



THE REPUBLIC OF UGANDA

# THE SUCCESSION (AMENDMENT), BILL 2018.

VOLUME II

18<sup>th</sup> April, 2018



# THE SUCCESSION (AMENDMENT), BILL 2018

18<sup>th</sup> April, 2018



## TABLE OF CONTENTS

1.POLICY AND PRINCIPLES.....	1
2.DEFECTS IN THE EXISTING LAW.....	1
3.THE OBJECTIVES OF THE BILL.....	4
THE SUCCESSION (AMENDMENT) BILL, 2018 ARRANGEMENT OF CLAUSES .....	6
THE SUCCESSION (AMENDMENT) ACT, 2018.....	8
1. Short title and commencement.....	8
2. Amendment of section 2 of the Succession Act.....	9
3. Repeal of section 3 of the principal Act.....	11
4. Repeal of section 7 of the principal Act.....	11
5. Amendment of section 9 of the principal Act.....	11
6. Substitution of section 13 of the principal Act.....	12
7. Substitution of section 14 of the principal Act.....	12
8. Repeal of section 15 of the principal Act.....	12
9. Substitution of section 18 of the principal Act.....	12
10. Repeal of Part III of the principal Act.....	13
11. Amendment of section 26 of the principal Act.....	13
12. Substitution of section 27 of the principal Act.....	13
13. Amendment of section 28 of the principal Act.....	15
14. Substitution of section 29 of the principal Act.....	15
15. Amendment of section 30 of the principal Act.....	16
16. Repeal of section 31 of the principal Act.....	17
17. Repeal of section 34 of the principal Act.....	17
19.Amendment of section 36 of the principal Act.....	17
20. Amendment of section 38 of the principal Act.....	18
21.Substitution of section 43 of the principal Act.....	19
22. Substitution of section 44 of the principal Act.....	19
23. Insertion of new section 44A to principal Act.....	20
24. Amendment of section 45 of the principal Act.....	21

25. Substitution of section 46 of the principal Act.....	21
26. Substitution of section 47 of the principal Act.....	22
27. Substitution of section 55 of the principal Act.....	22
28. Substitution of section 87 of the principal Act.....	22
29. Substitution of section 179 of the principal Act.....	23
30. Amendment of section 200 of the principal Act.....	24
32. Substitution of section 203 of the principal Act.....	24
33. Substitution of section 204 of the principal Act.....	25
34. Insertion of a new section 204A to the principal Act...	25
35. Substitution of section 215 of the principal Act.....	26
36. Repeal of section 216 of the principal Act.....	26
37. Amendment of section 234 of the principal Act.....	27
38. Substitution of section 249 of the principal Act.....	27
39. Amendment of section 258 of the principal Act.....	27
40. Amendment of section 259 of the principal Act.....	28
41. Insertion of new section 267A to the principal Act....	28
42. Substitution of section 268 of the principal Act.....	29
43. Substitution of section 270 of the principal Act.....	29
44. Substitution of section 272 of the principal Act.....	30
45. Substitution of section 273 of the principal Act.....	30
46. Repeal of section 276 of the principal Act.....	30
47. Amendment of section 278 of the principal Act.....	31
48. Substitution of section 279 of the principal Act.....	31
49. Insertion of a new section 311A in the principal Act...	31
50. Substitution of section 321 of the principal Act.....	33
51. Substituting of section 331 of the principal Act.....	33
52. Substitution of section 332 of the principal Act.....	35
53. Substitution of section 333 of the principal Act.....	35
54. Insertion of new section 333A to the principal Act....	36
55. Amendment of section 335 of the principal Act.....	36
56. Substitution of the First Schedule to the principal Act. .....	36
57. Repeal of the Second Schedule to the principal Act...	37
58. Miscellaneous amendments to the principal Act.....	37

# **MEMORANDUM**

## **1. POLICY AND PRINCIPLES**

The object of the Bill is to amend the Succession Act, Cap. 162 to bring it in conformity with the Constitution of the Republic of Uganda and to reflect the current prevailing socio-economic circumstances in Uganda and internationally accepted human rights standards.

The current Succession Act contains provisions that are discriminatory towards women contrary to the Constitution. Recent Constitutional Court pronouncement have rendered some of the provisions of the Succession Act unconstitutional and thus null and void on the basis of gender discrimination. The Act therefore needs to be reformed to bring it in conformity with the Constitution. The issues that need to be addressed include the gender insensitive sections which discriminate between men and women, the definition of child and protection of rights of children, surviving spouses. The right of occupancy and definition of principal residential holding also needs to be streamlined.

## **2. DEFECTS IN THE EXISTING LAW**

The origin of Uganda's law of succession can be traced as far back as the Succession Ordinance of 1906 which was adopted from English law. There were shortcomings in the Ordinance that led to the enactment of the Succession (Amendment) Decree, 1972. The Decree provided for intestacy in the case of Ugandans and recognized the rights of illegitimate and adopted children. Many of the provisions in the Decree of 1972 were discriminatory on the basis of sex. The current Succession Act, Cap 162 is a replica of the 1972 Ordinance and therefore still discriminatory and

contrary to the provisions of the Constitution.

