Intestate Succession Act (n 149 above), Sec.1(1)(c)(i).

²⁹¹ [2020] Civil Appeal 14.

²⁹² Succession Act (n 235 above), Sec.26(2).

jurisdictions, for instance, in US, the law provides limited, rather than broad, judicial discretion when a surviving spouse seeks to inherit property. While the law aims to protect the surviving spouse by giving them priority, judicial discretionary power is usually confined to interpreting ambiguous situations (e.g., determining the validity of a marriage, common-law status, or whether a separation constituted abandonment). In most states, the surviving spouse is the first priority to inherit, often receiving the entire estate if there are no children, or a significant share if children exist.²⁹³ For instance, in *Lawrence v. Chater*,²⁹⁴ it was established that the judge discretion is limited within the predetermined amount given. Similarly, in UK, succession law simply provides judicial discretionary powers to adjust the property rights of a surviving spouse under the Inheritance (Provision for Family and Dependants) Act 1975.²⁹⁵ This is regulated by the Inheritance and Trustees' Powers Act 2014 which sets strict statutory formulas for distributing assets, the 1975 Act acts as a safety net allowing the court to override these rules if they fail to provide 'reasonable financial provision' for the survivor.²⁹⁶ In India and South Africa, succession law generally does not provide significant judicial discretionary powers to alter the fixed shares of a surviving spouse in intestate succession. It instead, acts as a statutory, mandatory, and inflexible framework that defines exact percentages or shares for the spouse.²⁹⁷

4.3.7 Matrimonial Property Act

Unlike in Uganda where judge made laws are relied, in Kenya, intestate succession is also governed by Matrimonial Property Act (MPA) 2013. While the Law of Succession Act does not formally incorporate the Matrimonial Property Act, recent judicial trends have increasingly used the MPA to protect surviving spouses during intestate succession. The law defines 'matrimonial property' as the matrimonial home, household goods, and any other property jointly owned and acquired during marriage. It vests ownership based on the contribution (monetary or non-monetary) of each spouse.²⁹⁸ The Constitution of Kenya²⁹⁹ mandates spousal equality during and at the dissolution of marriage. Courts now debate whether 'dissolution' includes death, allowing matrimonial property rights to be settled before the remaining estate is distributed under succession law. The Matrimonial Property Act has helped surviving spouses—particularly widows—by providing a mechanism to 'ring-fence' their share of property before it enters the

²⁹³ UPC (n 1 Above), Sec 2-102.

²⁹⁴ [1996] 516 U.S. 163.

²⁹⁵ Inheritance (Provision for Family and Dependants) Act (n 60 above), Sec. 4.

²⁹⁶ As above, Sec. 1, 2, &3.

²⁹⁷ Hindu Succession Act (n 97 above), Sec.8.

²⁹⁸ MPA (n 229 Above), Sec.6.

²⁹⁹ The Constitution of Kenya (n 228 above).

general pool for distribution among other heirs. This means that spouses can claim a share of property by proving domestic work, childcare, or farm work, even if the property is registered solely in the deceased's name.³⁰⁰

The MPA provides that property acquired during marriage in one spouse's name is rebuttably presumed to be held in trust for the other, allowing survivors to claim a 50% share based on this beneficial interest.³⁰¹ Section 8 of the MPA protects the first wife's interest in property acquired before subsequent marriages, ensuring it is not diluted by later wives during estate distribution.³⁰² In the case of *JOO v MBO*,³⁰³ the Supreme Court of Kenya affirmed that while equality is a principle, property division is not automatically 50:50; a survivor must prove their contribution to claim a specific share. It has therefore emerged that Uganda needs to have a Matrimonial Property Act to operate along a principal legislation of Succession Act.

4.4 The rationale of Section 26 of the Succession Act (Newly enacted) in comparison with Succession Act Cap 162 (Scrapped) in protecting spousal rights during succession

The interplay between Section 26 of Succession Act Cap 268 and the broader architecture of the Succession Act (Cap 162) forms the legislative anchor for protecting spousal and family property rights upon the death of a partner in Uganda. The rationale behind Section 26 particularly as refined by subsequent jurisprudence and the landmark Succession (Amendment) Act addresses severe historical gaps in Cap 162 regarding spousal vulnerability, property grabbing, and gender discrimination. Under earlier applications of the Succession Act, when a breadwinner died intestate (without a will), extended family networks (clans) frequently claimed absolute ownership of family land and homes. Surviving spouses disproportionately widows were routinely subjected to forced evictions and stripped of shelter. Rationale for Section 26 establishes a statutory block preventing the residential holding from being lumped into general estate distribution, safeguarding the fundamental right to housing for the surviving spouse and dependent children.

Historically, patriarchal interpretations under older succession frameworks allowed testators or administrators to relegate a widow to a precarious status often granting her a conditional right to “stay in the matrimonial home only until she remarries.” Section 26 and related intestacy protections were designed to dismantle this conditional vulnerability. The rationale ensures that the surviving spouse’s right to the residential holding is treated as an inviolable, primary entitlement

³⁰⁰ MPA (n 229 Above), Sec.2,7 & 14.

³⁰¹ MPA (n 229 above), Sec.14.

³⁰² MPA (n 229 above), Sec.8.

³⁰³ [2023] KESC 4 (KLR) (27 January 2023).

rather than a temporary privilege dictated by the whims of extended relatives. Cap 162 originally contained colonial-era provisions that heavily favored male lineage and patriarchal customs, conflicting directly with the equality mandates of the 1995 Constitution of Uganda (Article 31), which guarantees men and women equal rights during and upon the dissolution of marriage. Section 26 acts as a legislative instrument to operationalize this constitutional command, ensuring that surviving spouses of either gender are legally protected from discriminatory property stripping.

A core rationale driving the strict enforcement of Section 26 alongside modern Cap 162 amendments is the requirement for spousal and lineal descendant consent before any estate property can be disposed of or sold. Administrators and executors are legally barred from liquidating or distributing core residential properties unilaterally. This shields the family asset base from bad-faith actors, hasty sales, and intermeddling, ensuring that the primary family home is preserved for those who depend on it for daily survival and stability. Beyond spousal protection, Section 26 recognizes that the matrimonial home is inextricably linked to the welfare of minor children. By insulating the residential holding from premature division, the law ensures that children are not displaced during their formative years, allowing them stability for education, maintenance, and overall development amidst the trauma of losing a parent.

