

OBJECTION

MY LORD

LEGAL PRACTICE DEMYSTIFIED



**FIRST
EDITION**

ISAAC CHRISTOPHER LUBOGO

OBJECTION MY LORD

“Legal Practice Demystified”



FAMILY LAW & PRACTICE



OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED

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REVISED FIRST EDITION

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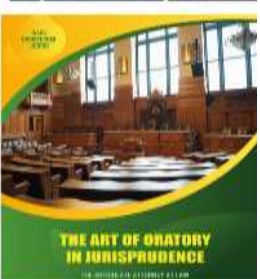
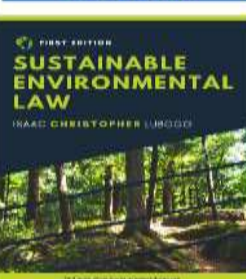
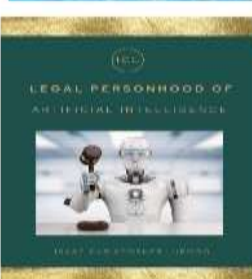
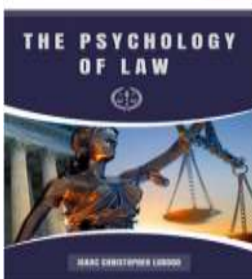
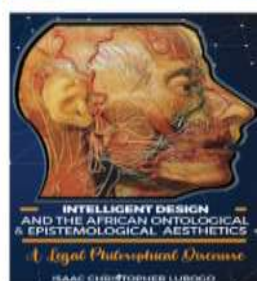
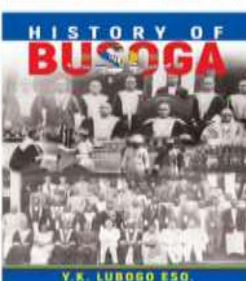
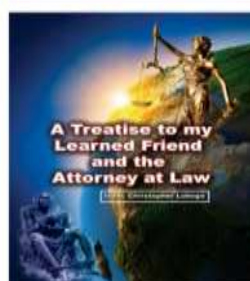
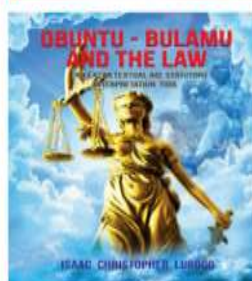
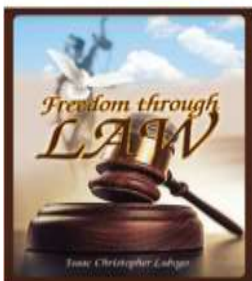
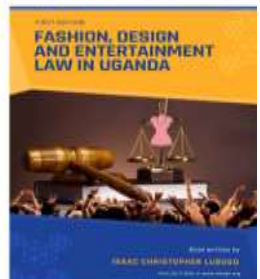
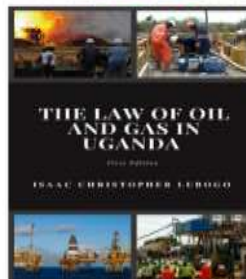
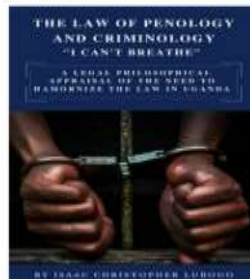
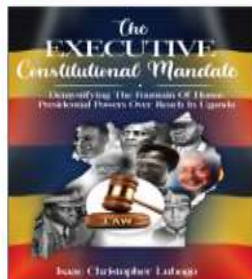
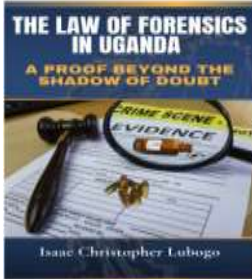
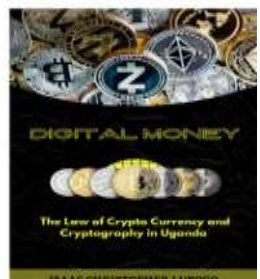
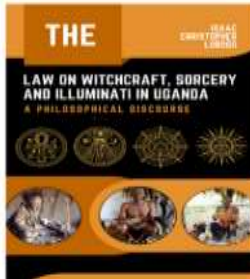
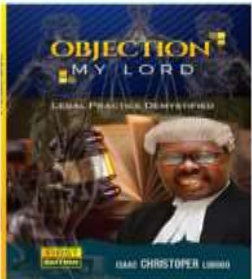
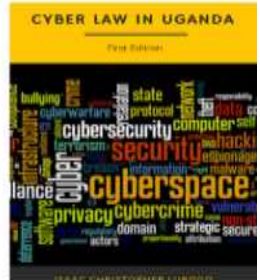
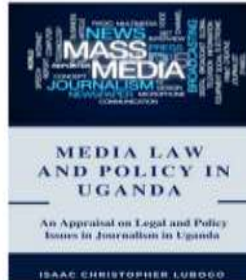
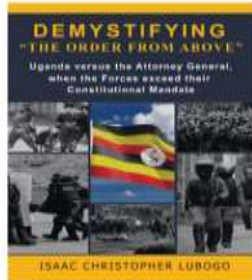
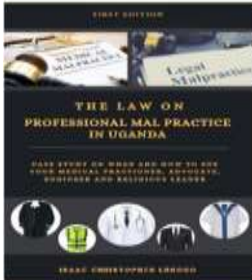
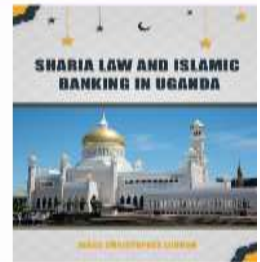
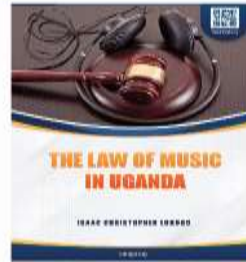
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ISAAC CHRISTOPHER LUBOGO'S WORKS



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DEDICATION



*To the Lord Who Breathes Life and Spirit on Me ... Be My Guide
Oh Lord of The Entire Universe.*

*“....Daniel was preferred above the presidents and princes,
because an excellent spirit was in him, and the king thought to set
him over the whole realm”*

Daniel Chapter six, verse three

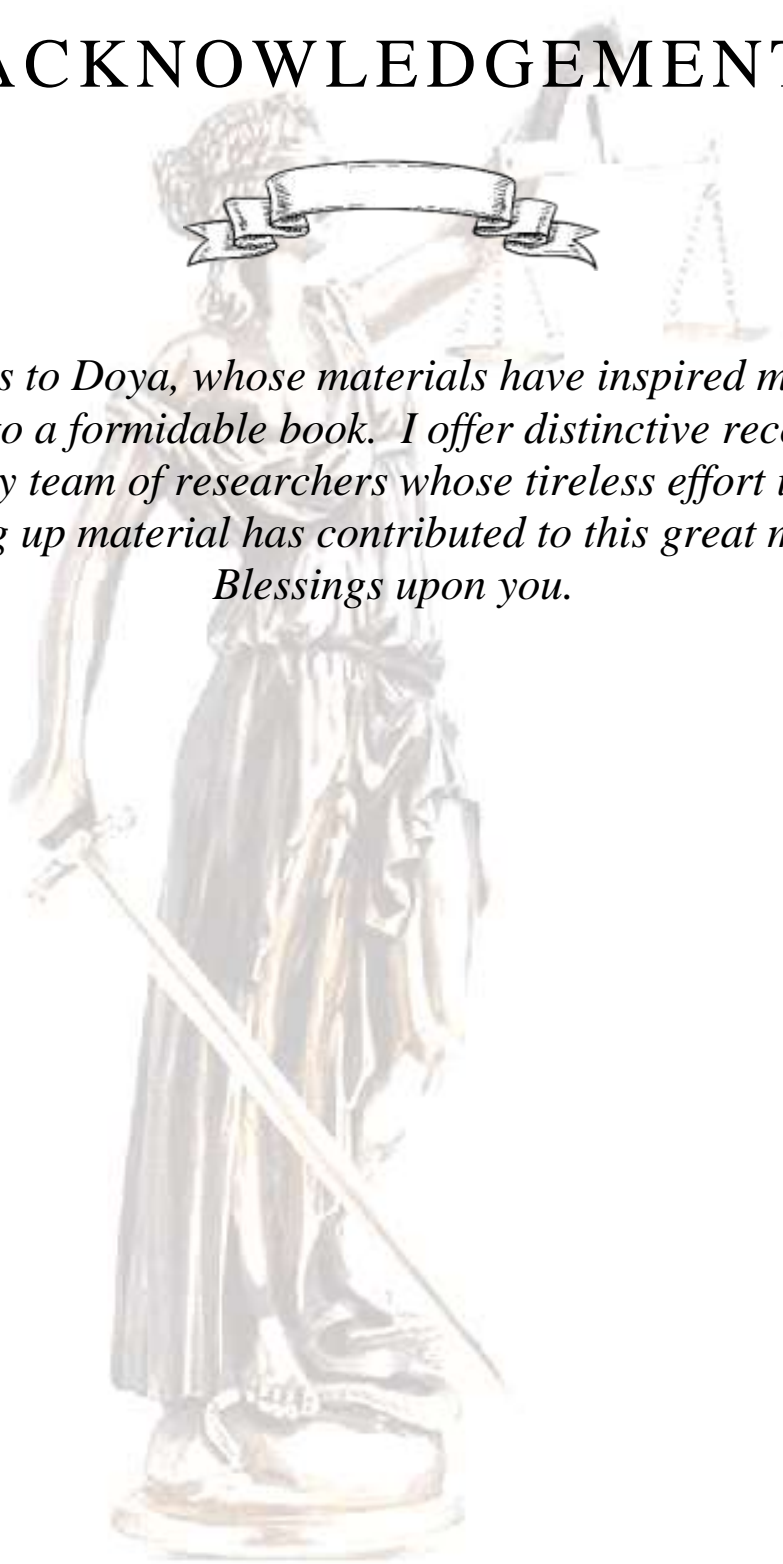


Vox Populi, Vox Dei (Latin, 'the voice of the people is the voice of God')



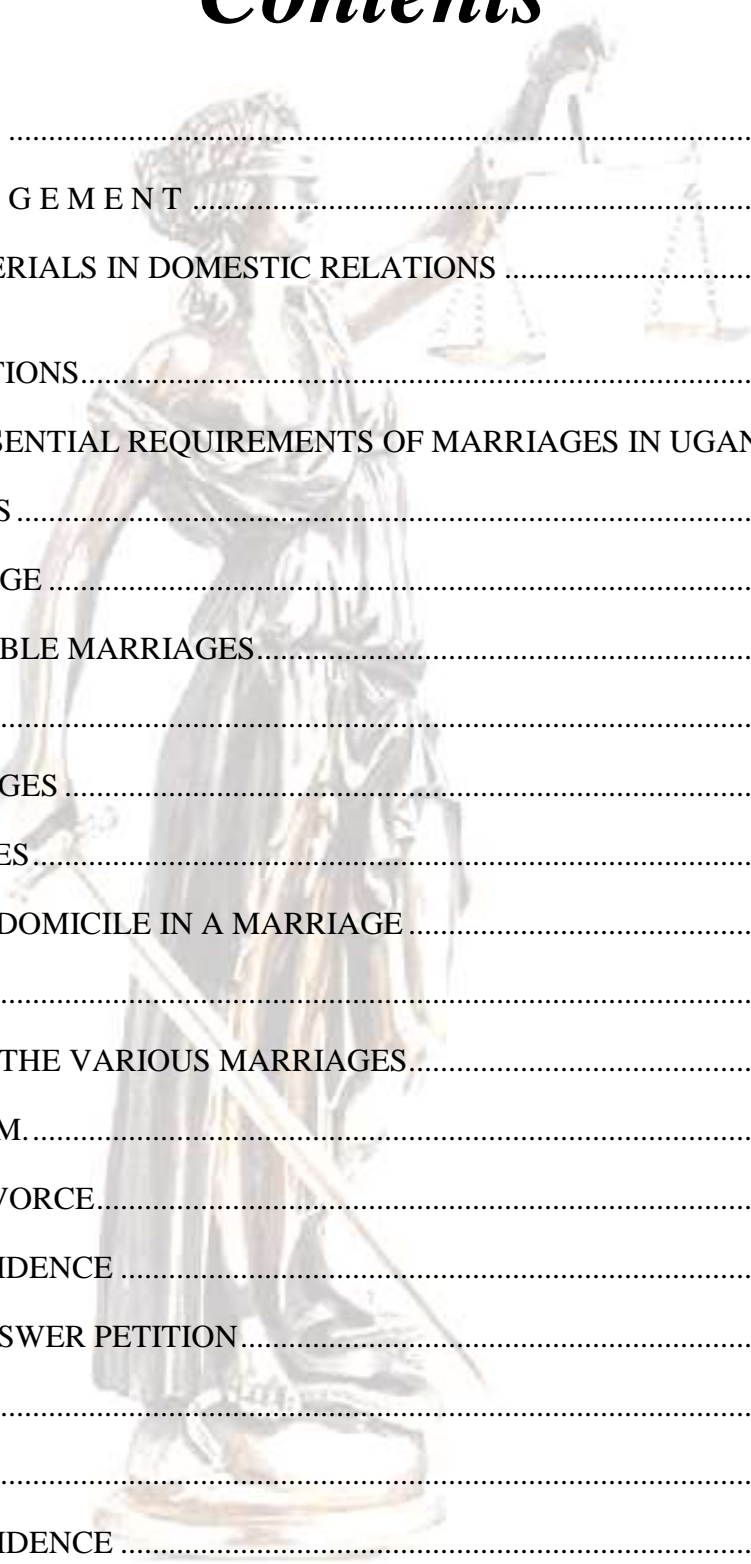
Salus populi suprema lex esto (Latin: "The health (welfare, good, salvation, felicity) of the people should be the supreme law", "Let the good (or safety) of the people be the supreme (or highest) law", or "The welfare of the people shall be the supreme law") is a maxim or principle found in Cicero's De Legibus (book III, part III, sub. VIII).

ACKNOWLEDGEMENT



Great thanks to Doya, whose materials have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript. Blessings upon you.

Contents

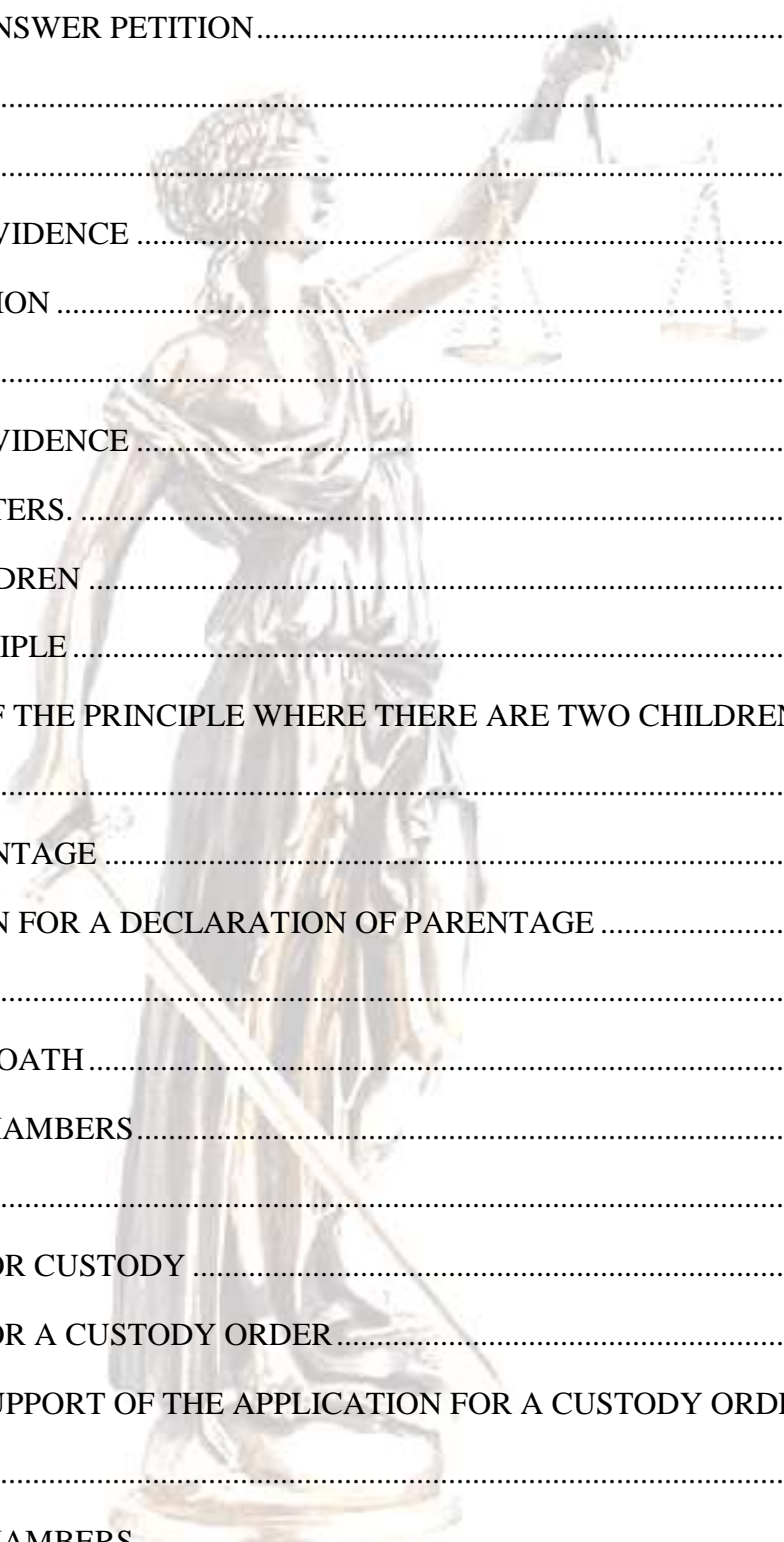


DEDICATION	v
ACKNOWLEDGEMENT	vii
CASES AND MATERIALS IN DOMESTIC RELATIONS	xvi
DOMESTIC RELATIONS.....	1
FORMAL AND ESSENTIAL REQUIREMENTS OF MARRIAGES IN UGANDA	2
CIVIL MARRIAGES	5
CHURCH MARRIAGE	7
VOID AND VOIDABLE MARRIAGES.....	7
MAINTENANCE.....	12
ISLAMIC MARRIAGES	15
HINDU MARRIAGES.....	17
IMPORTANCE OF DOMICILE IN A MARRIAGE	18
DIVORCE	20
DIVORCE UNDER THE VARIOUS MARRIAGES.....	20
DIVORCE IN ISLAM.....	28
PETITION FOR DIVORCE.....	33
SUMMARY OF EVIDENCE	36
SUMMONS TO ANSWER PETITION.....	38
PETITION	39
VERIFICATION	40
SUMMARY OF EVIDENCE	42
REPLY TO PETITION	44

OBJECTION MY LORD

VERIFICATION.....	45
SUMMARY OF EVIDENCE.....	46
CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE.....	48
PETITION FOR RESTITUTION OF CONJUGAL RIGHTS AND PROVISION OF MAINTENANCE.....	49
SEPARATION AGREEMENT.....	51
PETITION FOR SEPARATION.....	55
DIVORCE UNDER MOHAMMEDAN MARRIAGES.....	57
SUMMONS TO ANSWER PETITION.....	62
PETITION FOR NULLITY OF MARRIAGE.....	63
VERIFICATION.....	64
SUMMARY OF EVIDENCE.....	65
REPLY TO PETITION.....	67
VERIFICATION.....	67
SUMMARY OF EVIDENCE.....	69
CASES.....	71
SEPARATION OF SPOUSES.....	74
SEPARATION BY AGREEMENT.....	74
COMMON LAW AND DOCTRINES OF EQUITY.....	74
CLAUSES IN A SEPARATION AGREEMENT.....	75
DESCRIPTION OF THE PARTIES.....	75
DRAFTING OF SEPARATION AGREEMENTS.....	75
SEPARATION AGREEMENT.....	76
JUDICIAL SEPARATION.....	78
MATRIMONIAL OFFENCES.....	78

ISAAC CHRISTOPHER LUBOGO



PROCEDURE FOR PETITIONING FOR A JUDICIAL SEPARATION 79

SUMMONS TO ANSWER PETITION 82

PETITION 83

VERIFICATION 85

SUMMARY OF EVIDENCE 86

REPLY TO PETITION 88

VERIFICATION 89

SUMMARY OF EVIDENCE 90

CHILDREN MATTERS 92

RIGHTS OF CHILDREN 92

WELFARE PRINCIPLE 93

APPLICATION OF THE PRINCIPLE WHERE THERE ARE TWO CHILDREN. 94

PARENTAGE 94

PROOF OF PARENTAGE 95

AN APPLICATION FOR A DECLARATION OF PARENTAGE 95

APPEALS 97

COMPLAINT ON OATH 98

SUMMONS IN CHAMBERS 99

CUSTODY 100

APPLICATION FOR CUSTODY 100

APPLICATION FOR A CUSTODY ORDER 102


AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR A CUSTODY ORDER 103

SUMMONS 105

SUMMONS IN CHAMBERS 105

MAINTENANCE 106

OBJECTION MY LORD



APPLICATION FOR A MAINTENANCE ORDER 107

COMPLAINT ON OATH..... 110

INTERIM ORDERS AND ORDERS THAT CAN BE ISSUED FOR CARE, PROTECTION AND WELFARE OF THE CHILD 112

GROUNDS FOR MAKING A SUPERVISION OR CARE ORDER..... 113

ADOPTION OF CHILDREN 114

LAW APPLICABLE TO ADOPTION..... 114

INTERCOUNTRY ADOPTION 119

CONSEQUENCES OF ADOPTION..... 121

PETITION..... 123

RESPONDENTS’ SUMMARY OF EVIDENCE. 127

PETITION FOR ADOPTION OF A CHILD 130

PETITION FOR ADOPTION OF A CHILD 132

ADOPTION ORDER..... 135

GUARDIANSHIP 137

DUTIES OF GUARDIAN 137

TYPES OF GUARDIANSHIP 137

HOW TO APPLY FOR LEGAL GUARDIANSHIP 138

NOTICE OF MOTION 140

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION: 143

PETITION FOR GUARDIANSHIP 146

SUMMARY OF EVIDENCE:..... 149

GUARDIANSHIP ORDER EXTRACTED..... 152

ORDER. 152

GUARDIANSHIP ORDER EXTRACTED WHERE THE GUARDIAN SEEKS TO TRANSFER PROPERTY REGISTERED IN MINOR’S NAMES..... 153

ISAAC CHRISTOPHER LUBOGO

ORDER..... 153

MATTERS TO CONSIDER BEFORE GRANTING CUSTODY OF CHILDREN GENERALLY
..... 154

MAINTENANCE OF CHILDREN.....155

PROVING PATERNITY & DECLARATION OF PARENTAGE..... 156

THE PROCEDURE FOR DECLARATION OF PARENTAGE IS AS FOLLOWS:..... 157

THE FORUM: 157

THE DOCUMENT(S)..... 157

FORM 2: FOR DECLARATION OF PARENTAGE..... 159

COMPLAINT ON OATH..... 159

SUCCESSION.....160

TESTATE SUCCESSION 160

TESTATE SUCCESSION..... 162

CAPACITY TO MAKE A WILL 162

REVOCAION OF WILLS 165

INTESTATE SUCCESSION167

THE PROCEDURE FOR APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION
..... 168