Several studies have been carried out in Uganda and recommendations made to address the gaps identified in the Succession Act. These studies include the Commission on Marriage, Divorce and Status of Women of 1965 which culminated into what is commonly referred to as the Kalema Commission Report of 1965. One of the recommendations led to the enactment of the Customary Marriages (Registration) Decree, 1973 (Decree No. 16 of 1973) which recognized customary marriages and validated otherwise invalid marriages solemnized before the coming into force of the Decree. The Kalema Commission recognized that most marriages were celebrated under customary law. In some instances, a husband who initially married under the Marriage Act went ahead and married under customary law. The subsequent customary marriage would be invalid but the Customary Marriage (Registration) Decree validated them.

Another study was the Ministry of Gender and Community Development Study of Women and Inheritance in Bushenyi District (Project paper No. 4. of July 1994). This study established that customary clan structures that control the administration of property after death were still firmly entrenched in the communities studied. As a result, even where a will exists, the customary norms may override it.

The Uganda Law Reform Commission secondary study on the law of succession alongside the study on the Domestic Relations Bill of 2003 and the Study Report on the Review of Laws of Succession in Uganda, 2014 have also established several challenges within the law and practices of succession including the discriminatory nature of the provisions of the Succession Act and obsolete fines and penalties.

The Constitution of the Republic of Uganda 1995 provides for equality of men and women. The current Succession Act which is a replica of the 1972 decree has discriminatory provisions that led to a Constitutional Petition decided on 5<sup>th</sup> April, 2007. In the case of Law & Advocacy for Women in Uganda v Attorney General of Uganda, Constitutional Petition No. 13 of 05: The Constitutional Court held that the provisions of sections 2(n) (I) (ii), 23, 26, 27, 29, 43, 44 of the Succession Act are inconsistent with Articles 20, 21, 24, 26, 31, 33, and 44 of the Constitution.

Additionally, in the case of Administrator General Vs. Charles Acire & Another. HCCS. 235/1994: Court pointed out the fact that Section 311 of the Succession Act provides that where any person entitled to a share in the distribution of the estate of an intestate is a minor, the Succession law does not make provisions specifying the duties of the person holding the property, manner of investing the property, provisions for account to the minor when he or she becomes of age and does not provide penalties for breach of these duties.

Lastly, the Constitution Court in April 2007 declared sections 14, 15, 27, 8(a), 43, 44(2)(n)(i), of the Succession Act null and void.

These rulings have further created a lacuna in the Succession Act which need to be addressed urgently.

### 3. THE OBJECTIVES OF THE BILL

The Bill seeks to amend the Succession Act, Cap 162 -

- a. address the gaps in the current Act including providing for gender equality in matters of succession in accordance with articles 21 and 33 of the Constitution;
- b. repeal or amend section that were declared unconstitutional by the Constitutional Court;
- c. remove any provision that is discriminatory on the ground of sex;
- d. streamline the definition of minor to conform to the Constitution;
- e. refine the definition of customary heir or heiress to remove discrimination;
- f. clearly provide for the protection of principal residential holding for the benefit of the surviving spouse and lineal dependants;
- g. to revise the provisions relating to domicile of spouses upon marriage;
- h. to revise the percentages of distribution of the estate of an intestate to increase the percentage of the surviving spouse;
- i. to provide for the appointment of guardians for minor children by either parent;
- j. to provide for the powers and duties of guardians;
- k. to provide for the lapse of probate or letters of administration after three years subject to renewal by

court;

- l. to repeal provisions that have become obsolete;
- m. to revise and update fines and penalties to take into account inflation; and
- n. to provide for related matters.

# THE SUCCESSION (AMENDMENT) BILL, 2018

## *Arrangement of Clauses*

### **Clauses**

1. Short title and commencement.
2. Amendment of section 2 of the Succession Act.
3. Repeal of section 3 of the principal Act.
4. Repeal of section 7 of the principal Act.
5. Amendment of section 9 of the principal Act.
6. Substitution of section 13 of the principal Act.
7. Substitution of section 14 of the principal Act.
8. Repeal of section 15 of the principal Act.
9. Substitution of section 18 of the principal Act
10. Repeal of Part III of the principal Act.
11. Amendment of section 26 of the principal Act.
12. Substitution of section 27 of the principal Act.
13. Amendment of section 28 of the principal Act.
14. Substitution of section 29 of the principal Act.
15. Amendment of section 30 of the principal Act.
16. Repeal of section 31 of the principal Act.
17. Repeal of section 34 of the principal Act.
18. Substitution of section 35 of the principal Act.
19. Amendment of section 36 of the principal Act.
20. Amendment of section 38 of the principal Act.
21. Substitution of section 43 of the principal Act.
22. Substitution of section 44 of the principal Act.
23. Insertion of new section 44A to principal Act.
24. Amendment of section 45 of the principal Act.
25. Substitution of section 46 of the principal Act.
26. Substitution of section 47 of the principal Act.