4.5 Conclusion

The protection of property rights for surviving spouses varies significantly across US, UK, India, South Africa and Kenya, shifting between community property regimes, personal/religious law, and customary law versus statutory law conflicts. Specifically, even when recognized that Article 26 of Succession Act in Uganda is against customary law and a Jus Cogens, there are still bold questions about why it has persisted. To improve the law for the achievement of an ideal protection of property rights of surviving spouses during interstate succession in Uganda, attention must be directed to the constitutional demand for protection of deprivation of property and relate this to how property rights have been observed and addressed in countries like the US, UK, India, South Africa and Kenya, as well as to underlying challenges and achievements, to be able to overcome the underlying inconsistencies laid down in existing Succession laws and judgments in relation to disqualification due to separation, physical and function separation, burden of proof of surviving spouse, time limits for legal action, limits on amount recoverable, discretionary judicial powers, and many others in the Penalizing law of Uganda under section 26 of Succession Act.

Considering the revision in Section 26 of Succession Act, can be meaningful to highlighting aspects that remain biased; hence this can help to reflect better on what policy changes are needed in addressing discrimination especially when it comes to gender misconceptions, based on the successes achieved in other jurisdictions and what exactly fits the Ugandan context from what has been learned.

The dissertation is hoped to serve as a useful basis for legal practitioners, Governments and other relevant stakeholders to exchange experiences, good practices and challenges, and to discuss the way forward to enhance protection of property rights of surviving spouses during intestate succession and response strategies across common law Africa, including by implementing the recommendations outlined herein. The report can also assist Uganda in identifying priority areas on succession legislative reform and measures that can be undertaken.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction
5.2 Conclusions
5.2.1 International legal framework
5.2.2 Uganda's legal framework
5.2.3 Legal framework in selected countries
5.3 Recommendations
5.3.1 Legal reforms
5.3.2 Policy reforms
5.4 Suggested areas for further study

5.1 Introduction

While the law is evolving in many jurisdictions to recognize the protection of property rights of spouses during succession, significant reforms are still needed to better protect surviving spouses and ensure that officials/individuals who perpetrate discrimination are held accountable. In many countries, including Uganda, cultural, political inspired and gendered assumptions continue to shape their legal frameworks and societal attitudes towards women. These assumptions often overlook the possibility that the abuse of protection of property rights of surviving spouses is a direct abuse of the constitutional guarantees. Therefore, it is crucial to amend the Succession Act to address this gap and to ensure that all victims of abuse are provided with equal protection under the law. Many surviving spouses have been and remain victims of both state agencies and private persons and these are assumed to stem from societal structures, underreporting, and lack of adequate support systems.

This chapter presents the conclusions and recommendations based on the objectives of this thesis as derived from chapter one:

5.2. Conclusions

This section provides the conclusive remarks on existing international and national legal regime for the protection of property rights of separated spouses, the extent by which the Succession Act is consistent with the constitutional provisions on protection of property rights of separated

spouses in Uganda and a comparative analysis of selected global and regional best practices which exist for the protection of property rights of separated spouses during succession in a manner that yields legal and policy proposals which can be obtained from other jurisdictions to enhance Uganda's succession law towards protection of property rights of separated spouses as provided below.

5.2.1 International and National Legal Standards

The international and national understanding has been shaped by treaties, conventions, Constitution of Uganda, principal legislation and other statutes. In the majority of cases, the property rights a typical Ugandan woman claims upon the death of a spouse arises from her rights over the same acquired by virtue of marriage. According to Ahikire and Mwiine,⁷⁶⁷ women's rights to property during death of a spouse is far from satisfactory and must be reformed to advance the status of women in Uganda. Equally unsatisfactory is the fact that in Uganda, partly owing to the phenomena of legal pluralism, even where the relevant statutory laws are protective of women's rights to matrimonial property, their implementation is hindered by customary law practices, socialization, and the generally weak economic capacity of many women in the country. It is therefore imperative to appreciate the international, regional and sub-regional legal framework adopted by Uganda in auspices of protecting property rights of separated spouses during succession. The rubric of international and national legal framework constitutes a series of laws right from CEDAWA, Maputo Protocol to the Constitution and other statutes.

Although Uganda has adopted the above international and national framework, the protection of property rights of separated spouses during success remain hanging. This is associated with the fact that several implications in international and national legal framework appear to disqualify separated spouses from taking any interest in the estate if they were separated from the deceased 'as a member of the same household' at the time of death, focusing on the physical, functional separation of households rather than just legal divorce; if a spouse is separated, they must prove that they were not responsible for the separation, or that the separation was due to the deceased's actions, to inherit. If the survivor left willingly, they may be excluded. Furthermore, separated spouses seeking to claim interest in an intestate's estate must apply to court for a declaration allowing them to inherit within six months of the death of the intestate.

¹ J Ahikire & AA Mwine 'Gender equitable change and the place of informal networks in Uganda's legislative policy reforms' 2020.

In addition, even if a court allows a separated spouse to inherit, they may only be entitled to a portion of the property acquired *before* the separation, not the entire estate. Lastly, the protection is not automatic since the court has the discretion to determine what constitutes ‘good cause’ for a separated spouse to inherit, creating uncertainty. These thus remains inconsistent with constitutional demands of equality, access to justice, property rights and family rights in Uganda.

5.2.2 The Ugandan Legal Framework

Uganda envisages a conscious and good legal framework beyond some requirements of international legal framework. However, it espouses serious inconsistencies with the Constitution of Uganda. For instance, the Succession Act appears to disqualify separated spouses from taking any interest in the estate if they were separated from the deceased ‘as a member of the same household’ at the time of death. Secondly, the Act focuses on the physical, functional separation of households rather than just legal divorce. Thirdly, if a spouse is separated, they must prove that they were not responsible for the separation, or that the separation was due to the deceased’s actions, to inherit. If the survivor left willingly, they may be excluded. Fourthly, separated spouses seeking to claim interest in an intestate’s estate must apply to court for a declaration allowing them to inherit within six months of the death of the intestate.

Furthermore, even if a court allows a separated spouse to inherit, they may only be entitled to a portion of the property acquired *before* the separation, not the entire estate. Sixth, the protection is not automatic since the court has the discretion to determine what constitutes ‘good cause’ for a separated spouse to inherit, creating uncertainty. Lastly, absence of a matrimonial property act seems to affect the underlying process of succession after passing of one spouse. This study thus concludes that for the Succession Act to fulfill its balanced goal of justice, a balanced adoption and observance of existing legal frameworks internationally and nationally need to be objectively taken.