PETITION FOR PROBATE 170

VERIFICATION 172

LETTERS OF ADMINISTRATION 173

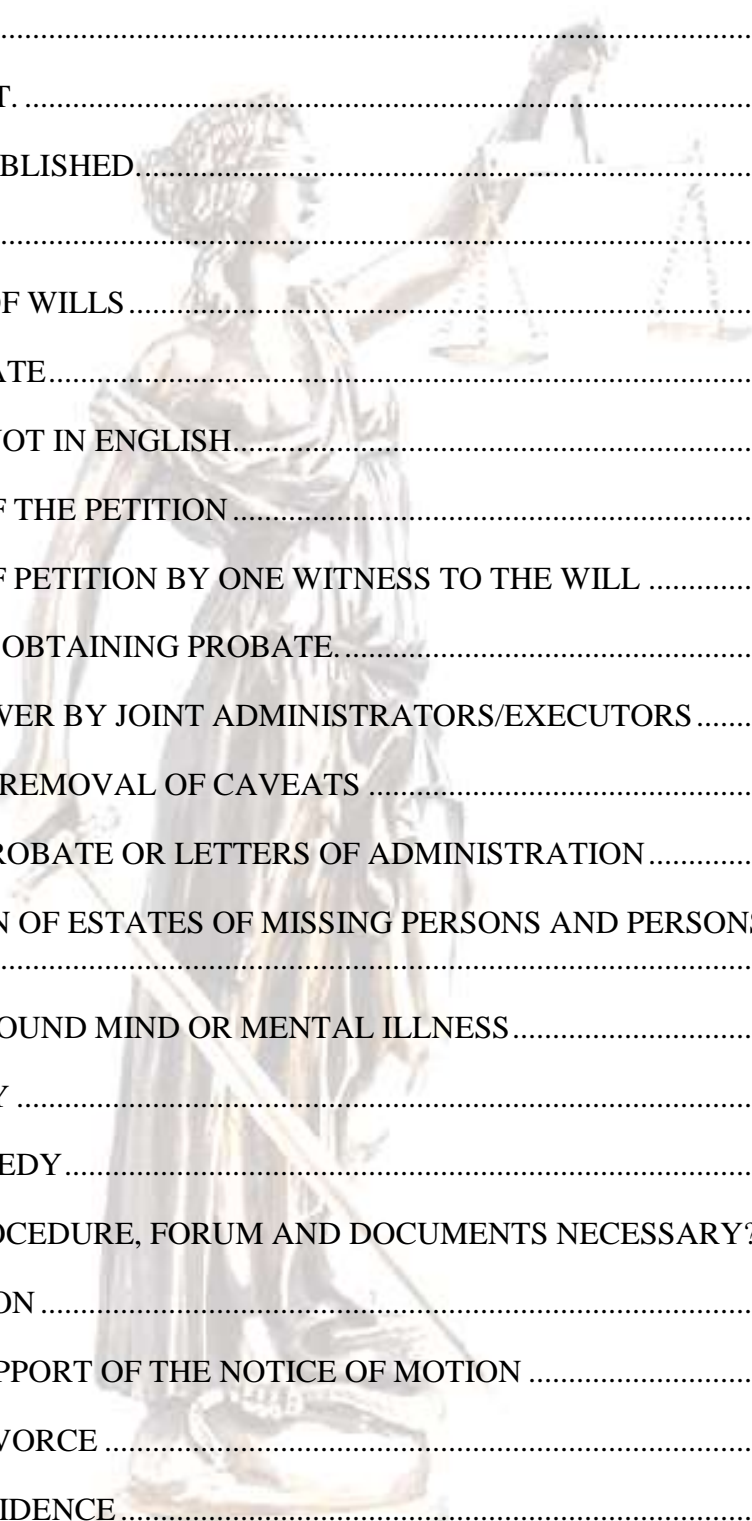
RE: APPLICATION FOR A CERTIFICATE OF NO OBJECTION TO THE ESTATE OF THE
LATE ABBAGA MABUGA 173

PETITION FOR LETTERS OF ADMINISTRATION..... 174

VERIFICATION 175

NOTICE..... 176

OBJECTION MY LORD



DECLARATION	177
COPY OF WILL	179
FORM OF CAVEAT.	183
NOTICE TO BE PUBLISHED.....	183
PLAINT.....	184
SAFE CUSTODY OF WILLS	186
GRANT OF PROBATE.....	186
WHERE WILL IS NOT IN ENGLISH.....	186
VERIFICATION OF THE PETITION	187
VERIFICATION OF PETITION BY ONE WITNESS TO THE WILL	187
PROCEDURE FOR OBTAINING PROBATE.....	187
EXERCISE OF POWER BY JOINT ADMINISTRATORS/EXECUTORS	189
LODGMET AND REMOVAL OF CAVEATS	191
RESEALING OF PROBATE OR LETTERS OF ADMINISTRATION.....	192
ADMINISTRATION OF ESTATES OF MISSING PERSONS AND PERSONS OF UNSOUND MIND	193
PERSONS OF UNSOUND MIND OR MENTAL ILLNESS.....	195
INTERIM REMEDY	198
LONG TERM REMEDY	199
WHAT IS THE PROCEDURE, FORUM AND DOCUMENTS NECESSARY?.....	201
NOTICE OF MOTION	203
AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION	205
PETITION FOR DIVORCE	210
SUMMARY OF EVIDENCE.....	213
SUMMONS TO FILE AN ANSWER TO THE PETITION.....	215

ISAAC CHRISTOPHER LUBOGO

CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE.....	216
PETITION FOR RESTITUTION OF CONJUGAL RIGHTS AND PROVISION OF MAINTENANCE.....	217
SEPARATION AGREEMENT.....	219
PETITION FOR SEPARATION.....	223
ADOPTION ORDER	225
PETITION FOR NULLITY	233
VERIFICATION	234
SUMMARY OF EVIDENCE	235
SUMMONS TO ANSWER PETITION.....	236
SUMMONS TO FILE A RESPONSE	239
PETITION FOR MAITENENCE ORDER AND RESTITUTION OF CONJUGAL RIGHTS.....	240
SUMMARY OF EVEIDENCE.....	242
MAINTENANCE SUMMONS.....	243
CAVEAT FORBIDDING MARRIAGE.....	246
STATUTORY DECLARATION	248
RECENT LAW REVIEWS.....	349
AMENDMENTS TO SUCCESSION LAW IN UGANDA UNDER THE SUCCESSION (AMENDMENT) ACT 2022	349
THE SUCCESSION AMENDMENT LAW HIGHLIGHTS	354
ESTATE OF MISSING PERSONSMANAGEMENT AMENDMENT ACT 2021.....	359
THE ADMINISTRATOR GENERAL’S (AMENDMENT) ACT	360
THE ADMINISTRATION OF ESTATES (SMALL ESTATES) (SPECIAL PROVISIONS)	362
THE PROBATE RESEALING (AMENDMENT) ACT	363
THE LAW APPLICABLE ON PROBATE RESEALING IN UGANDA.....	364

SEALING OF PROBATE AND LETTERS OF ADMINISTRATION OBTAINED FROM COUNTRIES OUTSIDE UGANDA 365

CONDITIONS TO BE FULFILLED BEFORE RESEALING 366

DOCUMENTS FOR DOMESTIC RELATIONS..... 369

PROCESS FOR CARE ORDERS, FOSTER CARE AND ADOPTION THE CHILDREN (AMENDMENT) ACT, 2016 BASED ON THE CHILDREN ACT 1997 INCLUDING THE AMENDMENTS OF 2016..... 425

SUMMARY ON ADOPTION, CHILD CUSTODY, MAINTENANCE & GUARDIANSHIP ... 433

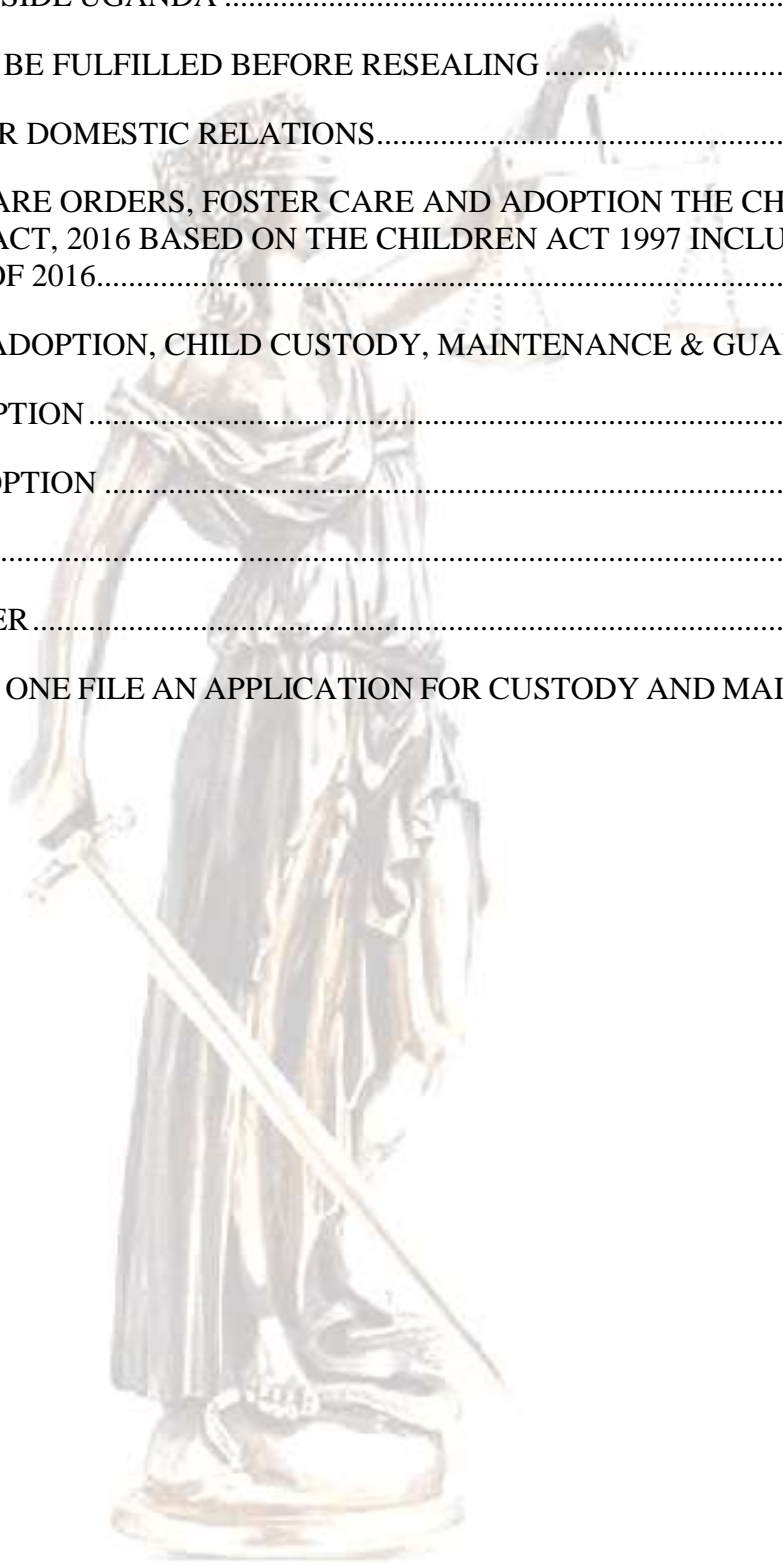
A. CITIZEN ADOPTION 433

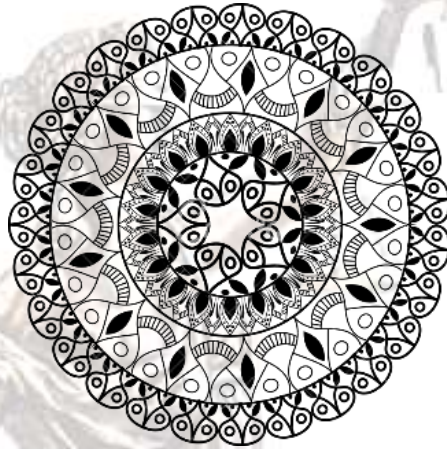
B. FOREIGN ADOPTION 434

CONSENTS 434

ADOPTION ORDER..... 434

WHERE SHOULD ONE FILE AN APPLICATION FOR CUSTODY AND MAINTENANCE? . 435





CASES AND MATERIALS IN DOMESTIC RELATIONS

The Laws Governing Domestic Relations in Uganda includes the following:

- The Constitution of the Republic of Uganda 1995
- The Judicature Act cap 13
- The Civil Procedure Act Cap 71
- The Civil Procedure Rules SI 71-1
- The Advocates (Remuneration and Taxation of Costs) Regulations SI 267-4
- The Magistrates Courts Act Cap 16
- The Marriage Act Cap 251
- The Marriage (District Registrars) Order SI 251-1
- The Divorce Act Cap 249
- The Divorce Act Rules SI 249-1
- The Customary Marriages Registration Act Cap 248
- The Customary Marriages (Registration) (Prescription of Forms and Fees) Regulations SI 248-1

OBJECTION MY LORD

- The Marriage & Divorce of Mohammedans Act 252
- The Marriage & Divorce of Mohammedans (Appointment of Registrars) Order SI 252-1
- The Marriage & Divorce of Mohammedans (Fees) Order SI 252-2
- The Marriage & Divorce of Mohammedans (Jurisdiction in Matrimonial Causes) Instrument SI 252-3
- The Marriage of Africans Act Cap 253
- The Hindus Marriage and Divorce of Act Cap 250
- The Hindus Marriage and Divorce (Marriage and Registration) Rules SI 250- 1
- The Children Act Cap 59
- The Children (Adoption of children) Rules SI 59-1
- The Children (Family and Children’s Court) Rules SI 59-2
- The Succession Act Cap 162 As Amended
- The Administration of Estates (Small Estates) (Special Provisions) Act Cap 156
- The Administration of Estates (Persons of unsound mind) (Procedure) Rules SI 155-1
- The Administration of Estates (Small Estates) (Special Provisions) Rules SI 156-1
- The Administrator General’s Act Cap 157
- The Administrator General’s (Fees) Rules SI 157-1
- The Evidence Act Cap 6
- The Constitution of the Republic Uganda 1995
- The Children Act Cap. 59 and the amendment thereto
- Divorce Act Cap 249
- The Children (Family and Children Court) Rules SI 59-2
- The Children (Adoption of Children) Rules SI 59-1
- Judicature Act Cap 13
- The Succession Act Cap 162 As Amended
- The Administration of Estates (Small Estates) (Special Provisions) Act Cap. 156

ISAAC CHRISTOPHER LUBOGO

- The Estates of Missing Persons Management Act Cap 1 59
- The Administration of Estates (Small Estates) (Special Provisions) Amendment of Jurisdiction of Magistrates Courts Order S1 20/2009
- The Administration of Estates (Small Estates) (Special Provisions) (Probate and Administration) Amendment Rules 2009
- Administrator General's Act Cap 157
- Probates Resealing Act Cap 160 and the Rules thereto
- Public Trustee Act Cap 161
- The Administration of Estates of Persons of Unsound Mind Act Cap, 155
- The Trustees Incorporations Act Cap 165
- Trust Corporations (Probate and Administration) Act Cap. 163
- The Evidence Act, Cap 43
- The Civil Procedure Act Cap 71
- The Civil Procedure Rules S.1 71-1

International and Regional Instruments

- UN Convention on the Rights of the Children, (1989)
- The African Charter on Human and People's Rights (1981)
- The African Charter on the Rights and Welfare of the African Child
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979)
- Protocol to the African Charter on Human and Peoples Rights, on the Rights of Women in Africa, 2003.
- Optional Protocol to the CRC on the Sale of Children, prostitution and pornography
- Optional protocol on the CRC on the Involvement of Children in Armed Conflict
- ILO Convention on minimum age for Admission to Employment (ILO Convention No. 138)

OBJECTION MY LORD

- The Hague Convention on the Protection and Co. operation in respect of Inter-Country Adoption of Children

CHILDREN

Rights of Children Specially recognized under the Constitution of Uganda 1995 Articles 31-34; The Children Act, Cap 59

- Who is a child?
- What is parental responsibility?
- Principles applicable in children matters
- Defining the concept best interest/welfare of the child
- Understanding the rights and duties of a child
- Understanding the rights and duties of parents and those in custody of the child.
- Jurisdiction in children matters both civil and criminal
- The role of local councils in children matters
- The role of the Family and Children Court; Orders awardable by the court.

Introductory Cases

- UG V Tangit Martin HCT CR - 288 OF 2006
- In Matter of Sanyu Elivania (Minor) Misc Cause No. 47 of 2005
- In Matter of Deborah Alitubeera Civil Appeal NO. of 2011
- Andrew Keenan V Pearl Hoareau HCMA 24 of 2009
- In the Matter of Paula Robertson (An Infant) Misc Cause No. 27/2001
- In the Matter of Loice Senema & Anor (An Infant) CV-FC-17/2003
- In the Matter of Ayla Mayanja (An Infant) Misc App No. 20 of 2003
- Rwabuhema Musinguzi V Harriet Kamakume Civil Appl. No. 142 of 2009
- In the Matter of Namugerwa Joyce & Ors (Minors) HCFC No. 28 of 2009
- In the Matter of Sarah Mirembe Misc. Application No. 58/92
- In the Matter of an Application by Mark and Stacy Luckey HCFC No. 12 of 2002

ISAAC CHRISTOPHER LUBOGO

- In the Matter of Michael Lumu HC Adoption Cause No. 8 of 2000
- In the Matter of and Application for Adoption of Gorretti Nakasaga (An Infant) HCAC No. 6 of 1996
- In the Matter of Sofia Mohamed & 2 ors Misc Appl. No. 50 of 1984
- Julian Fenzi V Nabbosa Marie PCMC No. 6 of 2012
- 16. Nakalule Christine V Herbert HCCA No.47 of 2008
- In the Matter of an Application for Guardianship of Peter Kalema HCCNo. 220/2013
- Fatoom Bin Abdul V Nabila Bin Ahmed Misc Appl No. 136/57 of EA 673
- Watson V Nik01ason [1955] 2 AER 427/1955
- Re M (1955) 2 AER 91 1
- Hitchcock V W.B(1952) 2 AER 1 19
- UNHCR Guidelines on determining best interest of the child
- CRC Committee General Comment No 14: On Best Interest of the Child
- CRC Committee General Comments NO. 17: On the right of the child to play and leisure
- CRC Committee General Comments No. 10: On Children's Rights in Juvenile Justice

Guardianship under the Children Act

- Concept of guardianship prior to 1996 and 2016; Bromely's Family Law Pg.395
- Types of guardianship (Legal, Customary, By agreement)
- Jurisdiction in guardianship applications.

Cases:

- In the Matter of an Application for Guardianship of Hillary Mujuzi (Minor) Misc App. No.32/2001
- In the Matter of Namugerwa Joyce & 2 Ors HCFC No. 28 of 2009
- In the Matter of an Application of Hassan Awa Hassan & 4 Ors Misc. APP No. 10/2002
- In the Matter of and Application for Guardianship of Nankya Mercy HCFC No. 92/2009
- In the Matter of an Application for Guardianship of Brenda Namanya & Ors (Minors)- Misc Cause No. of 2003

OBJECTION MY LORD

- In the Matter of an Application by Mark and Stacy Luckey HCFC No. 12 OF 2002
- In the Matter of Moses (Mukisa) HCFC No. 3 of 2012
- In the Matter of an Application of Sarah Namakula & Alex Katende (Minor) Misc App. No.91/1993
- In RE: Irene Najjuma (An Infant) HCFC No. 79 OF 2009
- 10. In the Matter of an Application of Aoran Eridad (Infant) HCFC No. 245 of 2010
- In the Matter of David Mark Kabwigu Kirunda HCFC No. 120 of 2009
- In the Matter of Sanyu Elivania (Minor) Misc Cause No. 47 of 2005
- In the Matter of Howard Little (an Infant) CACA No. 33 of 2006
- In the Matter of Kiyegga Tricia (Minor) Family Cause No. 162/2008
- In the Matter of an Application for Guardianship by Rene Kampmeyor Misc. App No.16/1993
- In the Matter of Prossy Nalugwa (an Infant) Misc. App No. 500/1997
- 17. In the Matter of Okol Lawrence Ikeba and Beatrice Ikeda (Infants) Misc. Appl. No. 229/1993
- 108. In the Matter of Jane Namukasa (an Infant) Misc. Appl. No. 90/91
- 19. In the Matter of Jane Nakintu & Others (all Infants) Misc. Appl. No.966/97
- 20. In the Matter of Sarah Mirembe Misc. Appl. No. 58/92
- 21 ,111 Re Nalugya (an Infant) [1997] IV KALR 134
- 22. Re Kangame Teres (an Infant) [1996] HCB 69
- 23. Yasmin V Mohamed [1973] ERCA
- 24. Adomat 1 V Okvare Adoption Cause No. 4/1994
- 25. Re Lawrence Ikeda & Beatrice Ikeda Misc. App, No.299/1993
- 26. Re Katende & Namakula App. No. 291/1993
- 27. Re Application for Guardianship Misc. App No. 58/1992
- 28. In the Matter of Otim Gabriel (Minor) HCFC No.3 of 2013
- 29. In the Matter of Justus Byamukama HCFC No. 220 of 2013
- 30. In the Matter of Aim Racheal Lukwiya (AN ADULT) HCFC No. 05 of 2013

ISAAC CHRISTOPHER LUBOGO

- 31.Re C [1989] 1 Aller 395
- 32.ReA [1940] 164 LT 230
- 33.Re AJ [1993] Parm Law 568

Termination of Guardianship

- In the Matter of an Application by Roxane Turner & Anor for a Writ of Habeas Corpus MiscApplication No. 06 of 2014
- In the Matter of Deborah Aljtubeera (supra)
- Exparte B [1972] 3 Aller 317
- Beaufort v Berty [1721] 1 P WMS 703
- R v.I (1899) 1 Ch 526
- FvF[1902] 1 Ch 688

Adoption

- [S. 44-55 of the Children Act] and amendments in the 2016 Act
- Re Edith Nnassazi Adoption Cause No. 7 of 1997
- In the matter of Michael Lumu H C Adoption Cause No. 8 of 2000
- Application for Adoption by Oloya Robina for Okot Robert (An Infant) H C F C No. 23/2005
- In the Matter of Alison Elliot, Adopt Cause No. 25 of 2003
- In the Matter of and Application for Adoption of Gorretti Nakasaga (An Infant) HCAC No. 6 of 1996
- In the Matter of Mlrembe Nasamba Adoption Cause No. 110 of 2009
- Re K (An Infant) [1953] 1 QB 117
- An Application for Adoption of Michelle and Thomas Adoption Cause No. 5 of 2005
- In RE: Irene Najjuma (An Infant) HCFC No. 79 of 2009
- In the Matter of Nicholas Mwanja & Anor HCFD No.78 of 2009
- In the Matter of and Application by Margret Laker & Anor, Adpt Cause No. 3 of 1998

OBJECTION MY LORD

- In the Matter of Juliet Nakazibwe ULR [1973] 140
- Re Sarah Nyakairu Adoption Cause No. 14: 1995
- In the Matter of Mathew David Hill (an Infant) [1993] 1 KALR 93
- In Re (An Infant) [1995] IV KALR 54 SC
- Re Julius Mwesigwa (Infant) [1994] 11 KALR 69
- In the Matter of Mariam Kimera Bazanye [1992] IV KALR 34
- Re Serwadda Mayanja Adoption Cause No. 7/1897
- Laker V Apio Adoption Cause No. 3 of 1998
- Re M. an Infant Supreme Court c/App 22/1994
- In the Matter of Jane Nakazibwe [1973] 1 ULR 140
- In the Matter of Tusabiri Suzannah (An Infant) HCAC No. 252 of 2013
- In the Matter of Natalie Matama (Infant) HCAC No. 289/2013 (Dual citizenship of Applicant)
- Re B [1962] 1 All ER 898
- Re G [1962] 2 All ER 546
- Re D [1940] Ch 20 321
- Re P [1989] 1 FLR 1
- Re S [1987] 2 All ER 99
- Re D [1980] 2 PLR 102
- Re S [1977] 3 All ER 671
- Re C [1986] Farm Law 360
- Re T [1977] All ER 77
- Re Secretary of State for Health [1992] 1 FLR 59
- Re K [1994] 2 FLR 116
- Re Callaghan [1985] 1 All ER 16
- Brach v Wollans [1949] 2 KB 388
- Re G [1995] 2 PLR 534

ISAAC CHRISTOPHER LUBOGO

- RE B [1995] 12 FLR 1

Parentage

[Part IX of the Children Act] [S. 67 — 74 of the Children Act]

- CT v MW
- B VB [1969] 3 ALLER 62
- Preston Jones V Preston Jones [1951] I ALLER 124
- Knowles v Knowles [1962] 2 ALLER 659
- Ettenfiled V Ettenfiled [1940] 1 ALLER 293
- Mwambo v Wandoa [1966] EA241
- Mpirirwe v Nsabimana 1994 IV KALR 89
- Kate Namatovu V Sergeant Kavuyo Misc Appl No. 18 of 2009
- Sanyu Milly Nalukwago V Jacqueline Nakabugo & Others HC Admin. Cause No. 20/06

Custody

[Sections 4, 5, 73, 85-87 Children Act]

- I. Nakalule Christine v Kakooza Herbert HCCA No. 47 of 2008
- Kirungi Doreen V Mugabe Ronald HCDC No. 48 of 2013
- Juliua Chama V Specioza Mbabazi FCDC No. 25 of 2011
- Florence Abeja V David Miles Div Cause No. 44 of 2013
- In the Matter of Ayla Mayanja (An Infant) Misc App No. 20 of 2003
- Juliet Hatanga v Sam Okv'ir, Nak- FC No. 232 of 2008
- In the matter of Ayla Mayanja HCMC No. 20 of 2003
- In the matter of Ali Issa Abdi Misc Appl No. 904 of 1997
- Kamugisha Theopy v Cakitoka Pascal [1996] IV LALR 116
- Pukeria Nakagwa v Donuniko Kiggundu [1978] HCB 310
- Habyarimana V Habyarimana [1980] HCB 139

OBJECTION MY LORD

- Teopista Kayongo v Richard Sekiziyivu [1978] HCB 240
- Kararu vNjeru [1968] EA 361
- Nakaguza v Kiggundu [1978] 310
- Catherine Jane Kalisa vJohn W. Kalisa [1974] HCB 108
- George Nyakairu V Rose Nyakairu [1979] HCB 261
- Re Holmann [1972] EA 673
- Mohammed Hassan v Nana Mzee [1949] 11 EAACA 4
- Monda vAhmed [1957] EA 673
- Musinga v Musinga [1993] vi KAI. R 160
- Williamson v Williamson [1993] vi KAIR 16
- Wambwa v Okumu [1970] EA 57
- Kalisa v Kalisa [1974] ICB 408
- Karanu v Karan [1974] EA 18
- Habyarimana VHabyarimana [1980] HCB 140
- Mohammed v Yasmin [1973] EACA.