27. Substitution of section 55 of the principal Act.
28. Substitution of section 87 of the principal Act.
29. Substitution of section 179 of the principal Act.
30. Amendment of section 200 of the principal Act.
31. Insertion of new section 201A to the principal Act.
32. Substitution of section 203 of the principal Act.
33. Substitution of section 204 of the principal Act.
34. Insertion of a new section 204A to the principal Act.
35. Substitution of section 215 of the principal Act.
36. Repeal of section 216 of the principal Act.
37. Amendment of section 234 of the principal Act.
38. Substitution of section 249 of the principal Act.
39. Amendment of section 258 of the principal Act.
40. Amendment of section 259 of the principal Act.
41. Insertion of new section 267A to the principal Act.
42. Substitution of section 268 of the principal Act.
43. Substitution of section 270 of the principal Act.
44. Substitution of section 272 of the principal Act.
45. Substitution of section 273 of the principal Act.
46. Repeal of section 276 of the principal Act.
47. Amendment of section 278 of the principal Act.
48. Substitution of section 279 of the principal Act.
49. Insertion of a new section 311A in the principal Act.
50. Substitution of section 321 of the principal Act.
51. Substituting of section 331 of the principal Act.
52. Substitution of section 332 of the principal Act.
53. Substitution of section 333 of the principal Act.
54. Insertion of new section 333A to the principal Act.
55. Amendment of section 335 of the principal Act.
56. Substitution of the First Schedule to the principal Act.
57. Repeal of the Second Schedule to the principal Act.
58. Miscellaneous amendments to the principal Act.

# **A BILL for an Act Entitled**

## **THE SUCCESSION (AMENDMENT) ACT, 2018**

An Act to amend the Succession Act, Cap 162, to bring it in conformity with the Constitution of the Republic of Uganda and provide for gender equality in accordance with articles 21 and 33 of the Constitution; to repeal sections that were declared unconstitutional by the Constitutional Court; to streamline the definition of minor to conform to the Constitution; to refine the definition of customary heir or heiress to remove discrimination; to clearly provide for the protection of principal residential holding for the benefit of the surviving spouse and lineal dependants; to revise the percentages of distribution of the estate of an intestate to increase the percentage of the surviving spouse; to provide for the appointment of guardians for minor children by either parent; to provide for the powers and duties of guardians; to introduce modern terminology and definitions of those who lack mental capacity and repeal repugnant terms such as “lunatics” and “insane”; to provide for the lapse of probate or letters of administration after three years subject to renewal by court; to enhance certain offences and penalties for contravention of the Act; and to provide for related matters.

**BE IT ENACTED by Parliament as follows:**

### **1. Short title and commencement.**

- (1) This Act may be cited as the Succession (Amendment) Act, 2018.
- (2) This Act shall come into force on the date to be appointed by the Minister by statutory instrument.

## **2. Amendment of section 2 of the Succession Act.**

The Succession Act in this Act referred to as the principal Act is amended in section 2 –

- a. by substituting for paragraph (b), the following-  
“(b) “child,” “issue” and “lineal descendant” means the offspring of the deceased regardless of the age of the offspring including a child adopted by the deceased in a manner recognised under the laws of Uganda;
- b. by inserting the following new paragraph immediately after paragraph (d) “(da) “currency point” has the value assigned to it in the First Schedule;”
- c. by substituting for paragraph (e) the following-  
“(e) customary heir or heiress” means a person recognised under the rites and customs of a particular tribe or community of a deceased person as being the customary heir or heiress of that person;”
- d. by substituting for paragraph (f), the following-  
“daughter” includes a daughter adopted in a manner recognised under the laws of Uganda;
- e. by inserting immediately after paragraph (j), the following-  
“(ja) “guardian” means a person having legal and parental responsibility for a minor child;”
- f. by repealing paragraph (l);
- g. by substituting for paragraph (n) the following-  
“(n) legal heir” means the living relative nearest in degree

- to an intestate”;
- h. by substituting for paragraph (o) the following-  
“(o) minor” means a person who has not attained the age of eighteen years, and “minority” means the status of such person;
  - i. by inserting immediately after paragraph (p) the following-  
“(pa) “other residential holding” means-
    - i. a residential holding owned by the intestate as a residential holding- but not occupied by him or her, surviving spouse and any children under the age of eighteen years because he or she was living in premises owned by another person or in a principal residential holding; or
    - ii. a country home occasionally occupied by him or her, surviving spouse and any children under the age of eighteen years;”
  - j) by inserting immediately after paragraph (r) the following-  
(ra) “principal residential holding” means the residential holding normally occupied by the spouse , surviving spouse and any children under the age of eighteen years prior to the death of one of the spouses as their principal residential holding and includes the house and the chattels in the house and one third of the land on which the is located or a portion of the land surrounding the house as the court may in the circumstances determine;”
  - k) by inserting immediately after paragraph (u) the following-  
“(ua) separation” means either separation for a period of

at least six months consecutively -

- i. by agreement, where the parties consent to suspend the marriage in writing and the consent is witnessed by at least one representative of each party; or
  - ii. by judicial order, where one or both parties petition the court asking for a suspension of the marriage on evidence that the parties can no longer live together;”
- l) by repealing paragraph (u);
- m) by inserting immediately after paragraph (v) the following –  
“(va) “spouse” means a husband or wife married in accordance with the laws of Uganda or laws of another country recognised in Uganda as a marriage under the laws of Uganda”; and
- n) by substituting for paragraph (v) the following -  
“(vb) “son” includes a son adopted in any manner recognized under the laws of Uganda.”