5.2.3 Global and Regional best practices

In all selected jurisdictions, the aspect of disqualification to inheritance due to separation is condemned. Unlike the Succession Act in Uganda, which provides that ‘A surviving spouse of an intestate shall not take any interest in the estate of the intestate if, at the death of the intestate the surviving spouse was separated from the intestate as a member of the same household’, in the selected jurisdictions in US, UK, India, South Africa and Kenya, separation does not automatically disqualify a spouse or civil partner from inheriting property rights under intestacy rules, provided

the marriage has not been legally dissolved. It therefore emerged that a separated spouse remains entitled to inherit, unless a final decree of divorce was granted before the deceased's passing.

In addition, in all selected jurisdictions, physical or functional separation of a household does not automatically disqualify a surviving spouse from inheriting property rights under intestate succession, provided the couple is still legally married at the time of death. This appeared contrary to Ugandan Succession Act which bases on physical and function separation of households by separated spouses not to benefit on the property of the deceased spouse during succession. In USA, the Probate Code provides that a surviving spouse excludes someone whose marriage was dissolved or annulled. In UK, if spouses are merely living apart but remain married, the separated spouse retains full inheritance rights. In India, legal separation or physical separation does not automatically equate to divorce. The determining factor is the subsistence of a legal marriage at the time of death.

Unlike Uganda, USA and India which put a high burden of proof to the surviving spouse to prove their spousal right. This slightly differs from other jurisdictions which puts less or no burden of proof to the surviving spouse to prove their property rights. In USA, the law generally puts the initial 'Onus Probandi' on the surviving spouse to establish their status as a legal spouse at the time of the decedent's death. In India, the burden of proof lies on the surviving spouse to establish the validity of their marriage if it is challenged by other legal heirs, as this relationship is the foundation of their inheritance right. This is not the case in UK, where the law does not generally place a heavy burden of proof on a surviving spouse to prove their entitlement to inherit property under intestacy rules.⁷⁶⁸ It has thus emerged that though burden of proof is important, however, it can bar a certain section of spouses to lose their property rights, hence, the burden needs to either shift to the other party or remains low for a surviving spouse.

Unlike the Ugandan Succession Act which limits time for legal action on the side of surviving spouse to six months after the death of the intestate spouse, in other jurisdictions, the best practice is that the time limit is not expressly defined and where it is defined, it impliedly gives a chance and discretion on the side of the courts to go above 6 months. For instance, in USA, the time ranges from a few months to a year after death or the opening of probate. In UK, there is no strict 'time limit' for a surviving spouse to *initially* inherit under the intestacy rules. Congruently, even in

⁷⁶⁸ AEA 1925, Sec.46 (1).

Kenya, there is no strict, absolute time limit (limitation period) for a surviving spouse to initiate legal action to claim inheritance in an interstate succession.

It has also emerged that all selected jurisdictions have limitations on the amount recoverable by a surviving spouse. The difference, however, arises on how they arrive on the share of the surviving spouse. In Uganda, the succession act authorises the surviving spouse to take no more than— (a) a proportion of the property of the intestate that he or she is entitled to under section 23; or (b) a proportion of the property that was acquired before the surviving spouse separated from the intestate as a member of the same household. However, in the US, succession law generally protects the surviving spouse by granting them the largest share of the estate including California Probate Code, New York EPTL, or the Uniform Probate Code adopted by some states. In India, however, there is no upper monetary limit on the amount a surviving spouse inherits. In South Africa, if the deceased and the separated spouse were married in community of property, the surviving spouse is automatically entitled to 50% of the joint estate by virtue of the marriage, not the Act.

The Succession Act in Uganda provides a wider discretion to judges in regard to determining complex events in line with realization of property rights of the surviving spouses. This leaves a huge room for abuse of property rights of a surviving spouse. This is not the case in other selected jurisdictions, for instance, in US, the law provides limited, rather than broad, judicial discretion when a surviving spouse seeks to inherit property. Similarly, in UK, succession law simply provides judicial discretionary powers to adjust the property rights of a surviving spouse under the Inheritance (Provision for Family and Dependents) Act 1975. In India and South Africa, succession law generally does not provide significant judicial discretionary powers to alter the fixed shares of a surviving spouse in intestate succession. It instead, acts as a statutory, mandatory, and inflexible framework that defines exact percentages or shares for the spouse.

5.3 Recommendations

While the law is evolving in many jurisdictions to recognize the protection of property rights of spouses during succession, significant reforms are still needed to better protect surviving spouses and ensure that officials/individuals who perpetrate discrimination are held accountable. In many countries, including Uganda, cultural, political inspired and gendered assumptions continue to shape their legal frameworks and societal attitudes towards women. These assumptions often overlook the possibility that the abuse of protection of property rights of surviving spouses is a direct abuse of the constitutional guarantees in Article 26, 21 and 31.

Therefore, it is crucial to amend the Succession Act to address this gap and to ensure that all victims of abuse are provided with equal protection under the law. Many surviving spouses have been and remain victims of both state agencies and private persons and these are assumed to stem from societal structures, underreporting, and lack of adequate support systems. Below are specific recommendations to support surviving spouses or potential victims now and in future:

5.3.1 Legal Reforms

These reforms have been advanced to improve the legal framework and practice in Uganda. These reforms are advanced to fill the gaps envisaged in the legal standard of Uganda as informed by international legal framework and selected jurisdictions.

5.3.1.1 Revisit Automatic Disqualification of Surviving Spouses due to Separation

There is a need to revisit the automatic disqualification of surviving spouses of an intestate not take any interest in the estate of the intestate if, at the death of the intestate the surviving spouse was separated from the intestate as a member of the same household. It is important to borrow from other jurisdictions in US, UK, India, South Africa and Kenya, where separation does not automatically disqualify a spouse from inheriting property rights, provided the marriage has not been legally dissolved. This is because separation does not constitute divorce, and thus, a separated spouse remains legally married and eligible to inherit. A surviving spouse, including a separated one, is entitled to personal/household effects and a life interest in the net estate. Spouses are considered dependents regardless of whether they were maintained by the deceased, distinguishing them from former (divorced) spouses who may need to prove dependence. This will be important in realization of fairness in estate planning, preventing financial hardship, and reflecting the evolving realities of modern relationships. When spouses separate but do not officially divorce, they often remain legally married, yet automatic disqualification can lead to severe, unintended consequences, such as leaving a vulnerable spouse without access to essential survivor benefits.