Maintenance of Children

[Article 34 of the Constitution of Uganda 1995; S.5, 6, 76, 77, 78, 81 & 82 Children Act]

- Nakalule Christine v. Kakooza Herbert HCCANo. 47 of 2008
- Kirungi Doreen V Mugabe Ronald HCDCNo. 48 of 2013
- Julius Chama V Specioza Mbabazi FCDC No. 25 of 2011
- Julian Fenzi vNabbosa Marie HCFC No. 6 of 2012
- George Mate v cool Nyakapanka [1974] HCB 253
- In the matter ofAyla Mayanja [an Infant]
- Mark Graves v Deinda Taylor NAK. FC No. 218 of 2007
- Tebandeke Darausi v Saidat Lugolobi FC No. 179 of 2008
- EismatvEismatD.CNo. 7/1988

- Aiiya V Aiiya D.C No.8/1973

Other Provisions of the Children Act

S. 19, 21, 24, 29, 31, 34, 35, 56, 66, 105, 10 & 11 Children Act.

Supervision, Care and Exclusion Orders

- Re. S [1992] I FLR 31
- R V Birmingham Juvenile Court Ex S [1984] FLR 713
- Re Wands-worth West Juvenile Court Exp. S [1984] FLR 713
- In the matter of Howard Little (an Infant) CACA No. 33 of 2006 In the Matter of an Application by Marshall Pierre FC No. 144-146 of 2013.

Recovery, Discovery, Search and Production Orders.

Foster Care Placements

Clarke Hall Morrison on Children Vol. 1, [401-500)

Surrey County Council V Battersby [1965] 2 QB 1 94

- Approved Homes
- Enforcement of Children's rights
- Role of the Probation and Welfare Officer
- Role of authorities and community members
- In the matter of Howard Little (an Infant) CACA No. 33 of 2006
- In the Matter OF Tusabiri Suzannah (Infant) Adoption Cause No. 252 of 2013

Juvenile Detention in Uganda

[Section 85 — 110 of the Children Act]

- a) Define key concepts
 - Who is a Juvenile and children in Conflict with the Law?

OBJECTION MY LORD

- What is juvenile justice?
- b) What are the international standards that govern juvenile detention?
- c) Legal regime governing juvenile justice in Uganda?

ADMINISTRATION OF ESTATES

TESTATE SUCCESSION

Relevant Legislation

- The Succession Act Cap 162 As Amended
- The Administration of Estates (Small Estates) (Special Provisions) Act Cap. 156
- The Administration of Estates (Small Estates) (Special Provisions) Amendment of
- Jurisdiction of Magistrates Courts Order SI 20/2009
- The Administration of Estates (Small Estates) (Special Provisions) (Probate and
- Administration) Amendment Rules, 2009
- Administration General's Act Cap 160
- Public Trustee Act Cap 161
- The Trustees Incorporation Act Cap 165
- Trust Corporations (Probate and Administration) Act Cap. 163
- The Evidence Act Cap 6

Execution of Wills

What is a Will?

- Haji Sulanti Habib Jjumba & ors v ajati Sofarani Nyinakiza Sanyu HCCS No. 718/95
- Administrator General v. Teddy Bukirwa & Anor [1992 - 93] HCB 192
- Milnes vF01den (1890) 15 PD 105
- Re stable [1919] P 7
- Cooke v Cooke (1866) LR. P & D 241

Validity of a Will: Requirements

- Administrator General v. Teddy Bukirwa & Ester Bukirwa [1992-1993] HCB 192
- Musoke Sanyu Lwanga v. Salim Galiwango [1997] V KALR 74 SC
- James Ruteete & Anor v, Catherine Zaribwende & Anor HCT-CV-1144-1997
- Rev. Kyamukama & Anor v. Catherine Zaribwende Anor HCT-CV-CS-1144-1997
- Beatrice Mailinga v. Jonathan Mailinga [2015] UCHCLD 39
- John Kabugo & 2 Ors v. Teophil Semuyinde Anor Civil Appeal No. 102 of 2003
- John Masanyalaze v. Rita Nanono & Ors Civil Appeal No. 86 of 2008 v-æ
- Re: Sulaiman Ssrwanga Ssalongo (Deceased) 1972 VLR 112
- Florence SaliB Nurdin v. Charmas Charania & Ors. [201 1] UCCA I
- Kiwalabye Stephen v. John Musoke [201 3] UGHCLD 22
- Mwakitale V Mwakitale [1 966] EA 35
- Admin General v. Norah Nakiyaga & Others Admin Cause No. 544 of 1990
- John Kyeswa v. Admin. General [2010] UGHC II
- Administrator General V Mrs. Norah Nakiyaga [1993] III KALR I vf5. Prince JDC Mpuuga Rukidi V Prince Solomon Iguru [1996] I KALR I
- AlitabalaEria v. Kakaire Vincent Civil Appeal No. 30 of 1987
- Haji Sulanti Habibu Jjumba & ors v Hajati Sofarani Nyinakiza Sanyu HCCS No. 718/95
- Dan Byamukama & Anor v. Peace Rwomwiju [2001] UGHC 93
- Re Estate of Gibson [1949] P 434
- Hudson Parker (1844), Rob. LCC. 14 21.
- Estate of Bullock [1968] P 1 96

Capacity to Make a Will

- Haji Sulaiti Habib Irumba V Hajati Safarani Nyima HCCS No. 718/1995
- Beatrice Nyakaana Kobusingye v. George Nyakaana & Ors. HCCS No. 84/1989
- Stella Mans Amobilis & Micheal Wandwasi v. Esther Nabusakala HCCS 72 OF

OBJECTION MY LORD

- James Ruteete & Gregory Rwetare v Fiona Mbabazi & 2 Ors [2001] UGHC 97
- Banks v Goodfellow [1870] LR5 QB 549
- Re Werber [1918] 1 CH 339
- Re Goods of G01man [1958] 1 WLR 457

Presence of Testamentary Intent

- Re Doney (1917) 34 TLR 138
- Selwood V Selwood (1921) 125 LT 26
- Re Beech [1923] P. 46
- Re Estate of Cnobbs [1962] 1 WLR 852
- Estate of McGilivray (1946) 62 538 ALLER
- Cripp v Halpole (1829) 2 Hagg 504
- Jameson v Cooke (1927) 1 Hagg 82
- Re Goods of Taylor [1933] IR 709

Codicils

- Richard Babumba & Ors v. James Ssali Babumba [2015] UCHCLD 31
- John Kabugo & 2 Ors v. Teophil Semuyinde & Anor Civ. App. No. 102 of 2003
- Sotheran v Denning (1881) 20 Ch. 0.99
- Caden v Wilcock (1898) P 21
- Sampson v Faxon [1907] P 54
- Kit cat v Kking [1930] P 26
- Re Wayland [1951] 2 All ER 104

SPECIAL WILLS

Privileged Wills

- James Katende & Two Others v. Dan Byarnukama Admin. Cause No. 201/92
- The Estate of Ada Stanely [19 If] P. 192

ISAAC CHRISTOPHER LUBOGO

- The Estate of Knibbs [1962] 2 All ER 829
- Boughton v, Knight [1873] LR 3 PD 65
- Goods of Rowson [1944] 2 ALL ER 36

Mutual Wills

- Re Oldham [1925] Ch 75
- Dufour v. Pereira [1769] 21 ER 332
- Re Hagger [1930] 2 Ch 190
- Gray v Perpetual Trustee co. Ltd [1928] AC 39T

Joint Wills

- Re Duddel [1932] 1 Ch 585
- Goods of Piazhi Smyth [1898] P 7
- Hobson v Blackburn (1923) 1 Add 274

Conditional Wills

- Re - estate of Thomas [1939] 2 All ER 567
- Re Goods of Robison (1879) LR P80 171
- Corett v Newey [1994] Ch. 388

Religious Wills

CONTRACTS INVOLVING WILLS

- Re Basham [1986] 1 WLR 1498
- Re Marsland [1939] Ch 820
- Synge v Synge [1960] 1 WLR 286

PROBATE

- Richard Babumba & ors v. James ssali Babumba [2015] UCHCFD 31
- Semakula Haruna v Josephine Nagadya & 4 Ors [2011] UGCOMM 106
- Walker v Gaskill [1914] P 192
- Stella Maria Amabilis & Michael Wandwasi v. Esther Nabusakala HCT CS No. 72 of 2007
- Sanyu Lwanga Musoke v. Sam Galiwango [1997] V KALR 47
- Goods of Stacey (1955) 4 WR 64
- Peter v Leeder [1878] 47 L.J.Q.B. 573
- Annet Namirimu Ndaula v. Rev. Aloni Mulondo & 2 Ors [2015] UCHCFD 48

EXECUTORS/EXECUTRIX

- Annet Namirimu Ndawula v Rev. Aloni Mulondo & 2 Ors [2015] UGHCFD
- John Katarikawe V William Katwiremu & Another [1977] HCB 210
- Richard Babumba & ors v. James Ssali Babumba [2016] UGHCFD 31
- Michael Oscar Kajemba v. James Mulwana & 3 Ors. HCCS No. 749 of 1997
- Peters v [1878] 47 L.J.Q.B. 573
- Tayebwa & 5 ors v Kyatwoha [2012] UCHC 179

REVOCATION OF WILLS

- Re Bird [1970] EACA 284
- Sanyu Lwanga Musoke v. Sam Galiwango [1997] V KALR 47
- Rwabaganda v Bahemunvabusha [1978] HCB 244
- Re Oldham (1724) ALL ER 288

Revocation by Destruction

- Hobbs v Knight [1838] 163 ER 267

ISAAC CHRISTOPHER LUBOGO

- Re Goods of Morton (1887) 12 PD 141
- Goods of Godfrey [1893] 69 LT 22
- Cheese v Lovejoy [1877] 2 251
- Goods of Woodward (1871) 2 PD 206
- Leonard v Leonard [1902] P 243
- Gill v Gill (1909) P 157
- Giles v Warren [1872] 2 401
- Scott v Scott (1859) 1 sw & Tr 258
- Estate of Kremer [1965] 110
- Re Sabatini [1969] 114 SJ 35
- Re Goods of Turner [1872] LR 2 403

Revocation by Will or Codicil

- Re Hawkesley, Black v Tidy [1934] Ch 384
- Birks v Birks [1865] 4 Sw & Tr 23

Duly Executed Writing Revocation Will

- In the Goods of Durance [1872] LR 2 406
- Re Spracklan's Estate, Re [1938] 2 All ER 345
- Beatrice Malinga v. Jonathan Malinga [2015] UCHCLD 39

ALTERATION OF A WILL

- John Kyeswa v. Admin. General [2010] UGHC 11
- Re Shearn [1880] 50 LJP 15

PASSING OF PROPERTY OTHER THAN BY WILL – GIFTS

Donations Inter Vivos

OBJECTION MY LORD

- Sophatia Beihi & 3 ors vs. Nangobi Jane & 2 Ors [2010] UCHC 15
- Thomas v. Times Book co. Ltd. [1966] 1 WLR 911

Donations Causa Mortis

- Vallée v. Blrchwood [2013] EWHC 1449
- Re Beaumont [1902] 1 Ch. 889
- Re Dillon [1890] 44 Ch. D. 76
- Re Farman [1887] 57 IJ Ch. 637

INTESTATE SUCCESSION

Relevant Statutes

- The Succession Act (Cap 162 esp. Parts IV & V(as amended))
- The Administrator General's Act (Cap 157)
- The Administration of Estates (Small Estates) (Special Provisions) Act (Cap 156) as amended
- Public Trustees Act. (Cap 141)

WHAT IS INTESTACY?

- Admin-Gen. v. Teddy Bukinva and Ester Bukinva [HCCS 208 of 1992]
- Admin-Gen. v. Akello Joyce Otti & Donato Otti [Civil Appeal No. 15/93]

HOW IS THE PROPERTY OF AN INTESTATE DISTRIBUTED?

- Law & Advocacy for Women in Ug v. AG [Const. Petition Nos. 13/05 & 05/06]
- Bamwite vs Nangobi (1977) HCB 41

WHO IS A "WIFE"/WIDOW?

- Christine Male & Anor v Namanda & Anor [1982] HCB 140

ISAAC CHRISTOPHER LUBOGO

- Elinesti Babumba & 2 ors v. EsterKzito (1992) 11 KALR 75
- Mugisha v. Kakuru & Ors. [HCCS No. 161 of 1993]
- Re Kibiego (1972) EA 179
- CissyNabaka vs Akoremera [HCCS 4/91]
- Best Kemigisha v. Mabel Komuntale [Civil Suit No. 5 of 1998]
- Omella & Omena v. Etieng& Odeke (1994) KALR 98
- Ephrahim v. Pastory and Kaizilege [1990] LRC (Const) 757

SEPARATION

- Farzia Rwobuganda v. Donato Banemuka [1978] HCB 244
- Mboijana James v. Mboijana Prophine [1990-91] HCB 10
- Nyendwoha Lucy v. Nyendwoha Robert [1989] KALR 108
- Joseph Baguma Sefuroza Matende [CS 12 of 1985]
- Elizabeth Wamala v. Jolly Kasande & ors [CA No. 10 of 2015]

RESIDENTIAL HOLDINGS

- Nanyonga v. Admin-Gen & Anor [Admin. Cause No. 107 of 1983]
- Juliet Kalema v. William Kalema & Rhoda Kalema [2004] UGCA 15
- Steven Musoke v. Fred Lule (1992) IU KALR 128
- Joyce Byabazira Bwako v. Parte [HCCS]
- In the matter of Kyakonye Misanga [1973] IULR 137
- Kemutingo v Yoramu Katuramu [1992] IV KALR 12

PROCEDURE FOR ADMINISTERING AN INTESTATE ESTATE

Who Can Apply for Letters of Administration?

- Lucy Akullo v. Michael Kilega [Admin. Cause No. 10 of 1990]

OBJECTION MY LORD

- Cissy Nabakka Kantinti v. Nakalemera [HCCS No. 84 of 1991]
- James Katende v. Dan Byamukama [Admin Cause No. 201/1992]

The Procedure

- David Ssajjaka Nalima v. Rebecca Musoke [Civil Appeal No. 5 of 1985]
- Christine Male V Namanda [19821 HCB 140]
- KonyvLamu Admin. Cause 15/1989
- Sara Sebowo & 5 Others v. Peter Sebowo [1991] HCB 95
- Re: Estate of Fatuma Binti Saleh [1961] EA219
- Rebecca Najjita v. Semalulu Wasswa & 2 Ors [Civil Suit No. 177 of 2002]
- Reuben Kiwanuka v. James Matovu [1991] HCB 94
- Khalid Walusimbi v. Jamil Kaaya & AG [1993] 1 KALR 20
- John Buteraba v. Edrisa Serwanga & Anor. [HCCS No. 222 of 2008]
- MboijanaJames v. Mboijana Prophine [1990-91] HCB 10
- Esero Bukeny•a v. Admin Gen. {1992} 1 1 1 KALR 152
- Steven Musoke v. Fred Lule [1992] IV KALR 128
- Gladys Ella Felster Omella v. Nicholas Ettieng & Anor. [1994] II KALR 98
- Nyendwoha Lucy v. Nyendwoha Robert & Anor. [1989 KALR 108]
- Ernest Babumba & 2 ors v. Nakasi Kizito [19921 11 KALR 75]
- Florence Kemitungo v. Yolam Katuramu [1992] IV KALR 12
- Ruth Sirimuzawo v. Paulo Mukasa & Ors [1994] II KALR 42

DUTIES/POWERS/LIABILITIES OF ADMINISTRATORS

- Kasawuli v. Dumba [HCCS No. 38 of 1988]
- Nsindika v. Tindibuhwa [1977] HCB 31
- Nanyonga v Admin-Gen Adm. [Cause No. 107 of 19831K]

ISAAC CHRISTOPHER LUBOGO

- Mureeba v. The Administrator of the Estate of Mureeba [Civil Suit No. 128 of 88]
- Nakabugo v AG [1967] EA 60

REVOCAION OF LETTERS OF ADMINISTRATION

- Administrator General v. Bruno Serunkuma [1993] IV KALR 79
- Administrator General v. Bukirwa & Anor [HCCS No. 208 of 1992]
- Administrator General v. Naklyaga [1993] III KALR I
- Nanyonga v. Administrator General [Adm. Cause No. 107 of 1983]
- Nakire v. Mpanga Kaggwa [1991] ULR 2042.

ADMINISTRATION OF PECULIAR ESTATES

Relevant Statutes

- The Estates of Missing Persons (Management) Act (Cap 159)
 - The Administration of Estates of Persons of Unsound Mind Act (Cap 146)
 - The Probate (Re-sealing) Act (Cap 160)
 - The Probate (Re-sealing) Rules
-
- (a) Simultaneous death of spouses
 - (b) Persons of Unsound Mind and Minors
 - (c) Missing Persons
 - (d) Under Sharia
 - (e) Estates outside Jurisdiction.



DOMESTIC RELATIONS

A) The Laws Governing Domestic Relations in Uganda includes the following:

1. The Constitution of the Republic of Uganda 1995
2. The Judicature Act cap 13
3. The Civil Procedure Act Cap 71
4. The Civil Procedure Rules SI 71-1
5. The Advocates (Remuneration and Taxation of Costs) Regulations SI 267-4
6. The Magistrates Courts Act Cap 16
7. The Marriage Act Cap 251
8. The Marriage (District Registrars) Order SI 251-1
9. The Divorce Act Cap 249
10. The Divorce Act Rules SI 249-1
11. The Customary Marriages Registration Act Cap 248
12. The Customary Marriages (Registration) (Prescription of Forms and Fees) Regulations SI 248-1
13. The Marriage & Divorce of Mohammedans Act 252
14. The Marriage & Divorce of Mohammedans (Appointment of Registrars) Order SI 252-1
15. The Marriage & Divorce of Mohammedans (Fees) Order SI 252-2
16. The Marriage & Divorce of Mohammedans (Jurisdiction in Matrimonial Causes) Instrument SI 252-3
17. The Marriage of Africans Act Cap 253
18. The Hindus Marriage and Divorce of Act Cap 250
19. The Hindus Marriage and Divorce (Marriage and Registration) Rules SI 250- 1
20. The Children Act Cap 59
21. The Children (Adoption of children) Rules SI 59-1
22. The Children (Family and Children's Court) Rules SI 59-2
23. The Succession Act Cap 162
24. The Administration of Estates (Small Estates) (Special Provisions) Act Cap 156

25. The Administration of Estates (Persons of unsound mind) (Procedure) Rules SI 155-1
26. The Administration of Estates (Small Estates) (Special Provisions) Rules SI 156-1
27. The Administrator General's Act Cap 157
28. The Administrator General's (Fees) Rules SI 157-1
29. The Evidence Act Cap 6

MARRIAGE

Marriage is the legal union of a couple as spouses. The basic elements of marriage are, the party's legal ability to marry each other, mutual consent of parties and a marriage contract as required by law.

Once married under the Marriage Act, you're incapable of contracting another marriage during the subsistence of that marriage. In **HYDE V HYDE**, marriage is monogamous and during its subsistence one cannot purport to enter another relationship.

TYPES OF MARRIAGES IN UGANDA

There are four types of marriages recognized by the law in Uganda and these include the following:

- **Customary Marriages** recognized majorly by The Customary Marriages Registration Act¹.
- **Civil Marriages** recognized majorly by The Marriage Act² and the Divorce Act³.
- **Church marriages** recognized majorly by The Marriage Act Cap and the Divorce Act.
- **Hindu Marriages** recognized majorly by The Hindu Marriage and Divorce Act⁴.
- **Mohammedan Marriages** recognized majorly by The Marriage and Divorce of Mohammedans Act⁵ and Sharia Law.

FORMAL AND ESSENTIAL REQUIREMENTS OF MARRIAGES IN UGANDA

A) CUSTOMARY MARRIAGES

The law applicable to customary marriages includes the following;

1. The Constitution of the Republic of Uganda 1995

¹ Cap 248

² Cap 251

³ Cap 249

⁴ Cap 250

⁵ Cap 252

OBJECTION MY LORD

2. The Judicature Act cap 13
3. The Customary Marriages Registration Act Cap 248
4. The Customary Marriages (Registration) (Prescription of Forms and Fees) Regulations SI 248-1
5. Case law and customary law

A CUSTOMARY MARRIAGE is defined in section 1(b) of the Customary Marriages Registration Act as a marriage celebrated in accordance with the rites of an African community and one of the parties to which is a member of that community. This principle is fortified by the case of **UGANDA VS KATO AND OTHERS [1976] HCB 204** where court held that the test of determining what type of marriage is, is whether the union is treated as a marriage by the laws or customs of the nation, race or sect to which the parties belong. Court went on further to state that; where the parties are from different tribes, the customs of the woman would be to one to be followed in case of a customary marriage.