### **3. Repeal of section 3 of the principal Act.**

The principal Act is amended by repealing section 3.

### **4. Repeal of section 7 of the principal Act.**

The principal Act is amended by repealing section 7.

### **5. Amendment of section 9 of the principal Act.**

The principal Act is amended in section 9-

- a. by substituting for the word “man” the word

- “person”; and
- b. by inserting immediately after the word “his” wherever it appears, the word “or her”.

#### **6. Substitution of section 13 of the principal Act.**

The principal Act is amended by substituting for section 13 the following-

##### **“13. Domicile of origin of a minor.**

Where a parent or guardian of a minor is domiciled in Uganda, that child is domiciled in Uganda.”

#### **7. Substitution of section 14 of the principal Act.**

The principal Act is amended by substituting for section 14 the following-

##### **“14. Domicile of choice.**

A person may acquire the domicile of his or her spouse upon marriage if that person did not have the same domicile as the spouse before marriage.

#### **8. Repeal of section 15 of the principal Act.**

The principal Act is amended by repealing section 15.

#### **9. Substitution of section 18 of the principal Act**

The principal Act is amended by substituting for section 18 the following-

“18. Where a person dies leaving movable property in Uganda, in the absence of proof of any domicile elsewhere, succession to the property shall be regulated by the laws of Uganda.”

## **10. Repeal of Part III of the principal Act.**

The principal Act is amended by repealing Part III.

## **11. Amendment of section 26 of the principal Act.**

Section 26 of the principal Act is amended-

- a. by substituting for subsection (1), the following-
- b. “(1) The principal residential holding and any other residential holding shall devolve to the surviving spouse and lineal descendants of the deceased.”
- c. by repealing subsection (2)

## **12. Substitution of section 27 of the principal Act.**

The principal Act is amended by substituting for section 27 the following

### **“27. Distribution on the death of an intestate.**

- (1) Subject to sections 29 and 30, the estate of an intestate, except his or her residential holding or other residential holding, shall be divided among the following classes in the following manner-
- a. where the intestate is survived by a spouse, a lineal descendant and a dependent relative-
  - i. the spouse shall receive 50 percent;
  - ii. the dependant relatives shall receive 9 percent;
  - iii. the lineal descendants shall receive 41 percent of the whole of the property of the intestate, but where the intestate leaves no surviving spouse or dependant relative under paragraph a (i) or (ii)

of this paragraph capable of taking a proportion of his or her property, that proportion shall go to the lineal descendants;

- b. where the intestate is survived by a spouse and a dependent relative but no lineal descendant-
    - i. the spouse shall receive 80 percent; and
    - ii. the dependent relative shall receive 20 percent, of the whole of the property of the intestate;
  - c. where the intestate is survived by a spouse or a dependent relative but no lineal descendant, the spouse or the dependent relative, as the case may be, shall receive 100 percent, of the whole of the property of the intestate;
  - d. where the intestate leaves no person surviving him or her, capable of taking a proportion of his or her property under paragraph (a), (b) or (c), the estate shall be divided equally between those relatives in the nearest degree of kinship to the intestate;
  - e. where the intestate leaves no person surviving him or her, capable of taking a proportion of his or her property under paragraph (a), (b), (c) or (d), the whole of their property shall belong to the legal heir.
- (2) A person may apply to court for an order that he or she is entitled to the deceased's estate or occupation of the residential holding occupied by the deceased.
  - (3) In making the order under subsection (3), court

shall have due regard to-

- a) the nature of the relationship between the deceased and the applicant;
- b) contribution made by the applicant to the deceased's estate; and
- c) any other relevant evidence that the court deems necessary."

### **13. Amendment of section 28 of the principal Act.**

Section 28 of the principal Act is amended –

- a) in subsection (1) by substituting for the word "wives" the word "spouses";
- b) by inserting immediately after subsection (1) the following-
  - "(1a) Notwithstanding subsection (1), in the distribution of property among members of the same class, the administrator shall consider the circumstances of each case including the age, contribution, duration of marriage or degree of dependency of the beneficiary.;
  - (1b) A person aggrieved by the decision of the administrator under subsection (1a) may appeal to the court against the decision within fourteen days from the date of the decision."

### **14. Substitution of section 29 of the principal Act.**

The Principal Act is amended-

- a) by substituting for section 29 the following-

**"29. Reservation of a principal and any other residential holding from distribution.**

- (1) A spouse or child of an intestate occupying a residential holding or any other residential holding under section 26 shall not be required to bring that occupation into account in assessing any share in the property of an intestate to which the spouse or child may be entitled under section 27.
- (2) A person entitled to any interest in a principal residential holding or any other residential holding under section 26(1) shall not be required to bring that interest into account in assessing any share in the property of an intestate to which that person may be entitled under section 27.
- (3) A person who evicts or attempts to evict the occupants of the principal residential holding or any other residential holding commits an offence and is liable on conviction to a fine not exceeding five thousand currency points or imprisonment not exceeding seven years or both.”