5.3.1.2 Revisit the clause on ‘Physical and Functional Separation of Household’ by spouses

The Succession Act needs to do away with ‘separation in fact’ requirement or physical and functional separation of households by separated spouses which disallows separated spouses not to benefit on the property of the deceased spouse during succession. This is because several jurisdictions differ from this stance, whereby physical or functional separation of a household does not automatically disqualify a surviving spouse from inheriting property rights under intestate

succession, provided the couple is still legally married at the time of death. It needs to be understood that a mere physical or functional separation (living apart, separate finances) does not terminate the right to inherit. The exceptions which are provided by the Act limit to (a) the surviving spouse has been absent on an approved course of study in an educational institution; (b) the intestate was, at the time of his or her death, the one who had separated from the surviving spouse as a member of the same household; or (c) the intestate is the one who caused the separation, are not exhaustive and present a huge burden to prove in some cases, when it comes to a surviving spouse.

The law therefore needs to look for legal, not physical, separation. For instance, a spouse who was estranged (estranged, living in a separate home, no communication) still has a legal claim to the estate, overriding other relatives, unless they are divorced. If the home is owned as joint tenants, it passes automatically to the survivor, regardless of separation. If owned as tenants in common, the deceased's share is distributed by intestacy laws, which includes the separated spouse. The determining factor needs to be, subsistence of a legal marriage at the time of death. As long as the marriage is valid, the spouse remains an heir. The study recommends that disqualification needs to be strictly limited to legal grounds, such as committing murder of the deceased and other serious offenses.

5.3.1.3 Reduce the Burden of Proof on the Surviving Spouse

There is a need to reduce or shift the burden of proof on the side which claims or denouncing the surviving spouse (other legal heirs) to prove their spousal property rights. This will be significant in realising constitutional mandate of protecting property rights of everyone. This is not to mean that the surviving spouse need not to prove, No. In some instances, the surviving spouse needs to prove his or her marriage legality while producing required legal documentations/procedures. But all other details, like physical and functional separation, reasons for separations and other excuses, need to press the initial burden on the complainants. This means that the law needs to generally puts the initial ‘Onus Probandi’ on the complainants not surviving spouse. In some instance where a spouse claims an asset is community property (even if in the decedent’s name), they must often ‘trace’ the funds used to purchase that asset back to community earnings, which requires extensive documentation. In some instances when a relationship (marriage) is questioned, the opinion of persons having special knowledge is relevant to be utilized especially when it comes to customary marriages which are common in Uganda. If a marriage is denied by others, the surviving spouse must provide proof (marriage certificate, witnesses, or evidence of promise to marry) to establish their status as the legal heir. In general, the law needs to actively favours the surviving spouse in

intestacy, reducing their need to ‘prove’ their right to inherit, provided the marriage was legal. The only exception which must be observed is that, even if a marriage existed, the spouse can be disqualified for criminal misconduct, shifting the focus to whether the spouse *deserves* to inherit.

5.3.1.4 Revise the Time Limit for Legal Action

There is a need for Ugandan Succession Act to remove limitation on time for legal action on the side of surviving spouse of six months after the death of the intestate spouse. Just as it done in majority of other global and regional jurisdiction, the time limit is not expressly defined and where it is defined, it impliedly gives a chance and discretion on the side of the courts to go above 6 months. For instance, in USA, the time ranges from a few months to a year after death or the opening of probate. However, this is not to say that there should not be strict deadline for opening probate because delaying can lead to issues, and once the process starts, the court expects administration to move forward, often requiring claims within a few months. Such significant legal time limits regarding property rights, challenging the distribution, and making additional claims must be done within time. In instances where the estate includes a dwelling house in which the surviving spouse was residing, they have a right to require the personal representatives to ‘appropriate’ the house in satisfaction of their interest. This must be done by written notice within 12 months of the grant of representation. If a spouse feels they have not been adequately provided for under the intestacy rules, or if they need to bring a legal action to claim their rights, any application for an order for financial provision must be made within six months from the date of the grant of representation (letters of administration).

The global and regional best practices in this case is ensuring that the succession laws generally do not place a specific, rigid time limit on a surviving spouse to claim their share in intestate property, but they must act within a reasonable period, typically three years from when the right to sue accrues (e.g., when the right is denied or succession opens), as guided by the Limitation Act. In summary, a surviving spouse in Kenya has strict time limit to start the succession process. For instance, in *re Estate of the Late Ndolo Kioko Musyimi (Deceased)*⁷⁶⁹, enhances 6-Month Window and the Doctrine of Laches. This is reemphasized in *Ethel Makumbi v. Nabatanzi Maureen & Others*⁷⁷⁰, where the court reaffirmed that a very long separation (over 25 years in this instance) can disentitle a surviving legally-recognized spouse from claiming a share or administering the estate, effectively

⁷⁶⁹ [2026] KEHC 9445 (KLR) (Succession Cause E600 of 2022).

⁷⁷⁰ [2021] (HC Civil Suit No. 84).

stripping certain spousal inheritance rights even if the marriage was never formally dissolved by divorce. It is thus recommended that they should file within 6-12 months to ensure proper management of the estate and avoid legal disputes. Delays, while not automatically fatal, can lead to the ‘doctrine of laches’ being applied if other heirs are prejudiced

5.3.1.5 Review the Process and Procedure of Enforcing Limitations on Amounts Recoverable

Although the Ugandan Succession Act provides limitations on the amount recoverable by the surviving spouse during intestacy, however, the process and procedure of granting this share remains liable to be abused. It is important therefore to protect the surviving spouse by granting them the largest share of the estate as done in US under California Probate Code, New York EPTL, or the Uniform Probate Code. It is important for courts or any selected arrangement to frequently deal with disputes over whether property is community or separate, which directly impacts the ‘limitation’ on the spouse's share. If property is deemed separate, the spouse receives less (if kids exist) than if it is deemed community. This is because in selected jurisdictions like India, there is no upper monetary limit on the amount a surviving spouse inherits. The law grants absolute ownership of property to the surviving spouse (widow/widower), removing traditional ‘limited estate’ restrictions. It should also be discovered that if the deceased and the separated spouse were married in community of property, the surviving spouse is automatically entitled to 50% of the joint estate by virtue of the marriage, not the Act. The remaining 50% (the deceased's share) is then distributed according to the Succession Act.