It must be noted however that the customs should not be contrary to the principles of natural justice and morality. This is the spirit of the law evident in section 14 of the Judicature Act Cap 13 which enjoins courts of judicature to apply customary law *ipso facto* in adjudication of matters before it provided the customs are not repugnant to natural justice and morality. Article 33(6) of the Constitution prohibits laws, cultures customs or traditions that are against the welfare or interest of women or that undermine their rights. This is fortified by the East African case of **KIMANI VS GIKANGA [1965] EA 735** where court was of the view that repugnant customs should not be upheld in society.

Under Section 4 (2), Customary Marriage maybe polygamous.

A customary marriage is a celebrated according to the rites and customs of an African community to which one of the parties is a member of that community or any marriage celebrated under part 3 of the customary marriage (**Registrations Act, Cap 248. Section 1 (b) of the Customary Marriage (Registrations) Act (CMRA)**).

What customs are to govern customary marriage?

In the case **NASSANGA V NANYONGA (1977) HCB 352**, the parties were both Banyakole who had moved to Buganda and changed their names. The court held that

1. Parties are free to choose the law to govern their relationship but this choice is made at the time the relationship is entered into and not after a dispute has arisen. The choice of law is a matter for the court to decide.
2. Where the parties belong to the same tribe the proper law is the law of the tribe to which they belong in matters of moveable property and interpersonal issues. In a case of immovable property, the law of the tribe where the property is situated applies. As the instant case related to marriage and dowry, the proper law was the law of the tribe to which the parties belong.

3. Where the parties belong to different tribes, the most equitable rule for the choice of law is to discover the law which both parties had in mind as governing their relationship at the time of the transaction in issue.

- In this case ankole customary law applied and not Buganda customary law since even the alleged dowry paid was paid in cows, an item which is not listed among the list of the items of dowry paid by Buganda.

In **KINTU V KINTU, DIVORCE APPEAL NO.135 OF 1997**, the court held that where the parties are from different tribes, the customs of the girl determine whether there was a marriage.

In **UGANDA V P. KATO ANDORS (1976 HCB 24)**, Court held that in order to establish the existence of a customary marriage its sufficient to prove that according to the customs and laws of a given-tribe, a marriage exists.

- The marriage should have been conducted according to the customs of that tribe and satisfied the requirements of that custom .in **UGANDA V JOHN EDOKU (1975) HCB 359**; the court held that if bride price is required it must be paid in full.

ESSENTIAL REQUIREMENTS

RIGHTS OF AN AFRICAN COMMUNITY: First and foremost, the Marriage should be conducted according to rights of an African community as enunciated in the case of **UGANDA VS KATO AND OTHERS [1976] HCB 204** where court held that the test of determining what type of marriage is, whether the union is treated as a marriage by the laws or customs of the nation, race or sect to which the parties belong.

FULL BRIDE PRICE: Secondly, where bride price has to be paid, it must be paid in full. This payment is made by the husband to be or the groom to the family of the girl he intends to marry. This principle is fortified by the case of **UGANDA VS EDUKU [1975] HCB 359**. Where court held that since bride price had not been paid in full, there was no subsisting marriage between the complainant and the adulterous woman for they were not considered as husband and wife. This was the same principle in **AIYA VS AIYA D.C. 8 OF 1973**. The girl's family may request for no dowry at all and the marriage will be valid. Therefore, dowry becomes relevant only when requested for and if not requested for, this does not mean that the marriage is void.

AGE: Thirdly, the age of marriage for the wife is considered to be at 16 years and for the husband is taken to be at 18 years. This is the spirit of the law in **Section 11 (a) and (b) of the Customary Marriages Registration Act**.

In light of the above there is need to strike a balance between the constitutional sanction and the sanction under the Act. The constitution of the Republic of Uganda 1995 is the supreme law of the land and shall have binding force on all persons. To this end therefore, it is legally correct for one to rely on **Article 31** which talks of the majority age as 18 and thus marrying off a girl of 18 years under customary law. The fallacy however is; persons have been so litigious on this matter.

OBJECTION MY LORD

PROHIBITED DEGREES: Fourthly, there should not be any prohibited degrees of kinship under **section 11(d) of the Customary Marriages Registration Act**. The prohibited degrees of kinship are provided for in the second schedule to the Customary Marriages Registration Act.

PARENTAL CONSENT: Fifthly, Consent of the parents is a must and it must be got. This is premised on the African tradition that girls cannot do anything without the parent's approval.

Section 11 (e) of the Customary Marriages Registration Act provides another condition to the effect that there should be no valid and subsisting monogamous marriage between the parties to this marriage and another person.

POTENTIALLY POLYGAMOUS: Must be noted that customary marriages are potentially polygamous. This is provided for in **Section 4 of the Customary Marriages Registration Act**.

Registration of customary marriages is provided for under **section 5 of the Customary Marriages Registration Act**. It does not however mean that failure to register the marriage renders it void. This is fortified by **NASSANGA VS NANYONGA [1977] HCB 314** where court held that failure of the parties to register the marriage does not invalidate the marriage.

Under **Section 6 of the Customary Marriages Registration Act**, the marriage may be registered not later than six months after the date of completion of the ceremony; with at least two witnesses to attend to the office of the Registrar with details to register the marriage.

CAVEATS TO CELEBRATION OF A CUSTOMARY MARRIAGE.

Under **Section 27 of Customary Marriage (Registration) Act**, any person whose consent of a marriage is required or who may know of any just cause why the customary marriage should not take place, may enter a caveat against the issue of the registrar's certificate by writing at any time before issuance of the certificate the word "**forbidden**" opposite to the entry of the notice in the customary marriage notice book, add his/her names and the grounds to wit.

CONSENT

Under **Section 32**, where the parties are below 21 years, they must have the consent of the father or of his dead or of unsound mind, then the mother.

CIVIL MARRIAGES

The basic issues for discussion here include the following

1. Whether the parties have capacity to contract a marriage?
2. If so, what formalities should be followed to effect the marriage?
3. What is the forum and documents?

Discussion

Section 1(f) of the Marriage Act defines a civil marriage in to mean a marriage between one man and one woman; subsistence of which; neither of them is at liberty to contract any form of marriage.

This is fortified by **HYDE VS HYDE (1863) LR P & D 130** which was noted with approval in **ALAI VS UGANDA (1967) EA 416** as the voluntary union of one man and one woman to the exclusion of all others. The case of **AYOUB VS AYOUB [1967] EA 416** provides that marriages under the Marriage Act is potentially monogamous. In ascertaining the validity of the marriage one ought to ensure that all the requisite steps provided for in the law have been followed.

Case law has however enunciated a principle in **WIGHTMAN WIGHTMAN (1963) R & N 275** where court held that evidence of a marriage ceremony followed by cohabitation lays a presumption of a valid civil marriage. In **HILL VS HILL (1959) 1 ALL ER 281**, court held that such a presumption can be rebutted unless evidence to the contrary is adduced beyond reasonable doubt there was no valid marriage. These are provided for in **Section 6 of Marriage Act Cap 251**. The parties to an intended marriage should place a notice with Registrar;

Notice entered in marriage register book, the notice lapses after three months and then parties marry after that **Section 9 of Marriage Act Cap 251**. If there is no objection at end of 21 days; before expiration of 3 months the parties are issued with certificate permitting them to marry, as provided for under section 10 of the Marriage Act.

It must be noted that this Certificate is issued upon application supported by affidavit, where the deponent is supposed to aver that: -

1. One of the party's residents in district where the marriage is going to be celebrated of celebration of marriage
2. Parties are above 21 years of age.
3. No impediments of kindred or affinity to the intended marriage
4. None of the party to the intended marriage is married by customary law to any person other than that person with whom such marriage is proposed.

CAPACITY TO CONTRACT A CIVIL MARRAIGE

To be able to contract into a valid marriage the following attributes should be present, as enunciated in **section 10 of the Marriage Act**; thus

OBJECTION MY LORD

Each of the parties must be **above 21 years** and if the parties are below this age, consent of the parties ought to be got. This should be read in line with **Article 31 of the Constitution 1995**, which lays down the majority age to be 18 years.

One should be of sound mind. This is premised on the principle of contract law which is to the effect that in any contract there ought to be consensus ad idem.

The intended marriage should be between a Male and Female; this is evident in the common law principle enunciated in **HYDE VS HYDE (1863) LR P & D 130** where court defined marriage as the voluntary union of one man and one woman to the exclusion of all others.

None of the party to the intended marriage is should be married by customary law to any person other than that person with whom such marriage is proposed. This is fortified in section 49 of the Marriage Act.

Parties to the intended marriage should not be within the prohibited degrees of consanguinity or kindred. These degrees are referred to in the second schedule to the Customary Marriages Registration Act.

CHURCH MARRIAGE

The law applicable to civil marriages applies to church marriages; save that church marriages do not have an option for divorce. There are however, a few other rules which one ought to deal with.

Section 20 (1) of the Marriage Act provides that for a church marriage to be valid, it must be celebrated in licensed place of worship, presided over by recognized Minister; according to rights/usages of marriages observed in that church.

Section 21 of the Marriage Act provides that in case of any impediment; the Minister should not celebrate the marriage, until he has been granted a registrar's Certificate or a Minister's licence.

It must be noted further that according to **Section 20 (2) of the Marriage Act**, the marriage must be celebrated between the hours 8.00 am – 6.00 pm.

Section 22 of the Marriage Act provides further that the marriage has to be celebrated in a building duly licensed by Minister, or such place as Minister's license may direct.

VOID AND VOIDABLE MARRIAGES

VOID MARRIAGES

A void marriage is void ab initio. A decree of nullity can be sought by any person with a legitimate interest and can be sought by any person with a legitimate interest and can be pronounced at any time, even after the parties have died.

IN DE RENEVILLE V DE RENEVILLE (1948) 1 ALL ER56, the court defined a void marriage as one that will be regarded by every court in any case in which the existence of marriage is in issue as never having taken place and can be treated so by both parties to it without the necessity of any decree annulling it.

In RE ROBERTS (1978)3 ALL ER 225, the court held that if a marriage is declared void, it is declared void on social and public policy grounds unlike in voidable marriages where the persons concerned with the grounds which make the marriage voidable are only the parties to the marriage and no one else.

Section 34 of the Marriage Act lays down the instances when a marriage shall be void and these include:

- 1) **Section 34 (1) of the Marriage Act**, if it's within the prohibited degrees of kindred or affinity or if either of the parties has contracted customary marriage with any other person other than the person with whom the marriage is now had.
- 2) **Section 34(2) of the Marriage Act**, where parties knowingly and willfully acquiesce in its celebration:
 - a. In an unlicensed place without minister's license
 - b. Under false name or names
 - c. Without the registrar's certificate of notice or ministers license duly issued.
 - d. Conducted by an unlicensed person.

VOIDABLE MARRIAGES

In DE RENEVILLE (1948), a voidable marriage was defined as a marriage that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction.

In RE ROBERTS, the court held that where a marriage is voidable, the matter is left entirely in the hands of the parties and the parties may not wish to take advantage of their undoubted right to have the marriage declared void.

GROUND FOR VOIDABLE MARRIAGES

1. Non-consummation.

Section 12 (a) of the Divorce Act allows an innocent party to petition for nullity on ground of permanent impotence.

IN DE RENEVILLE, the court held that non-consummation of a marriage rendered a marriage voidable whether it was based on incapacity to consummate or owing to willful refusal.

OBJECTION MY LORD

In **D VA (1845) 163 ER 1039**, the court held that consummation of the marriage requires ordinary and complete” rather than “partial and imperfect” sexual intercourse, including erection and penetration but not necessarily leading to orgasm.

In **SINGH V SINGH (1971)2 ALL ER828**, the court held that where there is willful refusal, the refusal must be settled and definite and arrived at “without just excuse”, the husband is expected to use appropriate facts, persuasion and encouragement if his wife is shy, and her resistance to insensitive demand will not necessarily be regarded as willful refusal.

In **HORTON V HORTON (1947) 2 ALL ER 871**, lord jowilt, stated that “willful refusal” means a settled and definite decision arrived at without just excuse, considering the whole history of the marriage.

2. Failure to consent

In **RE ROBERT**, the court held that absence of any consent renders a marriage voidable and not void. Consent to a marriage maybe voidable and not void. Consent to a marriage maybe varied by either insanity, duress or mistake as to the identity of the other or the nature of the ceremony.

a) Insanity.

In **DURHAM V DURHAM (1885) 10 PD 80**, the petitioner sought a decree of nullity and claimed his wife had not had the mental capacity needed for marriage. The court held that the contract of marriage is a very simple and which does not require a high degree of intelligence to comprehend. But a person who understands the language of the ceremony may still be affected by delusions or other insanity so as to have no real appreciation of its significance. Court found that the respondent had had sufficient capacity at the time of the marriage, though her condition had deteriorated later.

b) Duress.

In **SINGH V SINGH (1971)2 ALL ER 828**, for duress to suffice, it must be shown, it must be shown that the petitioner's will was overborne or that her consent was obtained through force or fear. There must be a threat to the petitioner's life, limb or liberty.

In **BUCKLAND V BUCKLAND (1967)2 ALL ER 300**, petitioner while working in Malta, developed a 15-year-old girl. He was arrested and charged with corrupting a minor. He affirmed his innocence, but his solicitor and his employer both advised him that he was unlikely to be believed and his only hope of escaping a substantial prison sentence was to marry the girl. He went on to contract the marriage. On return to England, he sought to have the marriage annulled. The court annulling the marriage held that he had only consented because of his reasonable fear of imprisonment and that was not true consent.

c) Mistake

A mistake as to the identity of the other party is generally sufficient to make a marriage voidable, but a mistake as to his attributes or as to the effect of marriage is not.

In the case of **C V C (1942) NZLR 356**, the petitioner met a man, respondent who claimed to be Michael Miller, a well-known boxer. She married him after a short courtship and subsequently found he was not miller at all and sought an annulment. The petition was dismissed. The court held that the petitioner was mistaken as to the respondent's attributes rather than his identity. She intended to marry the man, respondent, standing beside her and was mistaken only as to his name and profession.

In RE C AND D (1979) 35 FLR 340, the respondent was born a hermaphrodite. Under went surgery as a young adult to remove the external signs of feminity. Married the petitioner and the marriage was never annulled. Wife (petitioner) filed formality. Granting a declaration of nullity, the judge said W had intended to marry a male and was therefore mistaken as to the identity of her partner and that would be sufficient grounds.

APPROBATION OF VOIDABLE MARRIAGES

This occurs in situations where one of the parties is fully aware of facts making the marriage voidable and conducts himself although the marriage is valid, he/she may be estopped from revoking the marriage and will be deemed to have waived his or her rights.

The defect will be cured once the innocent party approbates the marriage.

In W and W (1952)1 ALL ER, the parties were married in 1941 but attempts by the husband to consummate the marriage were unsuccessful. In 1945, on the suggestion of the husband, the parties adopted a child and later in 1946, the husband left the wife and sought to annul the marriage for non –consummation. The court held that the husband had so approbated the marriage by his initiation of the adoption proceedings.

In HARTHAN V HARTHAN (1948) 2 ALL ER, the husband sought a declaration of nullity on a claim of his own impotence and claimed that in their 20 years marriages he had been unable to engage in any sexual intercourse and court declined to grant him the decree.

LEGAL EFFECTS OF MARRIAGE

1. Married status.

Once married under the Marriage Act, you're incapable of contracting another marriage during the subsistence of that marriage. **In HYDE V HYDE**, marriage is monogamous and during its subsistence one cannot purport to enter another relationship.

2. Legal fiction of one person.

At common law, when married, the personalities of husband and wife were fused into one hence there could be no civil action between the spouses for they were one and similarly spouses could not be jointly charged.

However, Art 31 of the constitution provides for equality in marriage between husband and wife thus the wife cannot lose her personality to the husband. Further in **MIDLAND BANK TRUST CO.LTD V GREEN [1981] AC 513**, lord denning held that now days both in law and in fact, husband and wife are two persons not one. The severance being complete in all aspects except in so far as its stated by law or a judicial decision.

3. Right of the wife to use the husband's name.

OBJECTION MY LORD

A marriage gives the wife the right to use the husband's name if she so wishes but this is not obligatory. **IN FONDAL V GOLDSMITH**, court held that while marriage confers a right to the wife to use her husband's name, she cannot be forced to do so but if she desires, she can use it without swearing a deed poll.

- Even after termination of the marriage, a wife may keep her husband's name and the husband has no right to restrain her from using it except if she is using it for a fraudulent purpose.

COWLEY V COWLEY (1900) P 305, upon dissolution of a marriage wife kept using the former husband's name. He applied for an injunction restricting her from using the name. Court held that a man has no such property in his name as to title him to prevent a woman not his wife claiming to be such unless she does so maliciously.

4. Presumption of legitimacy of children.

Any child born during the subsistence of a marriage shall be presumed to have been fathered by the husband however this presumption can be rebutted if one shows overwhelming evidence to the contrary in:

- a. Where husband was temporarily or permanently impotent at the time of conception.
- b. Absence of the husband for a reasonably long time. In **PRESTON JONES V PRESTON JONES (1956)1 ALL ER 124**, the husband had not been around for over 360 days after a particular coitus, court held that the child was not his legitimate child.

In Uganda there is no distinction between "legitimate" and illegitimate" children, they are all considered children. **KAJUBI V KABALI (1944) 11 EACA 34**.

5. Right to consortium or conjugal rights.

In **LYNCH V KNIGHT**, consortium was defined as living together as husband and wife with all the incidents that flow from that relationship. The right to consortium is the right to the company, society and affection of a spouse in any matrimonial relationship.

In **PLACE V SCARLE (1932)2 ALL ER 497**, court held that both husband and wife have a right to consortium and a right to each other and each of them has a right against any person who abuses that right without noble cause.

Where one of the parties withdraws conjugal rights from the other unreasonably, the innocent party may petition court under **Section 20 of Divorce Act** for restitution of conjugal rights.

Where the order is for restitution is granted and the other party against whom it's issued does not comply, their property may be attached or be condemned to civil prison per **Order 22 Rule 19 of the civil procedure rules**.

The non-compliance with the order as held in the case of **RV JACKSON (1891) 1 Q.B 671**, is a ground for separation or divorce because extra judicial means cannot be used to enforce the order.

Forcing the non-conforming spouse into coitus amounts to marital rape. In **R V R (Rape marital exemption) (1991)4 ALL ER 481**, the defendant went to her parents' house and forcefully had sex with

her. His conviction for rape was upheld by the HOLs who stated that the status women and particularly married women has changed beyond all recognition and in modern times any reasonable person must regard the common law position as to general consent to sex upon marriage as quite unacceptable. The supposed marital exception in rape forms no part of the law of England today.

In **UGANDA V YIGA HAMID, HCT CRMINAL SESSION CASE 0055 OF 2002**, Justice Kibuuka Musoke convicted the accused of rape finding no evidence that the couple had been married or that the woman had consented to sexual intercourse. The court further held that even if the couple had been married, women were constitutionally entitled to equal rights in marriage and the right to human dignity thus, the women would not have been obligated to submit to sexual intercourse against her will.

6. The right to maintenance.

Under common law, the husband has a duty to maintain his wife. The right to maintenance is often tied to the continued enjoyment of conjugal rights.

The right includes the right to a house and to be provided with recesses of like.

In the case of **KINTU V KINTU, DIVORCE APP. NO135 OF 97**, court held that the wife has a right to occupy the matrimonial home and be provided with necessities of life and where this isn't done, the wife can exercise what under common law is called the **DESCETRED WIFES EQUITY**, which means that the wife may insist on remaining in the matrimonial house if she is deserted by the husband.

MAINTENANCE

How a wife can enforce maintenance?

a) ENFORCING HER RIGHT OF AGENCY OF NECESSITY

Arises in situation where the husband fails to provide for his wife necessities. The wife is allowed to pledge or take goods on credit for a trader and trader will be able to sue the husband for the credit for the wife is treated as an agent for the husband.

BIBERFELD V BERENS[1952] 2 ALL ER 237,in considering whether a wife, who has been compelled by her husband's conduct to leave him, is her husband's agent of necessity, regard must be had to her means. In the present case, the wife had assets which she could have been reasonably expected to use to pay for necessities and accordingly, she was not her husband's agent of necessity.

b) THROUGH A BILATERAL MAINTENANCE AGREEMENT

Spouses living in separation may include a clause in their separation agreement of maintenance and this agreement must be enforceable.

In **WILLIAMS V WILLIAMS** | [1963] UKHL 6, a wife left her husband and the husband promised to make her weekly payment for her maintenance. He failed in this and the wife claimed arrears. The husband claimed that she had deserted and she could maintain herself. Lord denning held that a promise to perform

OBJECTION MY LORD

an existing duty is sufficient consideration to support a promise, so long as there is nothing in transaction which is contrary to the public interest.

c) MAINTENANCE ORDER FROM COURT

There is no provision in Uganda creating a right of a wife to seek a maintenance order where the marriage is still on going. Therefore, the petition is brought under the following provisions. **Article 139 of the constitution, Section 14 of the Judicature Act, Section 98 of the Civil Procedure Act, Section 10 of the Magistrate Court Act (if in magistrate courts).** These provisions grant the courts with the jurisdiction to hear family matters and in doing so may apply doctrines of common law and equity in ensuring there is maintenance between the husband and the wife.

Rebuttal of common law presumption that a husband is liable to maintain his wife

In **STRINGER V STRINGER (1952) 1 ALL ER 373**, the husband and wife separated by mutual consent in November 1946 and from that date the husband had not paid the wife any maintenance nor had she demanded any maintenance until 17th July 1951, when she issued a summons for willful neglect to maintain. Court held that proof of consensual separation of spouses without any agreement by the parties regarding the maintenance of the wife is sufficient to rebut the common law presumption that a husband is liable to maintain his wife.

7. THE RIGHT TO MATRIMONIAL CONFIDENCE

This bars spouses from disclosing matters which come to their knowledge as a result of a marriage relationship. The parties to a marriage have an obligation of confidentiality towards one another and either can be restrained by injunction from revealing to 3rd party anything learned from the other in the course of their married life.

In **ARGYLL V ARGYLL (1965)1 ALL ER 611**, the duties of Argyll divorced the wife on grounds of the wife's adultery. The wife did not contest the divorce on the understanding that nothing more would be said about the adultery. The duke subsequently sold stories to newspaper giving intimate details of that and other aspects of the wife's private life. The wife sought an injunction prohibiting the publication. The court granting the injunction held that, not only was the disclosure contrary to the undertakings that had been given earlier, but it was a breach of the confidence presumed to exist between husband and wife.

8. Matrimonial property (Article 26 and 31 of constitution)

Justice Bbosa in **KINTU V KINTU** and cited with approval in **HOPE BALIMBISOMWE V JULIUS RWABIBINURI**. Matrimonial property was defined as property to which each spouse should be entitled to and this is property which the parties chose to call home and which they jointly contributed to.

There is no statutory law in Uganda governing matrimonial property and therefore most of the reference is made to case law.

CONTRIBUTIONS BY SPOUSES

RWABINUMI V BAHIMBISOMWE (CIVIL APPEAL 10 of 2009) [2013]UGSC 5 (20 March 2013), the Supreme Court held that a spouse's contribution to acquisition of property maybe direct or indirect monetary contribution and non-monetary contributions which enables the other spouse to either acquire or develop the property.

In KIVUITU V KIVUITU C/A 26/85, it was held that a wife does contribute to the family in a thousand other ways including child bearing, looking after the family. It can't therefore be said that only monetary contributions should be taken into account.

Court further noted that the wife indirectly contributes to towards payments for household expenses, preparation of food, purchase of children's clothing, organizing children for school and generally enhance the welfare of the family and this amounts to a substantial indirect contribution to the family income and assets which entitle her to equal share in the couples' joint property.

In RWABINUMI V BAHIMBISOMWE CIVIL APPEAL 10 of 2009) [2013]UGSC 5 (20 March 2013, the Supreme Court further held that property acquired prior to the marriage by either spouse, property inherited during marriage or property individually owned by either spouse where the other spouse has made no direct or indirect contribution remains individually owned property. Therefore, property held prior to marriage and property individually acquired during marriage does not become joint property.