## **15. Amendment of section 30 of the principal Act.**

Section 30 of the principal Act is amended as follows-

- a) by inserting immediately after subsection (1) the following-

“(1a) The provision of subsection (1) shall not apply where at the time of death, it is the intestate who had separated from the surviving spouse.”;

and
- b) by substituting for subsection (3) the following-

“(3) Notwithstanding subsection (1), a court may, on application by or on behalf of the spouse before distribution of the intestate property, declare that subsection (1) shall not apply to the applicant.”

### **16. Repeal of section 31 of the principal Act.**

The principal Act is amended by repealing section 31.

### **17. Repeal of section 34 of the principal Act.**

Section 34 of the principal Act is repealed.

### **18. Substitution of section 35 of the principal Act.**

The principal Act is amended by substituting for section 35 the following-

#### **“35. Settlement of minor’s property in contemplation of marriage.**

The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the joint approbation of the minor’s parents or parent, if only one is living or a guardian or, if none are living, with the approbation of court.”

### **19. Amendment of section 36 of the principal Act.**

Section 36 of the principal Act is amended as follows-

- a. in subsection (2) by substituting for the words “married woman” the word “spouse”;
- b. by substituting for subsection (3) the following-

“(3) A person who has a hearing impairment, a speech impairment or a visual impairment is not incapacitated

from making a will if he or she is able to know what he or she does by it.”

- c. by substituting for subsection (4) the following-  
“(4) A person who ordinarily has a mental illness may make a will during an interval in which he or she does not have the mental illness.”
- d. by inserting immediately after subsection (5) the following-  
“(6) Notwithstanding subsection (1) or (2), where a person making a will is married or has children, the principal residential holding or any other residential holding shall not form part of the property to be disposed of in a will and shall be reserved for the welfare of the testator’s spouse and lineal descendants.”

## **20. Amendment of section 38 of the principal Act.**

Section 38 of the principal Act is amended by substituting for subsection (2) (a) the following-

“(a) subject to subsection (3), where the deceased’s estate produces an income, by way of periodical payments; and the order shall provide for their termination not later than-

- i) in case of a spouse, until he or she remarries, voluntarily leaves the principal residential holding or misuses the principal residential holding or puts it in disrepute;
- ii) in case of a minor child, until the child attains the

age of eighteen years;

- iii) in the case of a lineal dependant who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining himself or herself, marriage or the cessation of the disability, whichever comes first;”

## **21. Substitution of section 43 of the principal Act.**

The principal Act is amended by substituting for section 43, the following-

- “(1) A parent may by will appoint a guardian for his or her minor child.
- (2) A person shall not, by will deprive another person of parental rights except where the parental rights where removed by court.”

## **22. Substitution of section 44 of the principal Act.**

The principal Act is amended by substituting for section 44 the following-

### **“44. Statutory guardians.**

On the death of either a father or a mother of an infant where no guardian has been appointed by the will of the father or mother of the infant or if the guardian appointed by the will of either the mother or father is dead or refuses to act, the following persons shall in the following order of priority, be the guardian or guardians of the infant child of the deceased-

- a. the father or mother of the deceased except where there is a court order prohibiting the surviving parent from being the guardian to the infant;
- b. if the father and mother of the deceased are dead or where there is a court order, the brothers and sisters of the deceased;
- c. if the brothers and sisters of the deceased are dead, the brothers and sisters of the deceased's father and mother;
- d. If there is no person willing or entitled to be a guardian under subsection (1) (a) to (c), the court may, on the application of any person interested in the welfare of the infant, appoint a guardian."

### **23. Insertion of new section 44A to principal Act.**

The principal Act is amended by inserting immediately after section 44 the following-

#### **"44A. Relationship between a surviving parent and appointed guardian.**

- (1) A guardian appointed under section 43 shall act jointly with the surviving parent of the minor unless the court otherwise directs.
- (2) A guardian of a child may by will appoint another person as the guardian of the minor upon his or her death.
- (3) Where more than one guardian is appointed or different guardians are appointed by both parents, the persons appointed shall act jointly, after the death of the last surviving parent.

- (4) Where the surviving parent objects to joint guardianship, or where the appointed guardian considers that the surviving parent is unfit to act as a guardian of the child, the guardian or the parent of the child may apply to the court and the court may-
- a. reject the application and the parent and guardian shall continue to act jointly; or
  - b. order that the parent or guardian is unfit to act as a guardian and appoint a relative of the child or a person who is willing to act as a guardian of the child to act jointly with the parent or guardian or both of them.”

#### **24. Amendment of section 45 of the principal Act.**

Section 45 of the principal Act is amended by deleting the words “other than a court presided over by a magistrate grade III.

#### **25. Substitution of section 46 of the principal Act.**

The principal Act is amended by substituting for section 46 the following-

##### **“46. Powers and duties of a guardian.**

Where a guardian is appointed under this Act, the guardian may apply to court to exercise any of the following powers and duties-

- a. to have custody of the minor;
- b. to administer the property of the minor and in particular to receive, recover or invest the property for the benefit of the minor;
- c. to take all reasonable steps to safeguard the property of the minor from loss or damage; and

- d. to annually account in respect of the minor's property to the parent, court or custodian of the minor or to any other person as the court may direct.