5.3.1.6 Reduce the wider Discretionary Judicial Power

There is a need for the succession act in Uganda to limit or reduce wider discretionary powers given to judges in regard to determining just cause, amount recoverable and legality of marriages in the virtue of enforcing property rights of the surviving spouses. It is recommended that Uganda need to borrow a leaf from other jurisdictions, for instance, in US, the law provides limited, rather than broad, judicial discretion when a surviving spouse seeks to inherit property. While the law aims to protect the surviving spouse by giving them priority, judicial discretionary power is usually confined to interpreting ambiguous situations (e.g., determining the validity of a marriage, common-law status, or whether a separation constituted abandonment). This means that judge discretion needs to be limited within the predetermined amount given. In UK, succession law simply provides judicial discretionary powers to adjust the property rights of a surviving spouse under the Inheritance (Provision for Family and Dependants) Act 1975. This is regulated by the

Inheritance and Trustees' Powers Act 2014 which sets strict statutory formulas for distributing assets, the 1975 Act acts as a safety net allowing the court to override these rules if they fail to provide 'reasonable financial provision' for the survivor. In India and South Africa, succession law generally does not provide significant judicial discretionary powers to alter the fixed shares of a surviving spouse in intestate succession. It instead, acts as a statutory, mandatory, and inflexible framework that defines exact percentages or shares for the spouse.

5.3.1.7 Enacting Matrimonial Property Act

There is a need to enact Matrimonial Property Act (MPA) to work alongside the Succession Act in regulating intestate succession. This law is important in defining 'matrimonial property' as the matrimonial home, household goods, and any other property jointly owned and acquired during marriage. This law can elaborate and vest ownership based on the contribution (monetary or non-monetary) of each spouse. This law can also elaborate on existing legal debate of whether 'dissolution' includes death, allowing matrimonial property rights to be settled before the remaining estate is distributed under succession law. The Matrimonial Property Act has helped surviving spouses—particularly widows—by providing a mechanism to 'ring-fence' their share of property before it enters the general pool for distribution among other heirs. This means that spouses can claim a share of property by proving domestic work, childcare, or farm work, even if the property is registered solely in the deceased's name.

The MPA can limit property acquired during marriage in one spouse's name as rebuttably presumed to be held in trust for the other, allowing survivors to claim a 50% share based on this beneficial interest. The Act can protect the first wife's interest in property acquired before subsequent marriages, ensuring it is not diluted by later wives during estate distribution. This act would resolve the assumption that equality principle means dividing the property 50:50 without even a survivor prove their contribution to claim a specific share. This means that this law can provide a clear stance on whether equity or equality principle should be followed. If matrimonial property sharing is sorted, it also eases the distribution of remaining properties during succession, to avoid mixing matrimonial property into deceased's property.

5.3.1.8 Ratification of Hague Convention on the Law Applicable to Matrimonial Property Regimes (HCLAMPR) 1978

Uganda as a country has not ratified to the Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes. This non-ratification, combined with the lack of a

comprehensive domestic statute on matrimonial property, significantly affects the protection of property rights for separated spouses. The non-ratification is presumably affecting the broadness of Succession Act especially when it comes to protection of property rights of separated spouses during succession. Under the Hague Convention, the law applicable to a couple's property can automatically update if they change residence or nationality. Without it, international couples in Uganda face complex and often unpredictable outcomes because there is no unified international standard to determine which country's law applies to their assets.

The Convention can allow spouses to designate which law governs their property regime (e.g., through a prenuptial agreement). Additionally, because Uganda lacks both the Convention and a specific national Matrimonial Property, property division depends heavily on evolving case law. This leads to unpredictability, as different judges may apply different formulas for 'equitable sharing'. While courts in Uganda increasingly recognize 'unpaid care and domestic work', the lack of a standardized legislative framework (like that provided by the Convention) makes it difficult to quantify these contributions accurately, often leaving women at a disadvantage.

5.3.1.9 Ratification of Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons (HCLASEDP) 1989

The non-ratification of the Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons in Uganda creates legal uncertainty for separated spouses, primarily by leaving their property rights subjected to domestic laws that often privilege habitual residence and marriage subsistence over equitable distribution in Uganda. While the Succession Act improved protections, the lack of an international, harmonized framework like this poses specific risks. For instance, under current succession law, if a spouse is separated from the deceased as a member of the same household for over six months, they are generally disqualified from inheriting intestate. Without a treaty that harmonizes international standards on 'separation,' a separated spouse, particularly one living abroad or separated for a long period, may lose property rights.

The Hague Convention provides clear, predictable rules for which country's laws apply to a deceased's estate, prioritizing the deceased's habitual residence or nationality. Without this, a separated spouse in a cross-border scenario (e.g., Ugandan living in a foreign country) risks having their property rights determined by conflicting laws, which can lead to complex litigation. The Hague Convention framework would allow for a 'professio juris' (choice of law) to protect the estate. In contrast, domestic law may not adequately recognize a separated spouse's indirect financial contributions to matrimonial property, often looking only at the 'member of the same

household' status. While the Succession (Amendment) Act 2022 allows a court to grant a separated spouse a share upon application within six months, it requires proving the separation was not intentional or that they were not the cause, which is a high, costly burden. For separated spouses with assets located outside Uganda, the absence of a ratified international treaty makes it difficult to secure their share of the estate, as the foreign jurisdiction may not recognize Ugandan intestacy laws. The non-ratification thus keeps the process within a complex, often patriarchal, local framework rather than an internationally recognized one.

5.3.1.10 Amendment of ICCPR

As noted previously, the International Covenant on Civil and Political Rights (ICCPR) has never undergone formal textual amendments regarding spousal property or succession. However, the intersection of the ICCPR and the protection of spousal property rights upon death or succession has been powerfully shaped through authoritative interpretations (General Comments) by the UN Human Rights Committee particularly General Comment No. 28 (which addresses the equality of rights between men and women under Article 3) and the structural application of Article 23 (Protection of the Family) and Article 17 (Protection of the Home). When evaluating how international human rights standards align with or dictate the protection of spousal property during succession, several core principles emerge. For instance, the Human Rights Committee explicitly clarified under Article 23 that the equality of spouses does not end when a marriage terminates. When a marriage is dissolved by the death of a spouse, the surviving partner must enjoy equal inheritance and property rights. Laws or customs that strip a surviving spouse (frequently widows) of property rights upon a partner's death violate the core non-discrimination mandates of the ICCPR. General Comment No. 28 explicitly addresses harmful patriarchal customs, noting that women may not be treated as objects or part of the deceased husband's estate to be inherited or handed over together with his property to extended family members. International monitoring bodies view such practices as severe violations of human dignity, bodily autonomy, and equality before the law (Articles 3, 16, and 26 of the ICCPR). Arbitrary property grabbing and the forced eviction of surviving spouses by in-laws directly violate ICCPR Article 17, which guarantees protection against unlawful or arbitrary interference with one's home. State parties are internationally obligated to enact and enforce legislative measures that secure tenure and prevent third parties or biased clan structures from displacing a surviving spouse. Under the ICCPR, simply having formal equality on paper is insufficient. State parties have a positive duty to ensure that when a spouse's property rights are violated during succession, accessible judicial

mechanisms and effective remedies are readily available to reverse property dispossession and punish illegal intermeddling.