Where a spouse makes a direct/indirect contribution owned by another before the marriage, the spouse is entitled to share in the property to the extent of their contribution as was in **MAYAMBALA V MAYAMBALA DIVORCE CAUSE NO.3 OF 1998**

BANK ACCOUNTS

Wives and husbands may have their separate accounts. It's also possible that they may have joint accounts or a joint pool from which they deposit or withdraw money though not necessarily in equal proportions. As a result, they acquire a joint interest their in.

In JONES V MAYNARD (1951)1 ALL ER 802, where the husband authorized his wife to draw on his account which was after used as a joint account. Into the account dividends from both the husband and the wife's investment were deposited thereon. The two had not agreed on what their rights are in this joint venture but they regarded the account as their joint property.

The court held that the wife's action for an equal share in the balances on the account and the investments carried out using monies drawn from the account would succeed.

On the evidence the intention of the parties was to constitute a pool of their resources in the form of a joint account, it was not consistent with that intention to divide the monies in the account and the investments made with monies withdrawn therefore by reference to the amounts respectively contributed to the account by each of them and therefore the husband must be regarded as trustee for the wife of one half of the investment and of the balance of the account.

OBJECTION MY LORD

SAVINGS FROM HOUSEHOLD EXPENSES

IN BLACKWELL V BLACKWELL (1943) 2 ALL ER 579, on separation, the wife was found to have 103 pounds as savings in a cooperatives society and it was established that these savings were balances off the weekly housekeeping allowance made to the wife by the husband while the parties were still being together. It was contended that this sum was her own property. Court held that it was clear that the source of the money was the husband's weekly allowance and in the absence of sufficient evidence to the contrary the money was still the husband's property.

However, lord denning dissented in the case of **HODDINOT V HODDINOT (1949) 2 K.B 406**, where he stated that the position adopted by his colleagues as was in **BLACKWELL V BLACKWELL** might well work an injustice for it took no account of the fact that any savings from the house keeping money were as much due to the wife's skill and economy as a house wife as to her husband's earning capacity.

In light of **Article 26, Article 31 of the Constitution** and decisions such as **KIVUIT V KIVUIT (CIVIL APPEAL) 216 AND JULIUS V HOPE**, the balance from housekeeping allowance must be shared equally.

WEDDING GIFTS

Whether or not a gift belongs to one spouse alone or both of them is a question of the donor's intention. It is generally presumed that wedding presents in absence of any evidence to the contrary from the friends of either spouse (3rd party) belongs to that spouse alone.

In SAMSON V SAMSON (1960) 1 ALL ER 653, it was stated that there is no principle of law that wedding presents are joint wedding presents to both spouses. If there is evidence of intention on the part of the donor, that may determine whether the gift belongs to one spouse or both, but if there is no such evidence, the inference may be drawn that gifts from relatives and friends of a spouse were gifts to that spouse property which was given to one spouse may also become the property of both by subsequent conduct.

IN HOPE BAHIMBISOMWE V JULIUS RWABIBINUMI, DIVORCE CAUSE NO 4/2004, the court ordered the couple to share the marriage gifts equally given how they had subsequently conducted themselves in regard to the gifts.

Where a donor gifts for a joint use or ownership of the spouse, the gifts will be treated as jointly owned by the spouses.

In **KELNER V KELNER (1939) 3 ALL ER 957**, where a 100-pound deposited by the wife's father at the time of the marriage in a joint bank account in both spouses' names, was ordered to be divided equally between them. Court also noted that the spouse's subsequent conduct may turn a gift to one of them into joint property.

ISLAMIC MARRIAGES

The law applicable to this type of marriage includes the following:

1. The Marriage & Divorce of Mohammedans Act 252
2. The Marriage & Divorce of Mohammedans (Appointment of Registrars) Order SI 252-1
3. The Marriage & Divorce of Mohammedans (Fees) Order SI 252-2
4. The Marriage & Divorce of Mohammedans (Jurisdiction in Matrimonial Causes) Instrument SI 252-3
5. Sharia law

The issues for resolution usually include the following:

1. Whether the parties have capacity to contract a marriage?
2. If so, what formalities should be followed to effect the marriage?
3. What is the forum and documents?

Discussion

These are governed by Marriage and Divorce of Mohammedans Act Cap 252 provides in section 2 that all marriages between persons professing the Mohammedan religion and all divorces from such marriages celebrated or given according to the rites and observances of the Mohammedan religion and customary, usual among the sect or tribe and registered as provided in the Act. Shall be valid and registered as provided for under this act.

CAPACITY/ PREREQUISITES TO CONTRACT A MUSLIM MARRIAGE

These are spelt out in sharia law. The **Quran** provides in **Chap 4 vs 6** that the parties intending to contract must have attained the age of puberty. Secondly, the bride ought to give her consent. Consent of the wali is also a prerequisite. This is fortified by **HUSIN VS SAAYAH AND ANOTHER (1980) 7JH 183**, where court held that without the consent of the wali, the marriage is a nullity.

The marriage has to be witnessed by at least two males or one male and one female. This is provided for in **Quran Chap 2 vs 282**

There has to be payment of Mahr (Dowry). This is obligatory and it is taken as the consideration in a contract for marriage. This is fortified by the **Quran 4:4** where the husband is enjoined to give the wife by the marriage as free gifts. Parties should not be within prohibited degrees. This is provided for in the **Quran 4:23**, and these include the mother, father, daughters, son, mothers' sons, sister, father's sister etc.

OBJECTION MY LORD

CELEBRATION OF THE MARRIAGE

Celebration of the Marriage is not spelt out in the Act. Therefore, the Sharia practice prevails.

It must be noted that the marriage can be celebrated anywhere. This is usually at bride's home or mosque. There is no requirement for the Registrar of Marriages to be present. The marriage has to be witnessed by at least two males or one male and one female. This is provided for in **Quran Chap 2vs 282**

REGISTRATION OF THE MARRIAGE

The Marriage and Divorce of Mohammedans Act provides in section 3 and 4 for appointment of a Registrar. **Section 5** requires that the registration should be done within a month from date of marriage. Application shall be by the husband before his death, if he dies before one-month elapses, then the widow can apply.

It must be noted that where parties are minors, application can be made by the Guardian.

Before Registration, Registrar must be satisfied that: -

- 1) Marriage took place
- 2) Parties before him are the ones who actually entered the Marriage
- 3) The Guardian before him is the rightful person

Effect of Non-Registration is that it doesn't render a valid marriage invalid.

HINDU MARRIAGES

The law applicable includes the following:

The Constitution 1995

The Judicature Act Cap 13

The Hindus Marriage and Divorce of Act Cap 250

The Hindus Marriage and Divorce (Marriage and Registration) Rules SI 250- 1

The Divorce Act Cap 249

Case law.

The issues for resolution usually include the following:

1. Whether the parties have capacity to contract a marriage?
2. If so, what formalities should be followed to effect the marriage?
3. What is the forum and documents?

Sec 1(c) defines this type of marriage as Marriage between Hindus etc.

The Preliminaries are laid out in section 2 of The Hindus Marriage and Divorce of Act Cap 250; and they include the following;

- 1) Neither Party should have a spouse living at the time of the marriage.
- 2) Parties are of sound mind
- 3) Groom attained is 18 years
- 4) Bride attained 16 years; if not; consent of guardian should be given.
- 5) Parties are not within prohibited degrees of consanguinity; or kindred. The prohibited degrees are provided in **Section 2(2) of the Act**.

It must be noted that the persons capable of being guardians in **Section 3 of the Act**, include the father, mother etc. and the guardian must have attained the age of 21 years. The chief magistrate is enjoined to appoint a guardian upon application of any interested party.

CELEBRATION OF THE MARRIAGE

This is provided for in **Section 4 of the Act**. The Marriage is solemnized in accordance with the customary rights and ceremonies of either party thereto. If the rites include taking the seven steps according to the **Saptapadi**; the marriage is completed on taking the seven steps.

If the marriage is solemnized in the form of A and Koraj; the marriage becomes complete as soon as the fourth step is completed.

Section 6 of the Act provides that a marriage solemnized after the commencement of the Act shall be void if the former husband or wife of either party was living at the time of the marriage and the marriage with that former husband or wife was then in force and **section 153 of the Penal Code** shall apply.

Section 8 of the Act provides that the Divorce Act shall apply to marriages solemnized under the Hindu Marriage and Divorce Act.

IMPORTANCE OF DOMICILE IN A MARRIAGE

OBJECTION MY LORD

- Domicile helps in determination of the law governing the marriage.
- It also helps in determining the jurisdiction of the courts in matrimonial causes.
- The law of domicile also helps in proceedings for adoption of children.
- Formal requirements of a marriage are governed by the domicile of the party to the marriage. This is fortified by section 10(1)(a) of the Marriage Act.





DIVORCE

An action for divorce is founded on a breach of an obligation arising out of a valid marriage contract. Where the marriage is void, divorce is not applicable.

In civil, church or Hindu marriages, the law applicable is the divorce act cap 249

For Islamic marriages, the marriage and divorce of the Mohammedans act applies.

For customary marriage, the various customs under which the marriage was contracted apply to the divorce in so far as they conform to the constitution. **KINTU V KINTU (DIVORCE APPEAL 135 OF 1997) [2001] UGHC 46 (20 AUGUST 2001)**. Following the decision in **MIFUMI**, where the refund of bride price was declared unconstitutional it's not.

Article 31(1) of the constitution is applicable to all the divorce in all the various marriage.

DIVORCE UNDER THE VARIOUS MARRIAGES

CUSTOMARY MARRIAGES

Depends on the communities and not the Divorce Act as enunciated in **KINTU V KINTU (DIVORCE APPEAL 135 OF 1997) [2001] UGHC 46 (20 AUGUST 2001)**.

The grounds for divorce include witchcraft, laziness, barrenness, incompatibility, impotence and adultery.

OBJECTION MY LORD

CIVIL MARRIAGES

TERMINATION OF MARRIAGES

A valid marriage may be terminated either by the death of the parties or by dissolution or divorce pronounced by a court of competent jurisdiction.

Divorce is defined as the termination of a valid and subsisting marriage by a court of competent jurisdiction. It must be noted that for court to pass a decree of divorce, the Petitioner should have been domiciled in Uganda at the time the petition is presented.

Before consideration of Divorce, it is incumbent to have the checklist below for resolution:

1. Whether there is a valid and subsisting marriage between the parties?
2. If so, whether the facts disclose any matrimonial offences?
3. If so, whether X can petition court for divorce?
4. What is the forum, procedure and documents?

GROUND FOR DIVORCE UNDER THE DIVORCE ACT

The divorce act under **Section 4** provides for the grounds for divorce. These include: adultery, desertion. In the case of **UGANDA WOMENS LAWYERS ASSOCIATION V ATTORNEY GENERAL, CONSTITUTIONAL PETITION NO.2 OF 2003**, court held that any of the grounds stipulated in S.4 was sufficient to entitle the petitioner to a divorce.

In the case of **KAZIBWE V KAZIBWE, D.C NO.3 OF 2003**, court held that the position of law is that both adultery and cruelty are distinctive grounds each on its own rights upon which a decree for dissolution of marriage may be issued. The petitioner (wife) could therefore obtain a decree for divorce after proving to the satisfaction of the court either the ground of adultery or cruelty or both. **IN REBECCA NAGIDDE V CHARLES STEVEN MWASA, CACA NO.160 OF 2006**, the C.A set aside the decree nisi granted by the H.C on grounds that no matrimonial offence had been proved. The court reasoned that before the court grants a decree nisi, it must be satisfied that the petitioner has proved at least one matrimonial offence.

1. ADULTERY.

In the case of **HABYARIMANA V HABYARIMANA (1980) HCB 139**, adultery was defined as consensual sexual intercourse during the subsistence of the marriage between one spouse and a person of the opposite sex not being the other spouse.

Burden of proof and standard of proof

In **MARY RUHARA V CHRISTPOHER RUHARA (1977) HCB 86**, court held that the basic rule as established by case law is that in cases of adultery the burden of proof lies on the petitioner and its heavier burden than that lies on a party to an ordinary civil action though it is not high as in criminal case.

Elements of adultery

1. That the person was married
2. They had sex with another person not being their spouse. The sexual intercourse must be complete for those to be adultery. **IN DENNIS V DENNIS (1955)2 ALL ER 51**, the court held that there is no distinction to be drawn between the word's sexual intercourse in the definition of adultery and carnal knowledge in criminal law. It must be shown that there was penetration of female organ by the male organ however slight.

EVIDENCE IN ADULTERY CASES

It is not necessary to prove a direct fact of adultery. Adultery can be proved by circumstantial evidence as long as that evidence is cogent to the extent that it raises no other inference other than the fact that the respondent committed.

PRESTON JONES V PRESTON JONES (1951)1 ALL ER 124, where the respondent had given birth to a child 360 days after the last time, she had had sexual intercourse with her husband the petitioner who for all those days had been away.

In FRANK NIGEL OTHEMBI V ADONG GRACE CHODA DC NO.2 OF 1998, the petitioner found love letters in the respondent's bag.

CONDONATION OF ADULTERY

Under Section 9 of the divorce act, adultery is deemed to have been condoned where the offended party resumes conjugal cohabitation or was continued after discovery of the adultery.

In Y. MUGONYA V TROPHY NAKABI MUGONYA (1975) HCB 297, it was stated that proof of condonation requires evidence of forgiveness and reinstatement of the relationship although further commission of matrimonial offences receives the condoned offence.

2. CRUELTY

Under **Section 4 (2) of the Divorce Act**, a spouse may petition for divorce on grounds of cruelty. In the case of **HABYARIMANA V HABYARIMANA**, the court stated that no conduct can amount to cruelty in law unless it has the effect of producing actual or apprehended to the petitioners physical or mental health.

OBJECTION MY LORD

KASASA V KASASA (1976) HCB 348, the court held that in order to constitute cruelty, the petitioner must prove that the respondents conduct constitutes danger to their life, limbs or health, bodily or mental or a reasonable apprehension of it.

The conduct of the respondent to constitute legal cruelty must be beyond the reasonable wear and tear of marriage life. **In RUHARA V RUHARA**, it was held that scalding a person with burning oil would be the most cruel and brutal act and a clear injury to life and limb.

In the case of **HABYARIMANA V HABYARIMANA (1980) HCB 139**, the court held that before coming to a conclusion as to whether the respondents conduct amounts to legal cruelty, the court must consider the impact of the personality and conduct of one spouse or mind of the other and all incidents and quarrels between the spouses must be weighed from that point of view and regard must be heard on the circumstance of each case and the mental and physical conditions of the parties, their characters and social status. It has further been suggested that in deciding whether a particular conduct amounts to cruelty as a matrimonial case, the whole relation, the entire conduct, the personality, the character and the social status of the parties must be taken into account.

The court in **HABYARIMANA**, further noted that the burden of proof lies on the petitioner and the standard of proof is slightly higher than the preponderance of probability required in ordinary civil cases.

In **KIRUNGI DOREEN V MUGABE RONALD, DIVORCE CAUSE NO. 48 OF 2013**, the respondent had abandoned the matrimonial home and moved to live with his mother. Before that he had also stopped sleeping in the matrimonial bed and opted for the couch. The court held that the respondent was guilty for cruelty. It reasoned that looking at the evidence in totality, the entire matrimonial relations between the parties including their conduct amounted to cruelty. This was manifest in his denial of sexual intimacy to the petitioner, physical and verbal abuse and heavy drinking.

3. **DESERTION. (it's a form of self-help divorce)**

(Section 4 of the Divorce Act)

In the case of **PATEL V PATEL (1965) E.A 560**, court held that the constituents of desertion include:

- 1) That the husband or wife left the matrimonial home for the statutory period two years
- 2) Did so without the consent of the other partner
- 3) Did so with the intention of permanently ending cohabitation.

IN ERUME V KYOMUGISHA, DIVORCE CAUSE NO.9 OF 2014, the wife disappeared without trace and the husband was granted a divorce on grounds of desertation.

The black's law dictionary defines desertion as an actual abandonment or breaking off matrimonial cohabitation, by either of the parties, and a renouncing or refusal of duties and obligation of the relation with an intent to abandon or forsake entirely and not to return or resume marital relations.

ELEMENTS

1. INTENTION TO DESERT.

This is the notice to desert. There is no desertion unless the guilty spouse has the intention of remaining permanently separated from the other.

If a spouse is away for business, is deployed in the army, ill, or in prison, the desertion is voluntary and will not be construed unless the intentions can be expressly proved.

In KAYE V KAYE, THE TIMES 1953, the separation was not voluntary and under computation for all practical purposes, it was never possible for the wife to leave Poland and come to England, nor was the husband ever able to join her there.

Where the deserting spouse is alleged to be insane, it is a question of fact to be determined by the courts whether he or she is capable of forming the necessary animus.

IN PERRY V PERRY (1963) ALL ER 766, the wife left her husband because she suffered from an (unfounded) insane delusion that he was trying to murder her. It was held that her conduct had to be judged as though her belief was true and, in these circumstances, it was clear that there could be no desertion because she believed that she had good cause for leaving her husband.

In KIRUNGI DOREEN V MUBAGE RONALD (SUPRA), court held that he had unreasonably deserted the petitioner by virtual of his having abandoned the matrimonial bed though his refusal to have sexual intercourse with the petitioner.

CONSTRUCTIVE DESERTION

Where a spouse behaves in such a willful unreasonable and unjustifiable way that the other is driven out of his or her behavior, then there is desertion.

Constructive desertion is therefore above republic conduct which has to be ascertained in light of the presumption that a man intends the natural and probable consequences of his acts per court in **EDWARDS V EDWARDS (1948) P.268 C. A**

In LANG V LANG (1955) A.C 402, Lord Potter held that it is the intention of the deserting party which establishes desertion and that the intention permanently to end a relationship can be readily informed. Where a husbands conduct towards his wife was such that a reasonable man would know, and that the husband must have known, that in all probability it would result in the departure of the wife from the matrimonial home. That in the absence of rebutting evidence, there was sufficient proof of an intention on his part to disrupt the home and the fact that he nevertheless desired or requested her to stay did not rebut the information to be inferred from his acts that he intended to drive her out and he was guilty of constructive desertion.

However, irritating idiosyncrasies” which get on a wife’s nerves are part of the lottery in which every spouse engages on marrying.

OBJECTION MY LORD

In **BUCHLER V BUCHLER (1947) P.25 AND 45**, Asquith, LJ emphasized that the conduct must be more than the ordinary wear and tear of married life. The court stated constructively, the deserter may be the party who remains behind, if that party has been guilty of conduct which justifies the other party in leaving. Secondly to afford such justification, the conduct of the party staying need not have amounted to a matrimonial offence such as cruelty or adultery. But thirdly, it must exceed in gravity such behavior, vexatious and trying though it may be every spouse bargain to endure when accepting the other for better or worse. The ordinary wear and tear of conjugal life does not in itself suffice.

DECREE OF DIVORCE AND ITS EFFECTS

The decree is made in two stages; the decree is followed by the decree absolute as provided for under section 37 of the Divorce Act. It must be noted the petitioner may apply for the decree to be made absolute at any time after the expiration of **six weeks** from granting the decree Nisi.

If a petitioner fails to move court within a reasonable time, the decree Nisi be made absolute, the

Court may dismiss the suit. It must be noted that the purpose of the delay is to enable any person show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion, or by reason of material facts not having been brought before court. This is fortified by the case of **NEOGY V. NEOGY 19G7 EA GG4** (see) dictate to students.

The Decree is only pronounced if court is satisfied that the petitioner has proved his/her case and has not been accessory to or has connived with the Respondent in the act complained of.

Secondly, though the petition is brought before the court, court shall not be bound to pronounce the decree if it finds that the petitioner has during the marriage been guilty of adultery or has taken unreasonable delay in presenting the petition.

EFFECT OF PRONUNCIATION OF DECREE

First and foremost, the marriage is dissolved and as a result, either spouse is thereafter free to re-marry. It must be noted that the decree nisi does not have this effect and if either party remarries before it is made absolute. To this end, the subsequent marriage shall be void. This is fortified by section 39 of the Divorce Act.

Secondly, the court may award damages against a co-Respondent for committed adultery with the wife of the petitioner, it must be noted that if the petitioner claims damages for the same, section 21 warrants that court may order male co-respondent to pay the damages granted and failure to pay can lead committal to civil prison.

Thirdly, Court may make orders as to payment of permanent alimony by the husband to the wife that is, the husband is made to secure to the wife such sum of money as awarded by court. Permanent alimony is provided for in **Section 24 of the Divorce Act**. Court may order upon passing of a decree absolute or on a decree of judicial separation obtained by the wife; whereby the husband is ordered to secure to the wife

such sum of money as having regard to her fortune if any to the ability of the husband, and the conduct of the parties; as it thinks reasonable.

Alimony may be paid by yearly, month or weekly payment for any period not exceeding the life of the wife as provided for under **Section 24 of the Divorce Act**. Another point worth noting about alimony is that the alimony should not exceed one fifth of the husband's average net income. This principle was enunciated in the case of **GAKWAVU V. GASENGAYIRE (1977) HCB 322**.

Fourthly, court may make orders as relates to property under **Section 26 and 27 of the Divorce Act**. This is fortified by the case of **SAIDI V. MWANAMKULU (1978) LRT 200**.

Lastly but not least, court may make orders as to the custody, maintenance & education of the minor children of the marriage or for placing them under the protection of court under **section 29 of the Divorce Act**. This is fortified by the case of **NYAKANA V. NYAKANA (1979) HCB 26.1** where court held on custody.

JURISDICTION (FORUM)

This is conversed in **Section 3 of the Divorce Act** which states that where all parties are Africans, or where a petition for damages is lodged in accordance with section 21, jurisdiction may be exercised by a court over which presides a Magistrate Grade I or a chief Magistrate.

The High Court has jurisdiction where not all the parties are African. It should be noted however that the High Court has original jurisdiction in all matters, so one can invoke the inherent powers of the High Court to hear the matter.

In HOUGH V HOUGH, DIVORCE CAUSE NO.001/2006, the court held that the court in Uganda will have jurisdiction to hear the matter for as long as the petitioner establishes Uganda as his or her domicile of choice/origin. The court declared the issue of dependence domicile in relation to wives as being unconstitutional.

In order to satisfy the court that the parties have acquired domicile of choice, they must prove that they have abandoned their domicile of origin and they have settled intention to permanently stay in Uganda.

The blacks law dictionary (7th ed p.256), defines domicile as a place at which a person has been physically present and that the person regards as a home, a person's true, fixed, principle and permanent home, to which that person intends to return and remain even though currently residing elsewhere.

IN THORNHILL V THORNHILL (1965) EA 268, character and duration won't be material where there is personal presence.

IN ROBINAH KIYINGI V AGGREY KIYINGI C.A NO 41/2004, court held that the burden of proof is on the person alleging he has acquired a domicile of choice.

The aspect of domicile must be strictly stated in the petition/pleadings. **IN SATIVINDER SINGH V SANDNAR KAWR, H.C DIVIORCE CAUSE NO.2 OF 2002**, judge Kagaba among other things dismissed a petition which was defective for non-disclosure of the domicile of the petitioner. The judge stated that divorce must be ascertained in order to determine whether the court has the jurisdiction to

OBJECTION MY LORD

entertain the petition and grant the reliefs prayed for. Mere stating that the parties were Indian origin was not enough disclosure of domicile.

GROUNDS FOR DIVORCE

Section 4(1) of the Divorce Act provides grounds for divorce for the Husband. Thus, where since solemnization of the said marriage, the wife has been guilty of adultery, the husband can petition court for divorce. This means the husband relies on one ground.