## **26. Substitution of section 47 of the principal Act.**

The principal Act is amended by substituting for section 47 the following-

**“47. Will obtained by fraud, undue influence, duress, coercion, mistake of fact or importunity.**

A will or any part of a will, the making of which has been caused by fraud, undue influence, duress, coercion, mistake of fact or by such importunity which takes away the free will of the testator, is void.”

## **27. Substitution of section 55 of the principal Act.**

The principal Act is amended by substituting for section 55 the following-

**“55. Witness not disqualified by interest or by being executor or executrix.**

- (1) A person shall not by reason of interest in or by his or her being an executor or executrix of a will be disqualified as a witness to prove the execution of a will or to prove the validity or invalidity of a will
- (2) Subsection (1) shall not apply to a person who participated in the writing or preparation of the will.”

## **28. Substitution of section 87 of the principal Act.**

The principal Act is amended by substituting for section 87 the following-

**“87. Implied inclusion of children of the deceased**

**including adopted children.**

In the absence of any intimation to the contrary in the will, “child”, “son” or “daughter” or any word which expresses those relationships is to be understood as including any child whom the deceased parent has acknowledged as his or her child either while he is still living or in a will or a declaration has been made to that effect by a competent court.”

## **29. Substitution of section 179 of the principal Act.**

The principal Act is amended by substituting for section 179 the following-

### **“179. Property transferable by gift made in contemplation of death.**

- (1) Subject to sections 26, 29 and 30, a person may dispose, by gift made in contemplation of death, of any movable property which he or she could dispose of by will.
- (2) A gift is said to be made in contemplation of death where a person who is ill and expects to die shortly of his or her illness delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness.
- (3) A gift made in contemplation of death may be resumed by the donor.
- (4) A gift made in contemplation of death does not take effect if the donor recovers from the illness during which it was made nor if he or she survives the person to whom

it was made.”

### **30. Amendment of section 200 of the principal Act.**

Section 200 of the principal Act is amended by substituting for the words “next of kin” the words “the spouse and lineal descendants of the deceased person”.

### **31. Insertion of new section 201A to the principal Act.**

The principal Act is amended by inserting immediately after section 201 the following-

#### **“201A. Priority of surviving spouse to administer the estate of a deceased person.**

- (1) The surviving spouse shall have first priority to administer the estate of the deceased spouse.
- (2) The priority of the surviving spouse under subsection (1) may be disregarded by an order of court and administration is granted to another person other than the spouse of the deceased where he or she -
  - a. mismanages the estate; or
  - b. is mentally impaired and unable to manage the estate.”

### **32. Substitution of section 203 of the principal Act.**

The principal Act is amended by substituting for section 203 the following-

#### **“203. Citation of persons entitled in priority to administer.**

Subject to section 201A, administration shall not be granted to any relative if there is some other relative en-

titled to a greater proportion of the estate until a citation has been issued and published in the manner prescribed under this Act calling on that other relative to accept or refuse letters of administration.”

### **33. Substitution of section 204 of the principal Act.**

The principal Act is amended by substituting for section 204 the following-

#### **“204. Entitlement between members of the same class.**

Where there are two or more persons who are entitled to the same proportion of the estate, they shall be equally entitled to administration, and a grant may be made to any one or some of them jointly.”

### **34. Insertion of a new section 204A to the principal Act.**

The principal Act is amended by inserting immediately after section 204 the following-

#### **“204A. Citations or notice by persons or entities applying to administer.**

- (1) Subject to section 6(3) of the Administrator General’s Act, any person or entity applying for letters of administration must give definite notice in writing in presence of a witness to the spouse, lineal descendants and dependant relatives of the deceased of the person’s intention to apply for letters of administration at least thirty days prior to applying for letters of administration.
- (2) If proving such notice under the terms of

subsection (1) is impossible, the applicant shall satisfy the terms of subsection (1) by issuing or publishing such notice clearly and conspicuously in a publication likely to be seen by the dependant relative for a period of at least fourteen days prior to applying for letters of administration.”

### **35. Substitution of section 215 of the principal Act.**

The principal Act is amended by substituting for section 215 the following-

#### **“215. Administration during minority of sole executor or residuary legatee.**

- 1) When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of the minor or to such other person as the court shall think fit, until the minor attains the age of eighteen years, at which period, and not before, probate of the will shall be granted to him or her.
- 2) Notwithstanding subsection (1), where the sole executor or sole residuary legatee is eighteen years but under the age of twenty five years, the court may where it deems necessary for the benefit of the person, grant him or her letters of administration or probate under the supervision of court or the Administrator General until the person attains the age of twenty five years.”

### **36. Repeal of section 216 of the principal Act.**

The principal Act is amended by repealing section 216.