5.3.2 Policy Reforms

These reforms have been suggested to improve the policy framework and practice in Uganda. These reforms are advocated to fill the gaps envisaged in the policy framework of Uganda as informed by international policy framework and selected jurisdictions.

5.3.2.1 Continuous Capacity Building

To prevent further abuse of property rights of surviving spouses, it is essential to ensure that first responders, such as local government officials, Civil Society Organization officials, clan/family leaders, police officers, executors/administrators of estates, and administrator general officials who collaborate with surviving spouses and perpetrators, receive continuous capacity-building training on recognizing the warning signs of abuse of property rights. This shall make possible the protection of property rights abuse for separated spouses during succession. It will also make the process comprehensive and not limited to their being able to ensure appropriate handling of referrals, and meeting the needs and rights of victims.

5.3.2.2 Increasing public awareness of law related to protection of property rights

There should be departments established to conduct sensitization programmes and campaigns in communities, and over social and leading media to increase awareness of the real-life existence of and what entails in protecting property rights of surviving spouses. Direct toll-free helplines should be implemented for victims who may need support and report to administrator general office. This will reduce on discrepancies and continued abuse of this right.

5.3.2.3 Protection of Surviving Spouse (Victim)

To maintain the trial's sustainability, policymakers must guarantee that the victim or surviving receives sufficient protection. They must also expedite and streamline the legal system from reporting to court proceedings, making it more convenient for the victim to continue testifying in the trial. This is because many surviving spouses or victims remain worried and others face threats and death from other legal heir. This has made the process of achieving justice not worthwhile to several surviving spouses, hence, accepting to lose their property rights. In addition, there is a need to ensure that independent monitoring bodies such as Ombudspersons or national human rights institutions are adequately funded, allowing them to operate effectively and independently;

undertake efforts to strengthen cooperation with and support to non-governmental organizations that undertake monitoring activities and ensure that all reports produced by independent monitoring mechanisms, be made available and easily accessible to the public and that their recommendations are implemented by all actors concerned.

5.3.2.4 Zero tolerance policy on abuse of property rights of surviving spouses

There is a need to enact or amend legislation and policies to provide for the prosecution of alleged perpetrators, as required under international conventions. In this case, adoption of a ‘zero tolerance’ policy in relation to protecting property rights of surviving spouses by, inter alia, issuing public statements and adopting internal regulations condemning such ill practices like intermeddling while clearly stating that anyone committing such acts or otherwise participating or assisting in their officials will be criminally prosecuted and shall receive the appropriate penalties upon conviction. Further, consider creating separate investigative units within administrator general office or the Judiciary with a specific mandate on protecting property rights of surviving spouses.

5.4 Suggested Areas for Further Study

This study has provided an analysis of the existing abuse of property rights of surviving spouses in Uganda, focusing on the looming gap in the Succession Act, particularly Sections 26, in light of the protection of separated spouses during succession. However, there is still a knowledge gap as to why the women inheritance rights maintains the traditional aspects that undermine justice. More research could be done to determine why. Despite the gender-based gaps within the Ugandan Succession Act, the country has not responded to global pressure for Succession Law Reforms. Uganda maintains Article 26 in the Succession Act even in the face of the ongoing global pressure to have gender equality achieved and redefine the protection of property rights.

Lastly, there is need for a study that can establish why only three countries (France, Luxembourg, and Netherlands) have adopted Hague Convention on the Law Applicable to Matrimonial Property Regimes (HCLAMPR) 1978 and Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons (HCLASEDP) 1989 yet they would be good yardsticks in protection of property rights of separated spouses. In addition, a single position needs to be obtained in international law in regard to protection of property rights of surviving spouses to achieve a balanced approach to justice. This is because its occurrence is sometimes an international civil matter other than just a domestic concern.

BIBLIOGRAPHY

Books

Ahikire, Josephine and Ashaba, Amon Mwiine (2020) *Gender equitable change and the place of informal networks in Uganda's legislative policy reforms* (University of Manchester).

Bakibinga, David Justin (2022) *Property and Trust Law in Uganda* (Kluwer Law International BV).

Byaruhanga, Moses (2022) *Women's access to land in Uganda* (University of the Western Cape).

Jackson, Hackford; Schicke Ronald and Hogg Michael (2010). *Encyclopedia of identity* (Routledge International Encyclopedia).

Malik, Shruti; Kamakhya Nr Singh Asha Thomas; Ciro Troise and Stefano Bresciani (2024). *Does financial inclusion build the financial resilience of elderly women?* (Venture Capital: 1-23).

Gareth, Miller (2017) *International aspects of succession* (Routledge).

Monis, Harold (1971) *The law of succession in Uganda* (Orangutan Con Page).

Mujuzi, Jamil Ddamulira (2020) *Reconciling customary law and cultural practices with human rights in Uganda* (*Obiter* 41, no. 2: 239-256).

Nabawanda, Viola (2024) *Cohabitation and the Law Relating to Property Sharing in Uganda* (KAS African Law Study Library 10, no. 4: 485-498).

Pollock, Frederick and Maitland, Frederic William (1895) *The History of English Law Before the Time of Edward I... by Sir Frederick Pollock... and Frederick William Maitland.* (The University Press)

Saxena, Poonam Pradhan (2020) *Succession laws and gender justice.* In *Redefining family law in India*, pp. 282-305 (Routledge India).

Sherrin, Tammy; Parry Mills and Clark Strom (1978) *The Law of Succession* (Routledge).

Wallby, Sylvia (2012) *Six Structures of Patriarchy* (Revise Sociology). (Routledge).

Book Chapters

Auchmuty, Rosemary. "The feminist case against marriage." In *Research Handbook on Marriage, Cohabitation and the Law*, pp. 39-57. Edward Elgar Publishing, 2024.

Ahikire, Josephine, and Amon Mwiine Ashaba 'Gender equitable change and the place of informal networks in Uganda's legislative policy reforms' 2020.