Section 4(2) of the Divorce Act provides grounds for divorce for the Wife. Thus, where since the solemnization of the marriage,

- a) The husband has changed the profession of the religion from Christianity to another religion and gone through another celebration of marriage, under **Section 4(2) (a)**
- b) Incestuous Adultery, under **Section 4(2) (b) (i)**.
- c) Bigamy and adultery, under **Section 4(2) (b) (ii)**.
- d) Marriage with another man couple with adultery, under **Section 4(2) (b) (iii)**.
- e) Rape, Sodomy and bestiality, under **Section 4(2) (b) (iv)**
- f) Adultery and cruelty, under **Section 4(2) (b) (v)**
- g) Adultery and desertion without reasonable excuse for a period of two years or more, under **Section 4(2)**

It must be noted further that where the husband is relying is the Petitioner and relying on adultery as a ground, the alleged adulterer has to be joined as co respondent unless he is excused by court. Under **paragraphs (a) and (b) of Section 4 of the Divorce Act**

JURISDICTION IN ISLAMIC MARRIAGES

The marriage and divorce of Mohammedans act, under S.18 provides for jurisdiction under the act, any competent court can grant relief albeit doing so under Mohammedi's law.

Article 129(1) (d) of the constitution provides for Qadhir courts although these have not yet been operationalized by an act of parliament, the court in the case of **SUMAYA NABAWANUKA V MED MAKUMBI (DIVORCE CAUSE NO.39 OF 2011)**, premising its decision on Art.274 of the constitution held that sharia courts operated by the **Uganda Muslim Supreme Counsel were courts of competent jurisdiction** to hear matters in matrimonial proceedings under the Marriage And Divorce Of Mohammedi's Act.

Court further held that the high court has jurisdiction to handle Mohammedan divorce and the law applicable must be Mohammedan law and not the law as provided in the Divorce Act

Look at the marriage and divorce of Mohammedan (jurisdiction) regulations (S.1NO 252-3)

JURISDICTION IN CUSTOMARY MARRIAGE

The customary marriage (registration) act is silent about the applicability of the divorce act. The law recognizes customary marriages and customary divorce however, it merely outlines that the marriage and divorce would be in accordance to one's culture **Section 1 (2)**

IN KINTU V KINTU, DIVORCE APPEAL NO1997, justice.135 OF Bbosa, held that the formal courts have the jurisdiction to dissolve customary marriages however they must do so applying the customs of the culture under which the marriage was contracted in as far as those custom to the constitution.

PROCEDURE IN DIVORCE PROCEEDINGS UNDER THE DIVORCE ACT

1. Proceedings for divorce are brought by petition to the court as provided under Section 4 of the Act. **IN ANNE MUSISI V HERBERT MUSISI AND ANOR (DIVORCE CAUSE NO.14 OF 2007)**, it was held that divorce proceedings are commenced with a petition for dissolution of marriage by divorce, setting out the grounds on which the prayer for orders as to divorce relies.
2. **Section 30** provides that the proceedings under the Divorce Act are regulated by the Civil Procedure Act.
3. **Section 31** provides that every petition concisely states the nature the facts on which the claim is based and shall be verified as if it were a plaint and may be referred to as evidence during hearing. (This case it must be commissioned).
4. Court may grant interlocutory applications that may arise during the proceedings for example in **BASHEIJA V BASHEIJA AND ANOTHER, DIVORCE CAUSE NO.12 OF 2005**, where the court granted an interlocutory application to stay proceedings, when the petitioners counsel prayed for the order since the parties were in advanced stages of reconciliation.
5. Proof of service of petition and summons is crucial as is the case in normal civil proceedings.
6. Divorce proceedings may be held in camera. In **KIRUNGI V MUGABE, DIVORCE CAUSE NO.48 OF 2013**, the court granted prayers as to the sitting of court in chambers and noted that matters of divorce warranted meticulous privacy. **Section 35 of the Act** also provides for proceedings in camera.

DIVORCE IN ISLAM.

OBJECTION MY LORD

Islam immensely disapproves of divorce and encourages reconciliation of the event of disagreement but allows for divorce when it becomes inevitable. In **AYOOB V AYOOB (1968) EA 72**, court stated that marriage in Islam is not a temporary union and is meant for the entire span of life. Dissolution is however permitted if it fails to serve its objectives and has irretrievably broken down. It is purely contractual and not sacrament as it is in Christianity.

Ground

The general ground of divorce in the Quran is the hopeless failure of one or both parties to discharge their marital duties and to consent with each other in kindness, peace and compassion.

Forms

Marriage under Islamic law may be dissolved in four ways:

1. By the husband through talaq (outside court)
2. By mutual agreement of the spouses (khul)
3. By a judicial order of separation in a suit that may be raised by either of spouses. (fask)
4. Lian which is divorce by oath.

TALAQ

Pre-requisites

- Husband should be sane
- Husband should not be a minor
- Husband should be exercising own discretion

In **AYOOB V AYOOB**, court held that a Mohammedan marriage could be dissolved by talaq

NUMBER OF PRONOUNCEMENTS

An adult of sound mind, married person has the right to pronounce “divorce” (talaq) to his wife during the marital life three times.

The Quran 2:229 says, a divorce is permissible twice, after that the parties should either hold together on equitable terms or separate with kindness.

For two times the husband has the right to revoke the pronouncement and can continue usual marital relationship

When he gives the 3rd talaq, then the spouses do not remain married.

WHEN TO GIVE THE TALAQ

The wife should not be in her menses when the talaq is pronounced. Quran 65:2, therefore when the waiting period is over then men can either retain their women according to acceptable terms or part with them according to acceptable terms.

EFFECT/RE-MARRYING

If a husband divorces his wife (irrevocably) he cannot after, re-marry her until after she has married another husband and divorced her. After that period, the parties may re-unite. Quran 2:230.

PROCEDURE

1. The words used to convey the divorce must expressly convey the intention that the marriage tie is being dissolved.
2. The Talaq must be pronounced when the wife is in state of purity and the husband must abstain from having sexual intercourse with his wife after pronouncing talaq for the period of the three months.
3. The divorce may be given orally or in writing but must take place in the presence of two just men to keep testimony. Quran 65:2
- 4.

STATUTORY PROVISIONS

Section 2 of the Marriage and Divorce of the Mohammedan Act requires that the method of divorce to be carried out has to be in conformity with the rites and observances of the Mohammedan.

Section 5 (1) (a) of the Act provides for the registration of divorce by the husband within one month from the date of divorce.

Cases

In **THE KING V. THE SUPERINTENDENT REGISTRAR OF MARRIAGES, HAMMERSMITH (EX PARTE MIR-AWRIWARUDA) (1917) KB 634**, one of the issues raised was

OBJECTION MY LORD

whether the declaration of divorce (talaq) made by the husband has the effect in England of dissolving a marriage contracted according to marry gain in England. The court held that a marriage solemnized in UK between a Mohamed domiciled in India and a Christian woman in UK cannot be dissolved by the husband handing to the wife a writing of divorcement although that would be an appropriate mode of effecting the dissolution of a Mohamedan marriage according to Mohammedan law.

In RE MOHAMED HUSSIN AND HAZIMAH (1990)7 JH 189, the husband pronounced three talaqs at the same time. The appeal committee held that the three talaq pronounced at the same time effected only a single divorce. The appellants thus could re marry.

FASK

Fask is a decree by the Khadi (judge) after the careful consideration of an application by the wife. Its basis is in Quran 2:229. So here a man is supposed to to either keep the wife in an acceptable manner or release her with good treatment.

GROUNDS

1. **Defect in one of the spouses:** according to Malik School, shafii and hanbali schools, each couple is entitled to get divorce due disease and physical defect e.g., leprosy, madness, leucocythaemia and impotency. According to Shafii School what forms the basis is the infectiousness of the disease that are passed from husband to the wife.
2. **Failure to provide maintenance.**
3. **Cruelty:** if the fears that the husband will injure her person to such an extent that she is unable to live with him as husband and wife. Quran 4:128. In the Tanzanian case of **ZAINABU V MOHAMMED (1973) EA 280**, the wife brought the suit for divorce on grounds of inter alia cruelty. Court held that evidence of cruelty would lead to the dissolution of marriage under fask.
4. **Desertion by the husband:** the reason for giving the right to the wife is to save her from injury and hardship.

KHULA

It is an irrevocable divorce and is divorce by the woman. **IN SALUM V ASUMIN**, court held that a khula divorce is obtainable at the initiative of the wife and that although consideration for the khula divorce had not been paid in full, there was a valid divorce and the amount paid should be recovered from the wife or her father. Seaton j in particular said “with regard to divorce (khula) to be clear from the authorities of Mohammedan law” khula divorce is obtainable at the initiation of the wife. It is accomplished at once by means of appropriate words spoken or written by the two parties or their respective agents, the wife offering and the husband accepting compensation out of her property for the release of his marital rights.

In **HALIMA ATHUMANI V MAULIDI HAMISI (1991) TLR 179**, appellant applied for divorce against her husband on grounds of cruelty on the part of her husband. She alleged that her husband insisted to have sex against the order of nature which she vehemently resisted. The court indicated that under the law, there are two ways in which female spouses may seek dissolution of the marriage. 1st is fask divorce, 2nd a Moslem spouse can proceed to demand Khulu before a sheikh.

- The provisions on registration apply.

LIAN

If a husband puts forward slanderous accusation against his wife or a wife against her husband, the holy Quran lays down the procedure under 24:6-7 and 24:8-9. If a husband accuses his wife of adultery, he has to bring four witnesses to prove his case. Quran 4:15 but if he fails to do so he has to swear four times by God that he speaks the truth and 5th that the curse of God be on him if he be lying Quran 24:6-7. Against this if the wife also swears four times by God that her husband was telling a lie and fifthly if she invokes the wrath of God on her if her husband was speaking the truth. There is a deadlock then.

In this case, the Khadi holds the marriages dissolved as the couple isn't fit to live any longer as husband and wife.

REMEDIES OF THE PARTIES UPON DIVORCE

The Muhammadan Marriage and Divorce Act does not prescribe the remedies available to a party and S.18 specifically excludes the applicability of the divorce act. The section further grants power to any competent court given power to grant relief as provided under Islamic law to the party aggrieved. Thirdly, the H.C may exercise its inherent powers and grant appropriate remedies in accordance with Muslim law.

In **RE HAMZA MOHAMED AND NASHAT MOHAMED (Minors) H.C FAMILY MISC APPLIC NO.89 OF 2012**. The court considered the relief mentioned under **Section 18 of Muhammadan Marriage and Divorce Act**. The application was brought by the wife under Section 18. Mukiibi J stated that **Section 18** means that any party to an Islamic marriage may come to the court seeking relief by way of divorce and any other consequential orders but the court must apply Islamic law. The High Court up held the decision of the sharia court (at UMSC0 decision granting divorce to the parties and custody of the children to the wife and other relief. -

- Mahr: if not paid should be paid (Quran 4:4)
- Maintenance of wife (Quran 65:50)
- Maintenance of children ; after divorce, the man is supposed to contain maintaining the children (Quran 2:223)
- Right of accommodation entitlement of wife and husband should not chase her away. Quran 65:2

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2019

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

PETITION FOR DIVORCE

The humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX, KAMPALA and it shows

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality, Wakiso District and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe Municipality, Wakiso district.
3. THAT your humble petitioner professes the Anglican religion.
4. THAT your petitioner was in the month of May 2015, was lawfully married to the respondent in a customary marriage under the Karamojong customs at the home of the parents of the petitioner in Moroto district,
5. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at All saint's church at Nakasero in the district of Kampala, and that
 - a) The marriage was solemnized under the provisions of the Marriage Act cap251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe Municipality and there is one issue of the marriage to wit Lubogo Juniorborn on the 1st September 2016.
6. THAT your petitioner's husband, LUGAMBO HENRY, in or about the months of AUGUST 2017, SEPTEMBER 2017, FEBRUARY 2018, MARCH 2018 AND OCTOBER 2019 at their matrimonial home in Entebbe Municipality, Wakiso district violently assaulted your petitioner by striking her in the face, abdomen area, back and on the head with his enhanced fists, using a but on some occasions and his shoes at times.

ISAAC CHRISTOPHER LUBOGO

7. THAT your petitioner's husband, LUGAMBO HENRY, in or about the months of AUGUST 2017 TO OCTOBER 2019 at their matrimonial home in Entebbe municipality, Wakiso district insulted your petitioner by blaming her for all his problems, for being Karamojong and calling her good for nothing. This has caused your petitioner mental and emotional anguish.
8. THAT all avenues, forums and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results. (attached as Annexure 'A' is a copy of the minutes from one of the mediation meetings called by our relatives)
9. THAT due to the continued cruelty of the respondent to the petitioner, the marriage between the two of them has irretrievably broken down.
10. THAT the matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
11. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceeding nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) The marriage of your petitioner with the respondent be dissolved and a decree nisi be granted
- b) That the petitioner may have the custody of the issue of the marriage
- c) That the respondent be ordered to pay alimony of UGX.1,000,000 per month to the petitioner and pay UGX.1,000,000 per month to the petitioner for maintenance of the issue of the marriage.
- d) That the respondent pays the costs of and incidental to the petition
- e) That your petitioner may have such further and other relief as the court may deem fit.

DATED at KAMPALA, this 26th day of October 2019

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Before me;

OBJECTION MY LORD

COMMISSIONER FOR OATHS

Drawn and filed by;

SUI GENERIS AND CO. ADVOCATES,

P.O BOX0000, KAMPALA



ISAAC CHRISTOPHER LUBOGO

**THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE**

AT ENTEBBE

DIVORCE CAUSE NO.001 OF 2019

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

SUMMARY OF EVIDENCE

The petitioner shall adduce evidence to the effect that the respondent, LUBOGO HENRY, has been cruel to her thereby causing her emotional and psychological torture.

LIST OF DOCUMENTS

The petitioner will adduce the following documents in support of the petition.

1. The marriage certificate
2. Minutes from the previous mediation meetings
3. Any other with the leave of court.

LIST OF WITNESSES

The petitioner shall testify and call the following witnesses.

1. Akerimo Grace
2. Any other with leave of court

LIST OF AUTHORITIES

1. The divorce Act
2. Any other authority with leave of court.

Dated at Kampala on this 27th day of October 2019

PETITIONER

Drawn and filed by

OBJECTION MY LORD

SUI GENERIS AND CO ADVOCATES

P.O BOX0000, KAMPALA



ISAAC CHRISTOPHER LUBOGO

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
DIVORCE CAUSE NO 002 OF 2006**

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- REPENDENT

SUMMONS TO ANSWER PETITION

WHEREAS the Petitioner has petitioned this court for a decree for dissolution of marriage;

YOU ARE hereby summoned to file an answer to the Petition in this court within 15 days from the date of service of summon to you.

AND TAKE FURTHER NOTICE that in default of doing so, the petition will be heard and determined in your absence

Dated at Kampala this Day of 2006

.....

REGISTRAR

TO BE SERVED UPON

NYADOI MARY

OBJECTION MY LORD

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
DIVORCE CAUSE NO 002 OF 2006**

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- REPENDENT

PETITION

THE HUMBLE PETITION OF OGWANG BOB SHOWETH;

1. THAT the Petitioner is an adult male Ugandan, for sound mind resident at Kikuba Mutwe, Ggabba, Kampala and your petitioner's address for purposes of this suit is C/O SUI GENERIS and Co. Advocates, P.O.BOX0000, Kampala.
2. THAT the Respondent is a female adult Ugandan of sound mind and the Petitioner undertakes to effect service of the court process on her.
3. THAT you are Petitioner Professes the Christian Religion.
4. THAT you are Petitioner and the Respondent is domiciled in Uganda with a matrimonial home at Ggabba.
5. THAT your Petitioner was married to the Respondent vide a church marriage at All saints Cathedral on the 21st day of August 1998; solemnized in accordance with the provision of the marriage Act in force in Uganda; and have two issues to the marriage aged 3 and 5 respectively.

6. THAT in early 2004, the Respondent did commit adultery which the Co Respondent, at Room 12, Hotel Muyenga and around 20:00 hours on the 23rd of January 2004.
7. THAT owing to the adultery of the respondent, there has been an irretrievable breakdown of the said marriage between your petitioner and the said respondent.
8. THAT this petition is not prosecuted in collusion or connivance with the Respondent or with any other person connected in any way with these proceedings nor is your petitioner guilty of condonation.
9. THAT Notice to institute legal action was communicated to the Respondent.
10. THAT this cause of action arose in Kampala within the jurisdiction of this Honorable Court.

WHEREFORE, the Petitioner prays for

- a) A Decree for dissolution of marriage.
- b) An order of Maintenance for the Respondent.
- c) An order fort custody of the issues of the marriage
- d) Other Relief as Court Deems fit

DATED at Kampala the day of 2006

.....

Counsel for Petitioner

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

Before me;

OBJECTION MY LORD

Commissioner for oaths

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala



ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

DIVORCE CAUSE NO. 002 OF 2006

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- REPENDENT

SUMMARY OF EVIDENCE

The Petitioner will adduce evidence to show that the Respondent has been guilty of adultery, and that the marriage has irretrievably broken down.

LIST OF WITNESSES

Ogwang Bob

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

Mugonya vs Mugonya (1975) HCB 95

Sheldon vs Sheldon (1962) 2 All ER 257

Common Law and Doctrines of Equity & Others with leave of court

LIST OF DOCUMENTS

OBJECTION MY LORD

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....
Counsel for Petitioner



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
DIVORCE CAUSE NO 002 OF 2006**

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- REPENDENT

REPLY TO PETITION

THE HUMBLE PETITION OF THE RESPONDENT SHOWETH;

1. THAT the Respondent is a female adult Ugandan of sound mind and the Respondent undertakes to effect service of the court process on her.
2. THAT your Respondent Professes the Christian Religion.
3. THAT your Respondent and the Petitioner are domiciled in Uganda with a matrimonial home at Ggabba.
4. THAT your Respondent was married to the Petitioner v-ide a church marriage at All saints Cathedral on the 21st day of August 1998; solemnized in accordance with the provision of the marriage Act in force in Uganda, and begot two issues of the marriage aged 3 and 5 years respectively.
5. THAT the Respondent has never committed adultery as alleged by the petitioner and as a result there has been no irretrievable breakdown of the said marriage between you Respondent and the said respondent.
6. THAT the said incident on the 23rd day of January 2004 was simply a meeting of a business partner and the Petitioner will be put to strict proof of the allegations.

OBJECTION MY LORD

WHEREFORE, the Respondent prays that the petition be dismissed with costs to the Respondent.

DATED at Kampala the day of 2006

.....
Counsel for Respondent

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....
RESPONDENT

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA**

DIVORCE CAUSE NO 002 OF 2006

OGWANG BOB PETITIONER

VERSUS

NYADOI MARY RESPONDENT

ODONG SOLOMON CO- REPENDENT

SUMMARY OF EVIDENCE

The Respondent will adduce evidence to show that the Respondent has never committed adultery and as a result the marriage has never irretrievably broken down.

LIST OF WITNESSES

Nyadoi Mary

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

Mugonya vs Mugonya (1975) HCB 95

Sheldon vs Sheldon (1962) 2 All ER 257

Common Law and Doctrines of Equity

OBJECTION MY LORD

Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....

Counsel for Respondent

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala



ISAAC CHRISTOPHER LUBOGO

Caveat (S.13 of MA, S.27 OF CMRA)

**THE REPUBLIC OF UGANDA
IN THE MATTER OF THE MARRIAGE ACT**

CAP. 251

AND

**IN THE MATTER OF A CAVEAT FORBIDDING THE
SOLEMNISATION OF A MARRIAGE**

**TO: THE REGISTRAR OF
MARRIAGES AT KAMPALA**

CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE

TAKE NOTICE that I, LUGAMBO HENRY, being the lawful husband of GRACE AKOROMWIGURU who intends to contract another marriage at Christ the king church, hereby forbid the same for the following reasons.

1. That grace is already married to me having solemnized a marriage on 29th December 2015 at all saint's church Nakasero.

My address for purposes of service under this caveat is SUI GENERIS and co advocates, P.O BOX0000 KLA.

Dated at Kampala this 25th day of October 2019.

SIGNED by the sand

LUGAMBO HENRY

CAVEATOR.

Before me

COMMISSIONER FOR OATHS.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBEE
AT ENTEBEE.

MATRIMONIAL CAUSE NO 002 OF 2019

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGANBO HENRYRESPONDENT

PETITION FOR RESTITUTION OF CONJUGAL RIGHTS
AND PROVISION OF MAINTENANCE

(Under S.20 (1) and (2) of the D.A and O.22 rule 29 of civil procedure rules)

This is the humble petition of **GRACE AKOROMWIGURU** whose address for purposes of this petition shall be **SUI GENERIS AND CO. ADVOCATES, P.O BOX0000, KAMPALA** and these are as follows:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates under take to effect service on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and is a resident of Entebbe municipality, Wakiso district
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015; lawfully married to the respondent at Christ the king church in the district of Kampala and that:
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe municipality and there are two issues of the marriage to wit LUGAMBO JUNIOR AGED 20 YEARS AND AKIROMO JUNIOR AGED 3 YEARS.
5. THAT, the respondent, LUGAMBO HENRY has not from the month of AUGUST 2017, to date not provided maintenance neither to the petitioner nor to the children.
6. THAT the respondent, LUGAMBO HENRY has since the 14th day of AUGUST 2015 refused and still refuses to render her conjugal rights albeit living in the same house and sleeping in the same bed.

7. THAT the petitioner has taken all necessary steps to have the respondent, LUGAMBO HENRY restore her conjugal rights but with no success in sight.
8. THAT the matter arose in Entebbe municipality, Wakiso district which is with in this court's jurisdiction.

Your petitioner therefore humbly prays for a decree that;

- a) The respondent is ordered to provide maintenance for the wife and the children at a rate of UGX. 1,000,000 per month.
- b) The respondent be ordered to render the petitioner her conjugal rights
- c) The respondent pays the costs of and incidental to this petition.

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Drawn and filed by;

SUI GENERIS AND CO. ADVOCATES

P.O BOX0000, KAMPALA

before me

.....
COMMISSIONER FOR OATHS

Attach

1. Summary of evidence
2. Summons to file a reply
3. Mediation summary.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE DIVORCE ACT, CAP 249

AND IN THE MATTER OF THE CONTRACTS ACT, 2010

SEPARATION AGREEMENT

THIS AGREEMENT IS MADE THIS 27th day of October 2019.

BETWEEN

GRACE AKOROMWIGURU aged 24 years whose address for purposes of this agreement shall be SUI GENERIS COMPANY ADVOCATES, PILKINGTON ROAD, KAMPALA. (Hereinafter referred to as the wife)

AND

LUGAMBO HENRY aged 35 years, resident of lubowa, Entebbe, Wakiso district (Hereinafter referred to as the husband)

WHEREAS the husband and wife lawfully contracted a marriage on the 15th day of October 2015 at All saint's cathedral Nakasero in Kampala

AND WHEREAS they have since lived and cohabited together at their matrimonial home in Entebbe municipality and have two issues from the marriage to wit, Lugambo Junior aged 3 years and Lugambo Grace aged one year (Hereinafter referred to as the children)

AND WHEREAS the relationship between the two has broken down and thus they are desirous of separating and agree to live separately as agreed in this agreement.

THIS AGREEMENT IS THEREFORE WITNESSETH AS FOLLOWS:

1. NON MOLESTATION.

1.1 The parties mutually agree that there shall be no molestation of one by the other during the continuance of this agreement.

1.2 In the event that any of the parties violates the provision of clause 1.1 above, the party in breach shall pay damages of UGX 5,000,000 to the other innocent party.

2. MAINTENANCE OF WIFE AND CHILDREN.

ISAAC CHRISTOPHER LUBOGO

- 2.1 The husband shall provide for the maintenance of children and the wife at a rate UGX. 2,000,000 per month
- 2.2 The maintenance in clause 2.1 above shall be paid on every 28th day of the month and shall be deposited on the above account provided by the wife from time to time.
- 2.3 Failure to comply with clause 2.2 above, the sum in clause 2.1 shall attract an interest of 10% for each day after the 28th day to the day when the full sum due that month shall be paid.