### **37. Amendment of section 234 of the principal Act.**

Section 234 of the principal Act is amended in subsection (2) by inserting immediately after paragraph (c) the following new paragraph-

“(ca) the person to whom the grant was made has mismanaged the estate or abused the grant;”

### **38. Substitution of section 249 of the principal Act.**

The principal Act is amended by substituting for section 249 the following-

#### **“249. Punishment of false averment in petition or declaration.**

Where any petition or declaration which is required to be verified contains any averment which the person making the averment, or the verification knows or believes to be false, that person commits an offence is liable on conviction to a fine not exceeding one thousand currency point or imprisonment not exceeding one year or both.”

### **39. Amendment of section 258 of the principal Act.**

Section 258 of the principal Act is amended by renumbering the existing provision as subsection

(1) and inserting immediately after it, the following new subsections-

“(2) The grant of probate under subsection (1) shall be valid for a period of three years from the date issue.

(3) Notwithstanding subsection (2), the court may on such terms and conditions as it may deem necessary, extend the period referred to under subsection (2).”

#### **40. Amendment of section 259 of the principal Act.**

Section 259 of the principal Act is amended by renumbering the existing provision as subsection (1) and inserting immediately after it, the following new subsection-

- “(2) The letters of administration granted under subsection (1) shall be valid for a period of three years from the date issue.
- (3) Notwithstanding subsection (2), the court may on such terms and conditions as it may deem necessary, extend the period referred to under subsection (2).”

#### **41. Insertion of new section 267A to the principal Act.**

The principal Act is amended by inserting the following new subsection immediately after section 267-

##### **“267A. Powers of the Registrar.**

- (1) Where a judge deems an application for grant or revocation of probate or letters of administration can be handled by a registrar, the judge may refer the matter to the registrar with such directions as he or she deems fit and the registrar may make the grant or revocation.
- (2) A person aggrieved by an order made by the Registrar under subsection (1) may appeal to the High Court within fourteen days from the date of the order.
- (3) In this section, “registrar” means a registrar of the High Court or any other person acting in that capacity.”

#### **42. Substitution of section 268 of the principal Act.**

The principal Act is amended by substituting for section 268 the following-

**“268. Intermeddling.**

- (1) A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself or herself an executor commits an offence.
- (2) Subsection (1) shall not apply in cases where-
  - a. the intermeddling with the perishable goods of the deceased is for the purpose of preserving them, providing for the deceased’s funeral or for the immediate necessities of the deceased’s family or property; or
  - b. the dealing is in the ordinary course of business with goods of the deceased received from another.
- (3) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding one thousand currency points or imprisonment not exceeding one year or both.
- (4) A person who evicts or attempts to evict the occupants of the principle residential holding or any other residential holding commits an offence and is liable on conviction to a fine not exceeding five thousand currency points or imprisonment not exceeding seven years or both.”

**43. Substitution of section 270 of the principal Act.**

The principal Act is amended by substituting for section 270 the

following-

**“270. Disposal of property.**

An executor or administrator may, with the consent of the surviving spouse and all other beneficiaries of the estate, dispose of the property of the deceased either wholly or in part.”

**44. Substitution of section 272 of the principal Act.**

The principal Act is amended by substituting for section 272 the following-

**“272. Powers of several executors, executrixes or administrators to be exercised jointly.**

Subject to section 270, where there are several executors, executrixes or administrators, the powers of the executors or administrators granted to them, shall be exercised jointly unless otherwise directed by court.”

**45. Substitution of section 273 of the principal Act.**

The principal Act is amended by substituting for section 273 the following-

**“273. Survival of executors, executrixes or administrators.**

Upon the death of one or more executors, executrixes or administrators, the survivor shall seek the leave of court to act as a sole executor, executrix or administrator with the consent of the beneficiaries.”

**46. Repeal of section 276 of the principal Act.**

The principal Act is amended by repealing section 276.

**47. Amendment of section 278 of the principal Act.**

Section 278 of the principal Act is amended as follows-

- a) in subsection (1) by substituting for the word “six”, the word “three”;
- b) by inserting immediately after subsection (5) the following-

“(6) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding six months or both.

#### **48. Substitution of section 279 of the principal Act.**

The principal Act is amended by substituting for section 279, the following-

##### **“279. Property of the deceased.**

- (1) An executor, executrix or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him or her at that time of his or her death.
- (2) Debts incurred by the deceased against the principal residential holding or any other residential holding during marriage without written consent of the spouse who, prior to the deceased’s death shared that principal residential holding or any other residential holding with the deceased, shall be void and excluded from payment from the deceased’s estate.

#### **49. Insertion of a new section 311A in the principal Act.**

The principal Act is amended by inserting immediately after section 311 the following-

**“311A. Appointment of personal representative in respect of shares of a minor in intestacy.**

- (1) Where court appoints a personal representative in respect of share of a minor in intestacy, it must take into consideration the following factors-
  - (a) the minor’s wishes if he or she is of sufficient maturity to form an intelligent preference;
  - (b) the existence or nonexistence of an established relationship between the minor and the personal representative;
  - (c) the best interests of the minor.
- (2) The following categories of persons may be appointed personal representatives in respect of a share of a minor in intestacy-
  - (a) surviving spouse; or
  - (b) guardian.
- (3) The minor’s share in intestacy shall only be used for the benefit of the minor.
- (4) The duration of the personal representative in respect of share of a minor in intestacy shall terminate when the minor attains the age of eighteen years.
- (5) The personal representative shall transfer all remaining assets to the minor upon termination.”