Caplan, Patricia. "Cognatic descent, Islamic law and women's property on the East African coast." In *Women and Property*, pp. 23-43. Routledge, 2023.

Christandl, Gregor. "Succession Rights for Cohabitants." *Edinburgh Law Review* 24, no. 1 (2020): 138-143.

Harding, Rosie. "The rise of statutory wills and the limits of best interests decision-making in inheritance." *The Modern Law Review* 78, no. 6 (2015): 945-970.

Kafumbe, Anthony Luyirika. "Women's rights to property in marriage, divorce, and widowhood in Uganda: The problematic aspects." *Human Rights Review* 11, no. 2 (2010): 199-221.

Lateef, Husain, Emmanuel O. Amoako, Portia Nartey, Jia Tan, and Sean Joe. "Black youth and African-centered interventions: A systematic review." *Research on Social Work Practice* 32, no. 1 (2022): 3-12.

Moore, Elena, and Chuma Himonga. "Living customary law and families in South Africa." *Children, Families and the State* 61 (2018).

Odhiambo, Wilfrida. "Fighting for Gender Equality: Matrimonial Property Division in Kenya's Legal Landscape Upon Marriage Dissolution." *KAS African Law Study Library* 10, no. 4 (2024): 626-636.

Samaila, Emmanuel J. "Inheritance and Succession: Customary Law, Practice and Procedure." *Practice and Procedure (January 23, 2025)* (2025).

Saxena, Poonam Pradhan. "Succession laws and gender justice." In *Redefining family law in India*, pp. 282-305. Routledge India, 2020.

Storror, Richard F. "Family Protection in the Law of Succession: The Policy Puzzle." *Ne. UL Rev.* 11 (2019): 98.

Storror, Richard F. "Family Protection in the Law of Succession: The Policy Puzzle." *Ne. UL Rev.* 11 (2019): 98.

Journal Articles

Adnan, Sheikh Muhammad, Abid Hussain Shah, and Khurram Baig. "Comparison Between Islamic Laws and Private International Laws: Jurisdictional Matters Of Succession." *Pakistan Islamicus (An International Journal of Islamic & Social Sciences)* 4, no. 02 (2024): 101-118.

Amore, Mario Daniele, Morten Bennedsen, Isabelle Le Breton-Miller, and Danny Miller. "Back to the future: The effect of returning family successions on firm performance." *Strategic Management Journal* 42, no. 8 (2021): 1432-1458.

Arun, Sanjana. "From Beauvoir and Woolf's Critique and Analysis of 'Women as Property' to the Evolution of the Hindu Succession Law: How Far Have We Come in Achieving Equality in Women's Property Rights in India?." *Indian JL & Legal Rsch.* 3 (2021): 1.

Cavicchioli, Daniele, Danilo Bertoni, and Roberto Pretolani. "Farm succession at a crossroads: The interaction among farm characteristics, labour market conditions, and gender and birth order effects." *Journal of rural studies* 61 (2018): 73-83.

Chukwuokolo, J. Chidozie. "Afrocentrism or Eurocentrism: The dilemma of African development." *OGIRISI: A new journal of African studies* 6 (2009): 24-39.

Claassens, Aninka, and Catherine O'Regan. "Editorial citizenship and accountability: customary law and traditional leadership under South Africa's democratic constitution." *Journal of Southern African Studies* 47, no. 2 (2021): 155-172.

Fila, Ali Elema, Patrick Omwenga Kiage, and Celestine Nyamu Musembi 'Partition in Life and in Death: Intestate Succession after the Matrimonial Property Act', 2013. 2025:135. *E. Afr. LJ*.

Husain, Sahin, Nasir Purkon Ayoub, and Mukhammadolim Hassmann. "Legal pluralism in contemporary societies: Dynamics of interaction between islamic law and secular civil law." *SYARLAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 1, no. 1 (2024): 1-17.

Judiasih, Sonny Dewi, and Efa Laela Fakhriah. "Inheritance law system: Considering the pluralism of customary law in Indonesia." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 5, no. 2 (2018): 315-330.

Kodiyo, Kenneth Kaunda. "Historical Analysis of Women's Inheritance Rights in East Africa (Kenya, Uganda, and Tanzania) and the Influence of Colonialism." *Diké-A Márkus Dezső Összehasonlító Jogtörténeti Kutatócsoport folyóirata* 6, no. 2 (2022): 116-140.

Maina, Paul Mwambi. "Impact of Duration of Cohabitation on Succession in Cohabitation Marriages." *Journal of Public Policy & Governance* 8, no. 1 (2024): 53-69.

Mappong, Zainuddin, and Lili Lili. "Right to self-submission to western inheritance law for the heirs of islamic religion whom the property leaver has different religion." *Journal of Law and Sustainable Development* 11, no. 2 (2023): e423-e423.

Mathew, Ardra Ann. "Evolving Legal Perspective on Cohabitation Navigating Rights and Regulations." *Issue 6 Int'l JL Mgmt. & Human.* 6 (2023): 2704.

Maunatlala, Kgopotso, and Charles Maimela. "The implementation of customary law of succession and common law of succession respectively: With a specific focus on the eradication of the rule of male primogeniture." *De Jure Law Journal* 53, no. 1 (2020): 36-53.

Mbaku, John Mukum. "The Emerging Jurisprudence of the Africa Human Rights Court and the Protection of Human Rights in Africa." 2023:367. *Vand. J. Transnat'l L.* 56.

Mishra Archana, 'Breaking silence: Christian women's inheritance rights under Indian Succession Act, 1925', 2014:1-30. *Chotanagpur Law Journal.* 9(9).

Mishra Archana, 'Vicissitudes of Women's Inheritance Right—England, Canada and India at The Dawn Of 21st Century', 2016:481-508. *Journal of the Indian Law Institute.*

Moradipoor Saman, 'Comparative Study of Family Law Systems in East and West', 2025: 497-505. *Advanced Journal of Management, Humanity and Social Science.* 2025;1(8).

Mujuzi, Jamil Ddamulira. "Distribution of property at the termination of de facto unions (marriages by cohabitation/repute) in some African countries." *International Journal of Law, Policy and the Family* 37, no. 1 (2023): ebad015.

Mujuzi, Jamil Ddamulira. "Distribution of property at the termination of de facto unions (marriages by cohabitation/repute) in some African countries." *International Journal of Law, Policy and the Family* 37, no. 1 (2023): ebad015.

Mujuzi, Jamil Ddamulira. "Presumption of Marriage in Uganda." *International Journal of Law, Policy and the Family* 34, no. 3 (2020): 247-271.