3. LIVE A PART.

The parties agree that they shall continue to live separately in consideration for having each other's consortium.

4. DUM CASTA CLAUSE

None of the parties to this agreement shall be at liberty to have sex with another person during the subsistence of this agreement.

5. MATRIMONIAL PROPERTY

- 5.1 each party shall be entitled to take property constituting wearing apparel and personal effects
- 5.2 the wife shall be entitled to retain the matrimonial home during the subsistence of this agreement
- 5.3 all other properties constituting matrimonial property at the time of execution of this agreement shall continue to be held jointly and for the benefit of both parties
- 5.4 the party deriving any income from any of the properties mentioned in clause 5.3 shall have to account to the other party for all revenues earned from the properties and shall relinquish half of the income earned to the other party as their share in the income earned to the other party as their share in the income earned from the property.
- 5.5 All properties acquired by the parties during the subsistence of this agreement shall not be construed as constituting matrimonial property during the subsistence of this agreement or thereafter.

6. DURATION

- 6.1 This agreement shall unless otherwise expressly agreed upon by the parties in writing run for a period of two years from the date of execution.

OBJECTION MY LORD

6.2 Notwithstanding clause 6.1, the parties may by mutual consent terminate this agreement at any time during its subsistence.

7. CUSTODY OF THE CHILDREN.

7.1 The parties agree that the wife shall have custody of the children while the husband shall have visitation rights at all times

7.2 In exercise of his visitation rights in clause 7.1 above, the husband shall ensure that he gives at least a days' notice to the wife and shall ensure the visits are in a reasonable time

7.3 For avoidance of doubt, reasonable time shall be construed to be between 9:00am and 7:00pm.

8. AMENDMENT.

No provision in this agreement shall be varied or deemed to be varied except where there is an express agreement to that effect in writing signed by the parties.

9. DISPUTE RESOLUTION.

9.1 All disputes arising under this agreement shall be referred to a mediator within 10 working days from the date when the dispute arose.

9.2 The mediator referred to in clause 9.1, shall be a mediator appointed by CADER upon application by either party,

9.3 The mediation referred to clause 9.1, shall not exceed 30 days from the first day when the mediation is commenced.

9.4 Where the parties fail to reach a settlement in respect of the dispute, they shall refer the matter to court of competent jurisdiction for resolution of the dispute.

10. LAW APPLICABLE.

This agreement shall be governed by the laws of the republic of Uganda.

IN WITNESS WHEREOF, the parties have appended their signatures hereto on the date and year first mentioned above.

SIGNED BY:

SIGNED BY:

ISAAC CHRISTOPHER LUBOGO

AKORIMO GRACE
(WIFE)

LUGAMBO HENRY
(HUSBAND)

In the presence of

in the presence of

KIZITO DERRICK
ADVOCATE

LUMALE JOEL
ADVOCATE

Drawn by
SUI GENERIS AND CO ADVOCATES
P.O BOX0000, KAMPALA
UGANDA.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE

MATRIMONIAL CAUSE NO 003 OF 2019

AKIROMO GRACEPETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

PETITION FOR SEPARATION

(Under section 14 of the divorce act cap 249 and rule 4 of the divorce rules)

This is the humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX0000, KAMPALA and it showeth:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe municipality, Wakiso district.
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at all saint's cathedral at Nakasero in the district of Kampala and that
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251
 - b) After the marriage, your petitioner hired and cohabited with the respondent, LUGAMBO HENRY at kiwanga village, Entebbe municipality and there is one issue of the marriage to will LUBOGO JUNIOR born on the 1st September 2016.
5. THAT your petitioner's husband, LUGANBO HENRY, in or about the month of AUGUST 2017, SEPTEMBER 2019, at their matrimonial home in Entebbe municipality, Wakiso district, violently assaulted your petitioner by striking her in the face, abdomen areas, back and her head with calendared fits and his belt.
6. THAT all avenues and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results (Attach evidence if any)
7. THAT due to the respondent's cruelty to the petitioner, the marriage between the two has broken down.

ISAAC CHRISTOPHER LUBOGO

8. THAT this matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
9. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceedings nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) Your petitioner be judicially separated from LUGAMBO HENRY, the respondent
- b) The petitioner be granted custody of the issue of the marriage
- c) The respondent be ordered to pay a monthly maintenance for the child at a rate of UGX 1,000,000 per month.
- d) The respondent be ordered to pay alimony to the petitioner at a rate of UGX1,000,000 per month
- e) That the respondent pays the costs of and any other costs incidental to this petition.
- f) Any further remedies as the court may deem fit.

PETITIONER

I, AKIROMO GRACE, certify that the statements above are true to the best of my knowledge, information and belief.

PETITIONER

Drawn and filed by:

before me

SUI GENERIS AND CO ADVOCATES,

P. O BOX0000, KAMPALA,

COMMISSIONER FOR OATHS.UGANDA.

DIVORCE UNDER MOHAMMEDAN MARRIAGES

There are three types of divorce under Mohammedan law, and they are discussed below, thus;

TALAK DIVORCE

In its primitive sense, the word *talaq* means dismissal [to dismiss], but in law it signifies a release from the marriage tie. The Muhammadan law of divorce is founded upon express injunctions contained in the Qur'an, as well as in the Traditions, and its rules occupy a very large section in all Muhammadan works on jurisprudence⁶.

In this mode of divorce, if it is Talak Aslam, the husband has to pronounce Talak every month for three months. Talak Bidad is taken before a court of competent jurisdiction; it can in writing or can be oral. If it is deduced to writing, it has to be delivered to the wife.

The conditions for talak include the following:

The man should be sane;

He should not be a minor;

Pronouncement of the talak should be at his own discretion.

The talak should be pronounced when the wife is in a state of purity.

The last talak should be pronounced in the presence of witnesses.

FASK DIVORCE

This is an annulment or an abrogation of marriage. It is a decree passed by the Qadi after careful consideration of an application by the wife.

The grounds a wife can rely on include the following;

1. Separation due to defects in one of the spouses
2. Separation due to difficulties of the husband.
3. Separation due to apostasy of one of the spouses.
4. separation due to lack of equality of status of the husband

⁶Excerpt from "Dictionary of Islam" by Thomas Patrick Hughes © 1886

KHUL DIVORCE

This type of divorce is at the instance of the wife; she has to prove any of the following grounds:

- Cruelty or maltreatment
- Quitting conjugal domicile without making provision for the wife
- Insanity on the part of the husband
- Any other case, which in the opinion of the Qadi justifies divorce

HINDU MARRIAGES

Divorce under this type of marriage is regulated by the Divorce Act by virtue of Section 8 of the Divorce Act. For Hindus marriage is sacrosanct union, it is also an important social institution and it is between two individuals

NULLITY OF MARRIAGES

In law, a marriage can be rendered null and void if it is an unlawful marriage by virtue of conditions existing at the time of the marriage. These conditions can mean lack of capacity to contract. Evidence of fraud or duress preventing legal consent to the marriage and sexual impotence of one spouse that exist at the time the marriage is contracted and that was unknown to the other spouse.

Nullity of marriage should be differentiated from divorce. A decree of nullity declares, in effect, that the parties were never married, and at one time it absolved them from all obligations to each other. Thus, a decree of nullity is a judgment in rem, so no one can subsequently allege that the marriage is valid.

Divorce on the other hand is an acknowledgement of a valid and subsisting marriage, which the parties wish to terminate through a recognized process.

Another distinction which ought to be noted is that between void and voidable marriages. A void marriage is one where, although the parties have gone through a ceremony of marriage, they have not acquired the status of husband and wife owing to the presence of some impediment.

Lord Greene held in **DE RENEVILLE VS DE RENEVILLE [1948] 1 ALL ER 56** that a void marriage is one that will be declared will be regarded by every court in any case in which the existence of the marriage is in issue as never taken place and can be so treated by both parties to it without the necessity of any decree annulling to it.

A voidable marriage is a marriage which seems to be valid on the face of it, save for some reason, which if used at the instance of either party does terminate the marriage. **Some of the grounds one can rely on to terminate a voidable marriage include the following:**

OBJECTION MY LORD

FAILURE TO CONSUMMATE THE MARRIAGE

A marriage is said to be consummated as soon as the parties have sexual intercourse just after the marriage. Failure to consummate a marriage will be a ground for petitioning court for a decree of decree of nullity if the failure to consummate is a willful refusal of the part of the Respondent. Refusal to have sexual intercourse in any form will be a ground; particularly where the respondent refuses to take treatment to remove the physical or psychological impediment to consummation. This was fortified by **S v S (1954)**.⁷

It must be noted however, that the possibility of conception is irrelevant; what matters is the act, whether a sheath has been used or not. This was held in **BAXTER VS BAXTER (1942) 2 ALL ER 886**.

LACK OF CONSENT

It must be noted that a marriage is a contract and therefore lack of consent will invalidate the contract. A marriage shall be voidable if either party did not validly consent to it.

UNSOUNDNESS OF MIND

If, at the time of celebration of the ceremony, either party was unable to understand the nature of the contract he was entering into, this will affect a marriage. The test to be applied was laid down in the **ESTATE OF PARK 1953(2) ALL ER 1411 C/ A** where court held that where the person was not capable of understanding the nature of the contract into which he was entering or was in a condition such that he was incapable of understanding it. This therefore means that a person must be capable of appreciating the responsibilities and duties normally attached to marriages.

OTHER GROUNDS INCLUDE:

DRUNKENNESS AND DRUGS;

Effect of Drunkenness and drugs can be taken

MISTAKE AS TO THE IDENTITY OF THE CONTRACTING PARTY

Where one is mistaken as to the person he or she is marrying, this can be a ground for nullity of the marriages.

⁷3 All ER Reprint 736 at 743-744.

FRAUD AND MISREPRESENTATION;

According to **SING VS SING (1971) 2 ALL ER 828** court held that where it is proved that the will of one of the parties was overborne by genuine and reasonably held fear caused by threat and immediate danger to life, limb and liberty so that the constraint destroys the reality of consent in wedlock.

VENEREAL DISEASES

The husband may petition court for a nullity of marriage if at the time of the marriage, the Respondent was suffering from a venereal disease.

PREGNANCY PER ALIUM

The husband may petition court for a nullity of marriage if at the time of the marriage, the Respondent was pregnant by someone other than the petitioner.

BARS TO RELIEF OF NULLITY

There are three bars at common law against a party to a voidable marriage where he/she puts it out of his/her power to obtain a decree of nullity by his/her own conduct. These include the following:

a) **Petitioner's Conduct:**

This is premised on The Matrimonial Causes Act 1973 section 13(1) which provides that court shall not grant a decree of nullity on the ground that the marriage is voidable if the respondent satisfies court that the petitioner knew of the voidability of the marriage but conducted himself or herself in such a way that led the respondent to believe that the petitioner would not seek to annul the marriage.

ii) **Delay**

This is evident in situations where the Petitioner knows that it is open to him to him or her to have the marriage avoided but delays to take any legal steps to effect his intentions. The length of the delay is defendant on many factors and varies from case to case.

ii) **Injustice of Decree**

Where it is clear on the face of it that the decree will cause injustice to the respondent, the relief is not granted. In this case, court looks at the length of the marriage as one of the factors.

iii) **Lapse of Time:**

OBJECTION MY LORD

Under common law (Section 13 of the Matrimonial Causes Act 1973) In all cases except those based on importance or willful refusal to consummate, a decree of nullity must be refused if the proceedings were not instituted within three years of the date of the marriage. The purpose for this is to ensure that the validity of the marriage is not in doubt for too long. It must be noted that the lapse of time is not a bar in a case of inability or willful refusal to consummate marriage because the petitioner may try to overcome the impediment for a longer period than three years.

iv. **Petitioner's Knowledge**

If the petition is based on the Respondent's venereal] disease or pregnancy per alium, the court must be satisfied that the petitioner was ignorant of the facts alleged at the time of marriage. If these facts were within the Petitioner's knowledge, court will be slow to consider granting of relief to the Petitioner.



ISAAC CHRISTOPHER LUBOGO

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO 002 OF 2006**

OGWANG BOB **PETITIONER**
VERSUS
NYADOI MARY **RESPONDENT**

SUMMONS TO ANSWER PETITION

WHEREAS the Petitioner has petitioned this court for a decree for nullity of marriage;

YOU ARE hereby summoned to file an answer to the Petition in this court within 15 days from the date of service of summon to you.

AND TAKE FURTHER NOTICE that in default of doing so, the petition will be heard and determined in your absence

Dated at Kampala this Day of 2006

REGISTRAR

TO BE SERVED UPON

NYADOI MARY

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO 002 OF 2006

OGWANG BOB PETITIONER
VERSUS
NYADOI MARY RESPONDENT

PETITION FOR NULLITY OF MARRIAGE

THE HUMBLE PETITION OF OGWANG BOB SHOWETH;

1. THAT the Petitioner is an adult male Ugandan, for sound mind resident at Kikuba Mutwe, Ggabba, Kampala and your petitioner's address for purposes of this suit is C/O SUI GENERIS and Co. Advocates, P.O.BOX0000, Kampala.
2. THAT the Respondent is a female adult Ugandan of sound mind and the Petitioner undertakes to effect service of the court process on her.
3. THAT your Petitioner Professes the Christian Religion.
4. THAT your Petitioner and the Respondent are domiciled in Uganda with a matrimonial home at Ggabba.
5. THAT your Petitioner was married to the Respondent vide a church marriage at All saints Cathedral on the 21st day of July 2006; solemnized in accordance with the provision of the marriage Act in force in Uganda; and have two issues to the marriage aged 3 and 5 respectively.
6. THAT after the solemnization of the marriage, the Petitioner discovered on 9th October that the Respondent was three months pregnant with a child not being his.
7. THAT owing to this pregnancy per alium, there has been an irretrievable breakdown of the said marriage between you petitioner and the said respondent.
8. THAT this petition is not prosecuted in collusion or connivance with the Respondent or with any other person connected in any way with these proceedings nor is your petitioner guilty of condonation.
9. THAT Notice to institute legal action was communicated to the Respondent.

10. THAT this cause of action arose in Kampala within the jurisdiction of this Honorable Court.

WHEREFORE, the Petitioner prays for

- e) A Decree for nullity of marriage.
- f) Other Relief as Court Deems fir

DATED at Kampala the day of 2006

.....

Counsel for Petitioner

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

PETITIONER

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO 002 OF 2006

OGWANG BOB PETITIONER
VERSUS
NYADOI MARY RESPONDENT

SUMMARY OF EVIDENCE

The Petitioner will adduce evidence to show that after solemnization of the said marriage, the Petitioner discovered that the Respondent was pregnant with a child not being his, meaning that at the solemnization of the marriage, the Respondent was pregnant and that the marriage has irretrievably broken down.

LIST OF WITNESSES

Ogwang Bob
Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995
The Judicature Act Cap 13
The Marriage Act Cap 251
The Divorce Act Cap 249
The Divorce Rule SI 249-1
The Civil Procedure Act Cap 71
The Civil Procedure Rules SI 71-1

CASE LAW

Common Law and Doctrines of Equity

Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

.....

Counsel for Petitioner.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO 002 OF 2006

OGWANG BOB PETITIONER
VERSUS
NYADOI MARY RESPONDENT

REPLY TO PETITION

THE HUMBLE PETITION OF THE RESPONDENT SHOWETH;

1. THAT the Respondent is a female adult Ugandan of sound mind and the Respondent undertakes to effect service of the court process on her.
2. THAT your Respondent Professes the Christian Religion.
3. THAT your Respondent and the Petitioner are domiciled in Uganda with a matrimonial home at Ggabba.
4. THAT your Respondent was married to the Petitioner vide a church marriage at All saints Cathedral on the 21st day of July 2006; solemnized in accordance with the provision of the marriage Act in force in Uganda, and begot two issues of the marriage aged 3 and 5 years respectively.
5. THAT the Respondent has never had any other affair other than that with the Petitioner and as a result, the alleged pregnancy is out of my union with him.

WHEREFORE, the Respondent prays that the petition be dismissed with costs to the Respondent.

DATED at Kampala the day of 2006

.....
Counsel for Respondent

VERIFICATION

ISAAC CHRISTOPHER LUBOGO

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

RESPONDENT

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala



OBJECTION MY LORD

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO 002 OF 2006**

OGWANG BOB **PETITIONER**
VERSUS
NYADOI MARY **RESPONDENT**

SUMMARY OF EVIDENCE

The Respondent will adduce evidence to show that the alleged pregnancy is as a result of her union with the Petitioner and as a result the petition should not be granted.

LIST OF WITNESSES

Nyadoi Mary
Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995
The Judicature Act Cap 13
The Marriage Act Cap 251
The Divorce Act Cap 249
The Divorce Rule SI 249-1
The Civil Procedure Act Cap 71
The Civil Procedure Rules SI 71-1

CASE LAW

Common Law and Doctrines of Equity
Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

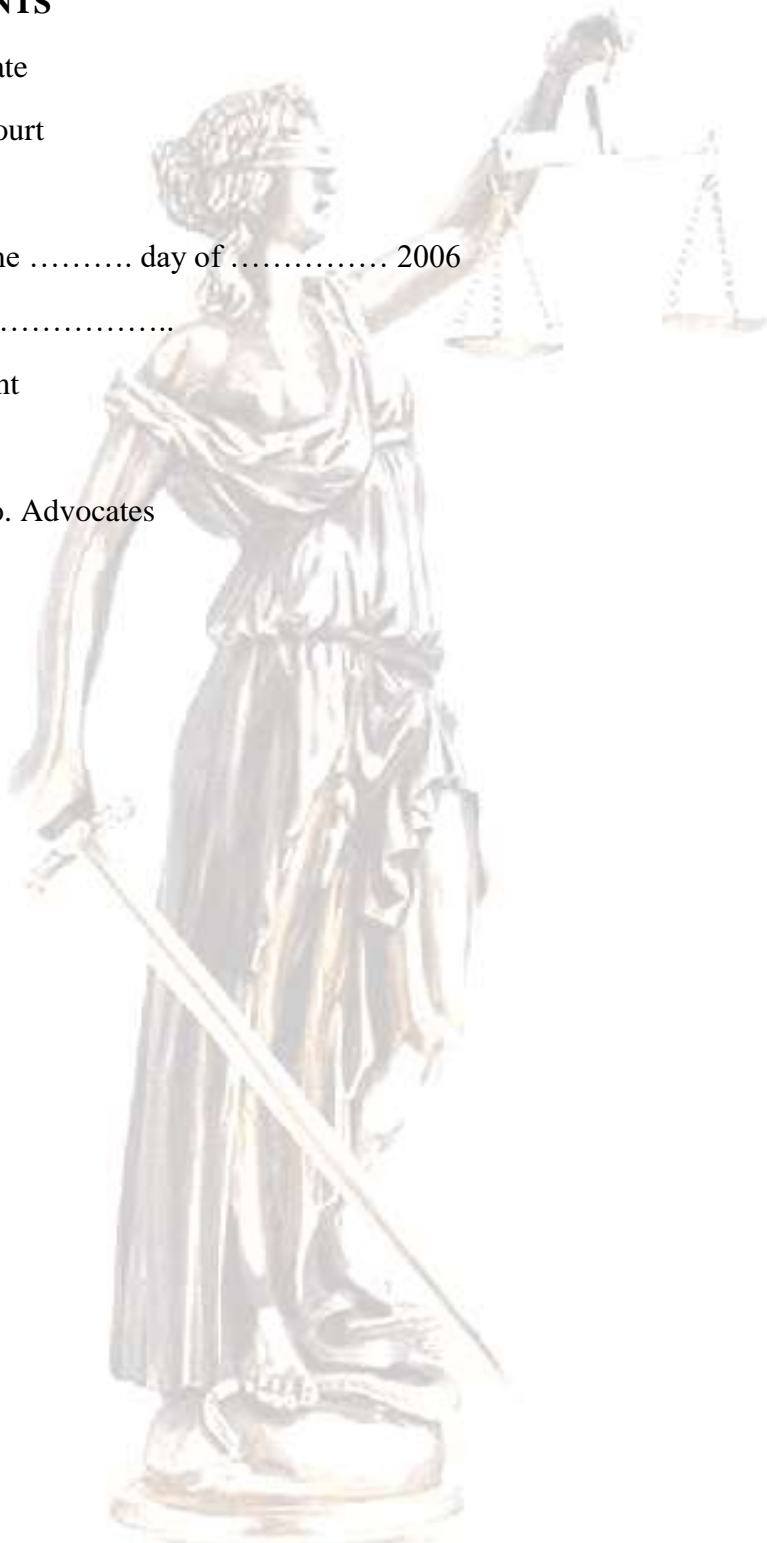
.....
Counsel for Respondent

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala



CASES

SUMAYA NABAWANUKA V MED MAKUMBI DIVORCE CAUSE NO. 39 OF 2011. JUSTICE KAINAMURA.

The petitioner filed this petition seeking for a decree nisi dissolving the marriage between the petitioner and the respondent custody of the child, maintenance of the petitioner and the respondent custody of the child, maintenance of the child, alimony, share of the matrimonial property, costs and any further order. The respondent in his reply refuted the allegations and by way of a P.o. applied for the petition to be dismissed because it is rededicated since the matter before court had been finally determined by the sharia Court of the Muslim Supreme Council counsel for the respondent argued that same parties and laid already been determined by the court with competent jurisdiction, Article 129 (1) (d) of the constitution. That it is the court envisaged under the marriages and Divorce of Mohammedans Act Cap 252. Counsel for the petitioner urged that Parliament has not yet operationalized Article 129(1) (d) that requires parliament to establish Qadhi courts and that High court has inherent powers to give remedies to all aggrieved parties before it.

It was held: - sharia Courts of the Muslim supreme council are operating within the law and are competent courts to handle divorce cases and grant relief. Therefore, the matter was heard and determined by a competent court would surely run afoul of Section 7 of the Civil Procedure Act as it is res judicata.

JULIUS CHAMA V SPECIOZA RWALINDA MBABAZI DIVORCE CAUSE NO.25 OF 2011.

The petitioner sought orders of the court for dissolution of his marriage with Specioza Rwalinda Mababazi and he prayed for custody of the only child in the marriage and costs of the petition. The petition was based on the ground of cruelty as set out in the petition.

Uganda Association of women Lawyers and 5 others v A.G const. petition No.2 of 2003 where the constitutional court nullified **Sections 4(1), (2), 5,22,23,24 and 26 of the Divorce Act Cap 249**. The said provisions are of no legal consequence and are no longer valid. This remains the position of the law (**HAN HERMAN KOCK V VICTONU KAGEHA D.C NO.6 OF 2011**)

What courts have done to bridge the gap is to look at the totality of the facts before it and determine whether the facts lead to the finding that the marriage has irretrievably broken down then divorce is granted (**GERSHOM MASIKO V FLORENCE NASIKO CA NO.8 OF 2011**)

The court held that since the acts of adultery, desertion and crudely have according to the uncontroverted evidence of the cross petition and her witness been established, the marriage between the petitioner and the respondent has interievably broken down and should be dissolved.

Absence of proof of existence of and ownership of the said properties fails the issue as court has no property to distribute.

KANWERU V KANWERU [2003] 2 E.A 484

The appellant had filed a divorce petition in the High court seeking dissolution of his marriage on ground of adultery committed with three persons, Evidence was adduced that the appellant had caught an STD from the respondent though no medical records were produced, and the respondent used not to be at home at midnight when the appellant would call from abroad.

Held, that the standard of proof is set out in **Section 10 of the Matrimonial Causes Act**. The requirement is that court must be satisfied that a matrimonial offence has been proved.

The Act does not refer to proof beyond reasonable doubt and it is proper to put the burden of proof at the level of a feeling certain.