## **50. Substitution of section 321 of the principal Act.**

The principal Act is amended by substituting for section 321 the following-

### **“321. Refund when legacy has become due on performance of condition.**

When the time prescribed by a will for the performance of a condition has elapsed without the condition having been performed and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has been allowed under section 124 for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he or she has paid it are liable to refund the amount with interest of 5 %.

## **51. Substituting of section 331 of the principal Act.**

The principal Act is amended by substituting for section 331 the following-

### **“331. Procedure where deceased has left property in a foreign country.**

- (1) Any person applying to the High Court for a grant of probate or letters of administration shall, if at that time or at any time after he or she has reason to believe that the deceased has left property in a foreign country, notify the court to that effect.
- (2) The court may at the time of granting probate or letters of administration, or at any time after that, on being notified of the existence of property belonging to the deceased in a foreign country, order that no claims other than claims entitled to

priority be paid until the expiration of a period not exceeding eighteen months from the making of the order.

- (3) A statement duly certified by the competent court in the foreign country and filed in the High Court of Uganda within the period ordered under subsection (2), showing the assets and liabilities of the estate of a deceased person within the respective jurisdictions of those courts, may be taken into account by an executor or administrator in Uganda, and the court may order that the assets be distributed in such manner as to secure the payment of all claims, other than those entitled to priority, rateably with those certified by the courts of the foreign country as under this subsection.
- (4) The court may order that any balance remaining in the hands of an executor or administrator after payment of claims in Uganda, whether in full or rateably under the provisions of this section, may be transmitted in whole or in part to an executor or administrator of the estate in the foreign country.
- (5) An executor, executrix or administrator acting in good faith under an order of the court as under subsection (4) shall not be liable to be sued in respect of that action.”

## **52. Substitution of section 332 of the principal Act.**

The principal Act is amended by substituting for section 332 the following-

**“332 Liability of executor or administrator for damage or loss to estate.**

- (1) Where an executor, executrix or administrator misapplies the estate of the deceased or proceeds from the disposition of the estate, or subjects it to loss or damage, the executor, executrix or administrator commits an offence and is liable on conviction to a fine not exceeding ten thousand currency points or imprisonment not exceeding seven years or both.
- (2) The court shall in addition to the penalty under subsection (1) require the person to make good to the estate and beneficiaries for the loss or damage caused to the estate.”

**53. Substitution of section 333 of the principal Act.**

The principal Act is amended by substituting for section 333 the following-

**“333. Liability of executor or administrator for neglect.**

- (1) Where an executor, executrix or administrator occasions a loss to the estate by neglecting to get any part of the property of the deceased, the executor, executrix or administrator commits an offence and is liable on conviction to a fine not exceeding one thousand currency points or imprisonment not exceeding one year or both.
- (2) The court shall in addition to the penalty under

subsection (1) require the person to make good to the estate and beneficiaries for the loss or damage caused to the estate.”

#### **54. Insertion of new section 333A to the principal Act.**

The principal Act is amended by inserting immediately after section 333 the following new section-

##### **“333A. Beneficiary’s estate not to form part of any payment.**

- (1) A person who acts on behalf of the beneficiaries of an estate in any matter shall not acquire any part of the beneficiary’s interest in the estate as payment for the services rendered.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand currency points or imprisonment not exceeding five years or both.

#### **55. Amendment of section 335 of the principal Act.**

Section 335 of the principal Act is amended by substituting for subsection (2) the following –

“(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one thousand currency points or imprisonment not exceeding one year or both.”

#### **56. Substitution of the First Schedule to the principal Act.**

The principal Act is amended by substituting for the First Schedule the following new Schedule-

## **First SCHEDULE**

### *Section 2*

## **CURRENCY POINT**

A currency point is equivalent to twenty thousand Uganda shillings

### **57. Repeal of the Second Schedule to the principal Act.**

The principal Act is amended by repealing the Second Schedule.

### **58. Miscellaneous amendments to the principal Act.**

The principal Act is amended –

- a) by substituting, wherever they appear, for reference to-
  - i) “husband” a reference “spouse;”
  - ii) “wife” a reference to “spouse;”
  - iii) “father” a reference to “parent;”
  - iv) “man” a reference to “person;”
  - v) “wives” a reference to “spouses;”
  - vi) “son” a reference to “child;”
  - vii) “heir” insert “or heiress;”
  - viii) “his” insert “or hers;”
  - ix) “him” insert “or her;”
  - x) “executor” insert “executrix;” and
  - xi) “lunatic” and “insane” wherever it appears, the words “mentally impaired person”

### **Cross References**

**Administrator Generals Act, Cap 157**



LANDnet Uganda  
Plot 213 Semwogerere Zone  
Mukalazi II Bukoto  
P.O. Box 14170, Kampala  
Email: [info@landnet.ug](mailto:info@landnet.ug)  
Tel No: +256-414-666703