Mujuzi, Jamil Ddamulira. "The Conundrum of Intestate Succession for Muslims in Uganda: Qadhis Court, Women's Rights, and Islamic Inheritance Law Issues." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (2023): 43-68.

Nyotah, Priscah, Edwin O. Abuya, and Francis DP Situma. "The Right of Establishment for Spouses of East African Community Citizens—a Paper Entitlement?." *Comparative & International Law Journal of Southern Africa* 57, no. 2 (2024).

O'Sullivan, Kathryn. "Cohabitant protection on relationship breakdown in Ireland: A lesson in illusory justice?." *International Journal of Law, Policy and The Family* 37, no. 1 (2023): ebad017.

O'Sullivan, Kathryn. "Posthumously conceived children and succession law: a view from Ireland." *International Journal of Law, Policy and the Family* 33, no. 3 (2019): 380-402.

Oldham, J. Thomas. *Divorce, separation and the distribution of property*. 2021. Law Journal Press.

Otu, Michael Takim, and Miebaka Nabiebu. "Succession and inheritance of property under Nigerian Laws: A comparative analysis." *European Journal of Social Sciences* 62, no. 2 (2021): 50-63.

Pazdan, Maksymilian, and Maciej Zachariasiewicz. "The EU succession regulation: achievements, ambiguities, and challenges for the future." *Journal of Private International Law* 17, no. 1 (2021): 74-113.

Poppe Taylor Emily S. 'Married, with Children at Death.' 2022:47. *ACTEC Law Journal* (23):2.

Schneider, Irene. "Family law and succession." In *Routledge handbook of Islamic law*, pp. 324-339. Routledge, 2019.

Tebbe, Nelson. "Inheritance and disinheritance: African customary law and constitutional rights." *The Journal of religion* 88, no. 4 (2008): 466-496.

Thakur, Divya. "Spousal Property Law in India: A Solace to Spouses." *Part 2 Indian J. Integrated Rsch. L.* 3 (2023): 1.

Violon, James Macalinao. "Women Empowerment Under International Law: A Comprehensive Analysis." 2023. *Research Ethics: Journal of Multidisciplinary Research* 1, no. 4.

Yusuf, Bifammengo. "A Comparative Study of Sharia and Secular Law of Inheritance Rights of Children Born Out of Wedlock." *Islamic University in Uganda Journal of Comparative Law* 8, no. 1 (2024): 187-195.

Zeigler, Sara L., and Gregory G. Gunderson. "Pernicious Patriarchy or Prosecutorial Progress?: Confronting Culture, War, and Rape in International Law." *Journal of Conflict Studies* 25, no. 2 (2005): 23-44.

Reports

Bakibisemu, Edrine. "An examination on the right of women on inheritance and ownership of property in marriage." (2019). Kampala International University.

Fraser E and Wood, S 'VAWG Legislation, Helpdesk Research Report No. 156. London, UK'. 2024. VAWG Helpdesk.

Gyapong, Adwoa Yeboah (2021). Commodification of family lands and the changing dynamics of access in Ghana. *Third World Quarterly*, 42(6), 1233-1251.

Ochilo, Louisa Akoth. "A critique of the constitutionality of section 3 (2) of the law of succession act of Kenya." (2020).

Tibihikirrab P 'Latest Laws and Amendments on Estates and Succession Management in Uganda. A Presentation by Dr. Pamela Tibihikirra-Kalyegira, Chairperson, Uganda Law Reform Commission at the 25th Annual Judges Conference Held On 5th-8th February, 2024 At Kampala Serena Conference Centre' (2024).

Dissertations

Kitui, Barbara. "The Land Governance Architecture and Securing Women's Land Rights In Uganda." PhD diss., University of Pretoria, 2024.

Kodiyo, Kenneth Kaunda. "Customary Law of Succession and the Influence of Colonialism." *PhD diss., University of Pécs* (2023).

Kodiyo, Kenneth Kaunda. "Intestate Succession in Kenya, Uganda, and Tanzania." PhD diss., University of Pécs, 2024.

LE Jared 'Freedom indivisible: Gays and lesbians in the African American civil rights movement' (2013) 61 Dissertation History Department University of Nebraska-Lincoln 25. <https://digitalcommons.unl.edu/historydiss/61>. [Last accessed 7 January 2026].

Mahlaela Theresia, 'A comparative study of the impact of technology on testate succession in South Africa', 2023. Doctoral dissertation.

Mugisa Patrick 'A critical analysis of the law relating to fraud cases in adoption proceedings in Uganda: a case study of the High Court Family Division' 2019. (Doctoral dissertation, Kampala international University, School of Law).

Nyamwata A, Lindah. "The law of succession in relation to women rights in Uganda." PhD diss., Kampala International University, School of Law, 2009.

Newspapers

Uganda Law Reform 'Launch of the 7th Revised Edition of 'The Principal Laws of Uganda' 2022. <http://www.ulrc.go.ug/launch-of-the-7th-revised-edition-of-the-principal-laws-of-uganda/> [Accessed 19 October 2025]

Websites

FAO 'The Constitution of Kenya, 2010', <https://faolex.fao.org/docs/pdf/ken127322.pdf> [Last Accessed 25 October 2025].

Hirsch JA 'American History of Inheritance Law: SSRN' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=982428 [Last accessed 20 October 2025].

KELIN Kenya 'Recommendation-KELIN Kenya. <https://www.kelinkkenya.org/wp-content/uploads/2022/05/Law-Of-Succesion-Act-Analysisby-Kelin.Doc> 2022. [Last Accessed on 24 October 2025].

N'TV 'Succession Amendment Bill: What Are the Likely Implications of Amendments? 2022. <https://www.youtube.com/watch?v=6rzT1G3FrEM> (Last Accessed 6th January 2026).

UN Women 'Statement: Widows' rights to independent life and livelihood after loss' 2023. <http://www.unwomen.org/en/news/stories/2017/6/statement-un-women-international-widows-day> [Accessed 5 January 2026].

UN Women 'Statement: Widows' rights to independent life and livelihood after loss' 2023.
<http://www.unwomen.org/en/news/stories/2017/6/statement-un-women-international-widows-day> [Accessed 5 January 2026].

UN Women 'Widows continue to face severe stigma and discrimination', 2024.
<http://asiapacific.unwomen.org/en/news-and-events/stories/2024/12/widows-continue-to-face-severestigma-and-discrimination>[Accessed 5 January 2026].