MAYAMBALA V NAYAMBLA DIVORCE CAUSE NO.3 OF 1998.

The petitioner filed this petition against her husband (respondent) seeking orders for dissolution of their marriage under the Divorce Acts custody of the children of their marriages, payment of the debts owed to the petitioner by the respondent, her contribution to the matrimonial house, and expenses for the education and maintenance of the children of the adultery and cruelty. Adultery has been defined as the voluntary sexual intercourse between a married to each other.

To be a ground, the adultery must be committed since the celebration of the marriage. It is immaterial whether the marriage has been consummated or not.

One act of adultery is sufficient **DOUGLAS V DOUGLAS [1952] ALL ER 748**. It must carry a high degree of probability.

Cruelty may be defined as willful and unjustified conduct of such character as to cause danger to life or health (bodily or mental) or as to give rise to reasonable apprehension of such danger. The conduct complained of must be serious .it must be higher than the ordinary tear and wear of a married life (**HABYARIMANA V HABYARIMARIA**).

The petitioner contributed 70% and in case the house is sold, she gets 70% of the market price.

BRUNO L. KIWUWA V IVAN SERUNKUMA AND JULIET NAMAZZI HIGH COURT CIVIL SUIT NO,52 of 2006.

The plaintiff instituted this suit to challenge the celebration of marriage of the first and second defendants on the grounds that both defendants, like the plaintiff, being Buganda by tribe, and belonging to the same clan of "Naliga" that is to say "sheep could not lawfully by reason of an obtaining custom, contract such a marriage.

Held: -

1. It is settled that where customary law is not documented, or so notorious for the court to take judicial.
2. A custom is defined as a practice that has been followed in a particular locality in such circumstances that is to be accepted as part of the law of that locality.
3. It must be in conformity with the constitution.

OBJECTION MY LORD

4. The Marriage Act recognizes the validity of customary marriages, the custom in issue applies to marriage under the Marriage Act.
5. A custom is repugnant to justice and morality if it causes a version and disgust to the principles of good behavior and as to what is reasonable and fair.

It is repugnant if it violates natural justice equity and good conscience. In this case, the custom is not barred and not in conflict or inconsistent with the Marriage Act.

MIFUMI (U) LTD & 12 ORS V A.G ANOR CONST. PETITION NO. 12 OF 2007.

The petition is brought under Article 2 (1) and (2), d37, (3), 93(a) and (d) of the constitution of Uganda and Rule 3 of the const. court (petitions and Reference Rules 5.191 of 2009) they challenge the constitutionality of the customary practice of demand for and payment of bride price.

Bride price is an amount of money of property or wealth paid by the groom or his family to the parents of a woman upon the marriage of their daughter to groom.

Dowry is paid to the groom, or used by the bride to help establish the new household, and dower, which is property settled on the bride herself by the groom at the time of marriage.

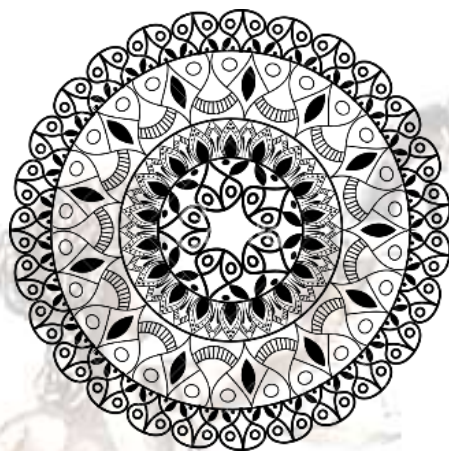
It is intended to reflect the perceived value of the girl or young women (bride price).

Justice L.E.M Mukasa Kikonyogo: - a bride price agreement is intended to show appreciation to the parents of a bride. It is entered into with joy by 2 parties seeking the facilities of a marriage relationship. It is not barred by the constitution. A man and a woman have the constitutional right to so choose the bride price option as the way they wish to get married. Any payment of bride price must be conditional upon voluntary consent of the 2 parties to the marriage.

However, the refund in the event of dissolution of marriage demeans and undermines the dignity of a woman and is in violation of **Article 33(6) of the Constitution** and violates the equal entitlements to equal right with the man in marriage **Article 31(1)**.

Supreme Court decision; **MIFUMI(U) LTD AMOR V A.G. & ANOR CONST** Approve Husbands can no longer did that bride price be returned in the 02/2014 event of dissolution of a customary marriage. It is contrary to the constitution regarding equality in contracting during marriage and at its dissolution. It violates Article 31 (1) (b) and 33(1). It should be prohibited under Article 32.

The custom of refund of bride devalues the worth, respect and dignity of woman. The practice completely ignores the contribution of the woman the practice completely Ignores the contribution of the woman to a marriage up to the time of its break down it fails under Article 32(2) of the constitution.



SEPARATION OF SPOUSES

SEPARATION BY AGREEMENT

The law applicable to this scope of study includes the following:

The Constitution 1995

The Judicature Act Cap 13

The Contract Act Cap 73

Case Law

COMMON LAW AND DOCTRINES OF EQUITY

It must be noted from the onset that parties can come to an agreement whereby, they spell out the terms of the separation. This is not provided for in any statute but is backed by common law. The guiding principle on separation agreements was upheld in **FENDER VS MILDMAY (1938)** where court held that the husband and wife can enter into separation agreements, which should not lack conformity with principles of public morality.

Court further held in **WILSON VS WILSON (1848) HLCAS 538** that there is nothing wrong or illegal per se in an agreement for immediate separation. It is not against public policy that separation agreements be allowed to stand. Thus, where a marriage has irrevocably broken down, then an agreement can be made, where the parties agree to stay apart.

CLAUSES IN A SEPARATION AGREEMENT

The first and cardinal clause to include in a separation agreement is that the parties should agree to leave apart. This is fortified by the case of **PEARSON VS AYLESPARD [1884] 14 QBD 729**. Other terms in a separation agreement include the following:

DESCRIPTION OF THE PARTIES

Non molestation Clause

Agreement to live apart

Maintenance clause

Dum Custa Clause

Amendment Clause

Duration Clause

Control of Matrimonial Home Clause

Custody clause

Property clause

Termination Clause

It must be noted that just like any other contract, the agreement should be signed by the parties and witnesses to, most preferably by a lawyer. Parties usually opt to go for separation agreements when they can go for judicial separation because they lack the grounds to pursue such remedies in courts of law. The agreement ceases to have effect when the wife commits adultery and this is a ground for divorce.

DRAFTING OF SEPARATION AGREEMENTS

The agreement is drafted like a standard contract agreement, where both parties provide consideration of consortium. A copy is drafted below.

ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

THE CONTRACT ACT CAP 2010

SEPARATION AGREEMENT

THIS AGREEMENT made this day of Two Thousand and Six

BETWEEN

OGWANG BOB of P.O.BOX0000, KAMPALA (hereinafter referred to as the Husband) of the one part

AND

NYADOI MARY of P.O.BOX0000, KAMPALA (hereinafter referred to as the Wife) of the other part), where the context permits shall be called the Parties;

WHEREAS the parties were married on or about the 20th day of August 1982;

AND WHEREAS the wife after solemnization of the said marriage bore two issues aged 5 and 3 years respectively (hereinafter referred to as the children)

AND WHEREAS the relationship between the parties because of the numerous reasons, has irrevocably broken down, for which reason is constrained;

NOW THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS.

1. In Consideration of the parties having each other's consortium and mutually accepting to stay apart, the parties enter into this agreement with conditions and terms as provided hereunder.
2. The parties agree that the custody of the children shall go to the wife in respect of the fact that they are of tender age and the husband shall have access to them.
3. The parties mutually agree that there shall be no molestation of one by the other during the continuance of this agreement.
4. The husband shall provide for the maintenance of the children and the wife shall also be entitled to a claim for maintenance from the husband in all matter's incidental to her welfare.
5. The maintenance of the wife shall continue subsisting on condition she remains chaste.

OBJECTION MY LORD

6. Breach of clause 4 above shall relinquish maintenance to herself save for that which will be incidental to the maintenance of the children.
7. Each of the parties will be entitled to take property which constitutes necessary wearing; other property shall be shared equally among the parties.
8. There shall be no institution of suits for restitution of conjugal rights during the subsistence of this agreement.
9. This agreement shall, unless otherwise agreed upon by the parties run for three years from the date of execution, save herein; this agreement can be terminated by mutual consent.
10. This agreement may be amended anytime upon agreement by the parties hereto and the amendments shall be reflected in writing duly signed by the parties and witnessed to.

IN WITNESS whereof, the parties unto have set their hands hereto the date and year first above mentioned.

Signed by the said **HUSBAND** }- _____

In the Presence of } _____

Signed by the said **WIFE** }- _____

In the Presence of } _____

Drawn and filed by

SUIGENERIS AND COMPANY ADVOCATES

P.O.BOX 71117

Kampala, UGANDA

JUDICIAL SEPARATION

This comes as a remedy to spouses who cannot have the remedy for divorce because of lack of the grounds. Judicial separation is provided for in section 14 of the Divorce Act, thus, a husband or wife may apply by petition to court for a judicial separation on the grounds of cruelty, adultery, or desertion without reasonable excuse for a period of two years or upwards, and the court on being satisfied that the allegations of the petition are true, and that there is no legal ground because the application should not be granted, may decree judicial separation accordingly.

Grounds for Judicial Separation under section 14 of the Divorce Act (for emphasis)

- Cruelty,
- Adultery,
- Desertion without reasonable excuse for a period of two years

MATRIMONIAL OFFENCES

These offences are specifically provided for in the Divorce Act and the Marriage Act and they are listed below;

Adultery under section 4(1) of the Divorce Act

This is defined in **HABYARIMANA VS HABYARIMANA (1980) HCB 139** as the consensual sexual intercourse during subsistence of a marriage between a spouse and a person of the opposite sex, not being his spouse.

Court held in **RUHARA VS RUHARA (1977) HCB 86** that in proof of adultery, court will look for corroborative evidence.

CRUELTY UNDER SECTION 4(2)(B)(V)

This was discussed in **MUGONYA VS MUGONYA (1975) HCB 95**; where court held that legal cruelty is defendant on facts of each case. The essential ingredient to prove is injury of life, limb or health. Common law laid down a yardstick for cruelty in the area of sexual intercourse, in **SHELDON VS SHELDON (1962) 2 ALL ER 257** where court held that denial of sexual intercourse may amount to cruelty; a husband's persistent refusal over a long period of time without reasonable excuse to have sexual intercourse with his wife can be cruelty.

OBJECTION MY LORD

DESERTION UNDER SECTION 4(2) (B)(VI)

Desertion is defined as the withdrawal from the society of the other without reasonable excuse. In the act, it has to be for two years or more before one can rely on it as a ground for either judicial separation or divorce.

The elements for proof of desertion are discussed in **PATEL VS PATEL [1965] EA 56** where court held that first and foremost; the petitioner should prove that the respondent left the matrimonial home;

Secondly that it was without consent of the other spouse,

Thirdly, with intention to permanently end cohabitation

OTHER OFFENCES INCLUDE;

- Incestuous Adultery under section 4(2)(b)(i) of the Divorce Act
- Bigamy under Section 4(2)(b)(ii) of the Divorce Act and Section 41 of the Marriage Act.
- Marriage with a person previously married, under Section 42 of the Marriage Act.
- Making false declarations for marriage, under Section 43 of the Marriage Act.
- False pretence of impediments to marriage, under Section 44 of the Marriage Act.
- Unlawfully performance of a marriage ceremony, under Section 45 of the Marriage Act.
- Willful neglect of duty to fill up certificate, under Section 46 of the Marriage Act.
- Personation of marriage, under Section 46 of the Marriage Act.
- Fictitious marriage, under Section 48 of the Marriage Act.
- Contracting a marriage when already married under customary law, under Section 49 of the Marriage Act.
- Contracting a customary marriage when already married under Marriage Act, under Section 50 of the Marriage Act.
- Rape, Sodomy, or bestiality under Section 4(2) (b)(iv) of the Divorce Act.

PROCEDURE FOR PETITIONING FOR A JUDICIAL SEPARATION

One applies to court by Petition. This is grounded on **Section 30 of the Divorce Act** which states that all proceedings under the act shall be regulated by the Civil Procedure Rules SI 71-1. in addition to this, **Section 31(1) of the Divorce Act** provides that the procedure is by petition, where every petition shall state, as distinctly as possible, as the nature of the case permits, the facts on which the claim is based, and shall be verified as if it were a plaint, and may at the hearing be referred to as evidence.

It must be noted further that **Section 31(2) of the Divorce Act** provides that petitions for dissolution of marriage, nullity of marriage or for judicial separation should always state that there is no collusion or connivance between the petitioner and the respondent. The petition is either supported by an affidavit or verified.

Secondly, after filing the petition, it is served on the Respondent who is supposed to file a reply to the petition. The reply is filed 15 days from the date of service of the petition. This is premised on the law of service of the court process under **Order 5 of the CPR SI 71-1**

Thirdly, upon filing of the Reply, the petition is set down for hearing under Order 9 rule 11(1) of the CPR SI 71-1.

DOCUMENTS

Summon to reply to the Petition; (court document)

Petition

Affidavit (if the petition is not verified)

Summary of Evidence,

List of Witnesses,

List of Documents,

List of Authorities

Affidavit of service on respondent (if the petition is not verified)

Reply to Petition

Affidavit in support of Reply to Petition

Summary of Evidence

List of Witnesses

List of Documents

List of Authorities

Affidavit of service on Petitioner

OBJECTION MY LORD

JURISDICTION (FORUM)

This is conversed in **Section 3 of the Divorce Act** which states that where all parties are Africans, or where a petition for damages is lodged in accordance with section 21, jurisdiction may be exercised by a court over which presides a Magistrate Grade I or a chief Magistrate.

The High Court has jurisdiction where not all the parties are African. It should be noted however that the High Court has original jurisdiction in all matters, so one can invoke the inherent powers of the High Court to hear the matter.



ISAAC CHRISTOPHER LUBOGO

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO 002 OF 2006**

OGWANG BOB **PETITIONER**
VERSUS
NYADOI MARY **RESPONDENT**

SUMMONS TO ANSWER PETITION

WHEREAS the Petitioner has petitioned this court for a decree for a judicial separation

YOU ARE hereby summoned to file an answer to the Petition in this court within 15 days from the date of service of summon to you.

AND TAKE FURTHER NOTICE that in default of doing so, the petition will be heard and determined in your absence

Dated at Kampala this Day of 2006

.....
REGISTRAR
TO BE SERVED UPON
NYADOI MARY

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO 002 OF 2006

OGWANG BOB **PETITIONER**
VERSUS
NYADOI MARY **RESPONDENT**

PETITION

(Under Section 3, 14, 30 and 31(1) of the Divorce Act, and section 98 of the CPA Cap 71)

THE HUMBLE PETITION OF OGWANG BOB SHOWETH;

- 1. THAT the Petitioner is an adult male Ugandan, for sound mind resident at Kikuba Mutwe, Ggabba, Kampala and your petitioner’s address for purposes of this suit is C/O SUI GENERIS and Co. Advocates, P.O.BOX0000, Kampala.
- 2. THAT the Respondent is a female adult Ugandan of sound mind and the Petitioner undertakes to effect service of the court process on her.
- 3. THAT your Petitioner Professes the Christian Religion.
- 4. THAT your Petitioner and the Respondent are domiciled in Uganda with a matrimonial home at Ggabba.
- 5. THAT your Petitioner was married to the Respondent vide a church marriage at All saints Cathedral on the 21st day of August 1998; solemnized in accordance with the provision of the marriage Act in force in Uganda.
- 6. THAT in early 2004, the Respondent started being very cruel at your humble Petitioner by continuously hurling insults at your petitioner without cause; and threatening actual violence on several occasions.

ISAAC CHRISTOPHER LUBOGO

7. THAT the respondent has on several occasion denied the Petitioner access to their matrimonial home in Ggabba.
8. THAT owing to the cruelty of the respondent, there has been an irretrievable breakdown of the said marriage between your petitioner and the said respondent.
9. THAT this petitioner is not prosecuted in collusion or connivance with the Respondent or with any other person connected in any way with these proceedings nor is your petitioner guilty of condonation.
10. THAT Notice to institute legal action was communicated to the Respondent.
11. THAT this cause of action arose in Kampala within the jurisdiction of this Honorable Court.

WHEREFORE, the Petitioner prays for

- (a) An order of Judicial Separation against the Respondent.
- (b) An order of Maintenance for the Respondent.
- (c) Other Relief as Court Deems fit

DATED at Kampala the day of 2006

.....

Counsel for Petitioner

OBJECTION MY LORD

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

PETITIONER

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006**

OGWANG BOB PETITIONER
VERSUS
NYADOI MARY RESPONDENT

SUMMARY OF EVIDENCE

The Petitioner will adduce evidence to show that the Respondent has been cruel towards him and that the marriage has irretrievably broken down.

LIST OF WITNESSES

Ogwang Bob
Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995
The Judicature Act Cap 13
The Marriage Act Cap 251
The Divorce Act Cap 249
The Divorce Rule SI 249-1
The Civil Procedure Act Cap 71
The Civil Procedure Rules SI 71-1
Mugonya vs Mugonya (1975) HCB 95
Sheldon vs Sheldon (1962) 2 All ER 257

OBJECTION MY LORD

Common Law and Doctrines of Equity

Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

DATED at Kampala the day of 2006

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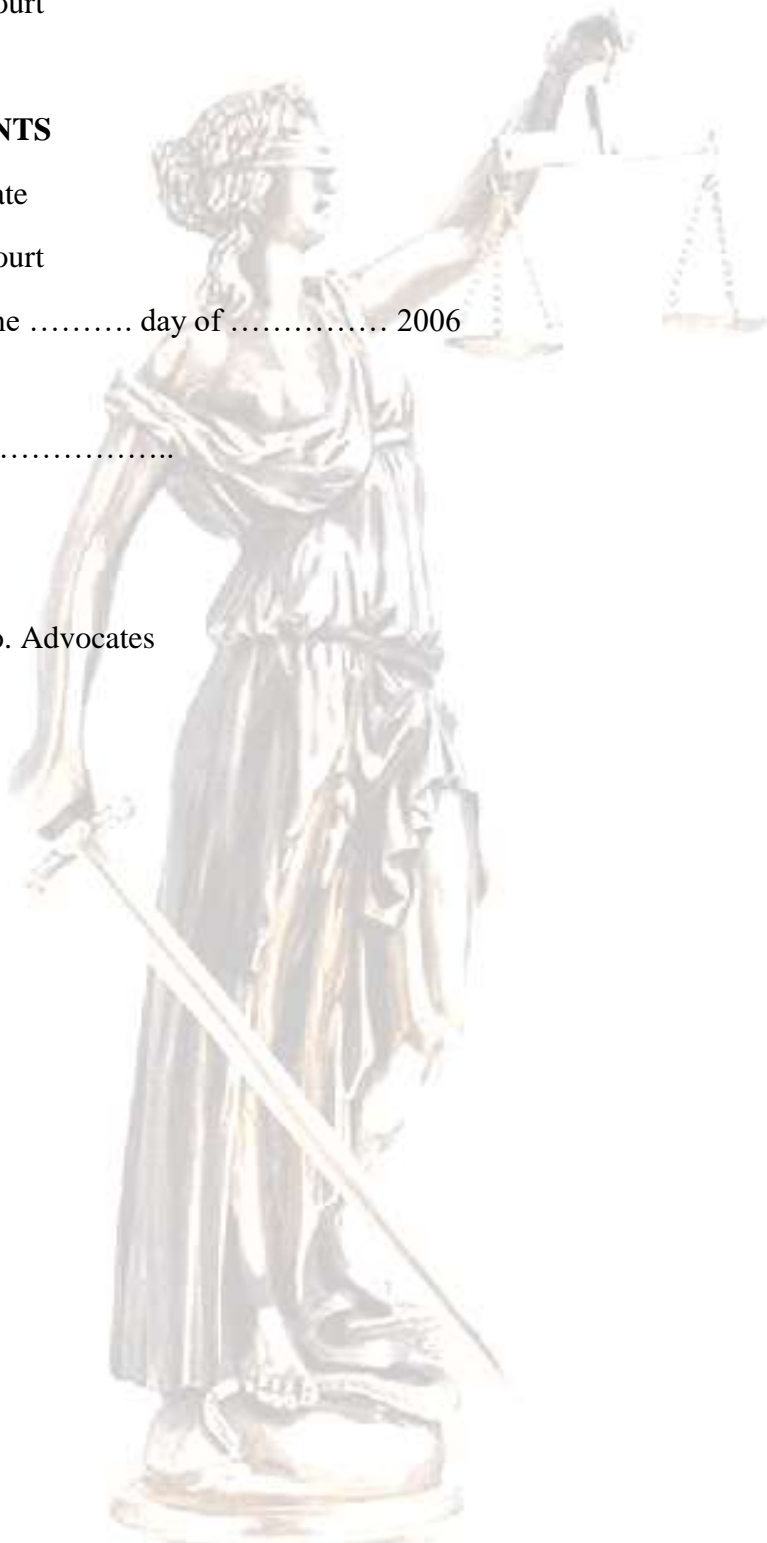
Counsel for Petitioner

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006**

OGWANG BOB **PETITIONER**
VERSUS
NYADOI MARY **RESPONDENT**

REPLY TO PETITION

(Under section 3, 14, 30 and 31(1) of the Divorce Act, and section 98 of the CPA Cap 71)

THE HUMBLE PETITION OF NYADOI MARY SHOWETH;

1. THAT the Respondent is a female adult Ugandan of sound mind and the Respondent undertakes to effect service of the court process on her.
2. THAT your Respondent Professes the Christian Religion.
3. THAT your Respondent and the Petitioner are domiciled in Uganda with a matrimonial home at Ggabba.
4. THAT your Respondent was married to the Petitioner vide a church marriage at All saints Cathedral on the 21st day of August 1998; solemnized in accordance with the provision of the marriage Act in force in Uganda.
5. THAT in early 2004, the Petitioner started being very cruel at your humble Respondent by continuously hurling insults at your Respondent without cause; and threatening actual violence on several occasions.
6. THAT the Petitioner has on several occasion denied the Respondent access to their matrimonial home in Ggabba.
7. THAT owing to the cruelty of the Petitioner, there has been an irretrievable breakdown of the said marriage between you Respondent and the said respondent.
8. THAT this Reply to the Petition is not prosecuted in collusion or connivance with the Petitioner or with any other person connected in any way with these proceedings nor is your Respondent guilty of condonation.

OBJECTION MY LORD

WHEREFORE, the Respondent prays that the petition be dismissed with costs to the Respondent.

DATED at Kampala the day of 2006

.....

Counsel for Respondent

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

RESPONDENT

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MATRIMONIAL CAUSE NO. 002 OF 2006**

OGWANG BOB **RESPONDENT**

VERSUS

NYADOI MARY **RESPONDENT**

SUMMARY OF EVIDENCE

The Respondent will adduce evidence to show that the Respondent has never been cruel towards him and that the marriage has never irretrievably broken down.

LIST OF WITNESSES

Nyadoi Mary

Others with leave of court

LIST OF AUTHORITIES

The Constitution 1995

The Judicature Act Cap 13

The Marriage Act Cap 251

The Divorce Act Cap 249

The Divorce Rule SI 249-1

The Civil Procedure Act Cap 71

The Civil Procedure Rules SI 71-1

Mugonya vs Mugonya (1975) HCB 95

Sheldon vs Sheldon (1962) 2 All ER 257

Common Law and Doctrines of Equity

Others with leave of court

LIST OF DOCUMENTS

The Marriage Certificate

Others with leave of court

OBJECTION MY LORD

DATED at Kampala the day of 2006

.....
Counsel for Respondent

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala





CHILDREN MATTERS.

Who is a child and what rights accruing to them?

Section 2 of the children's act defines a child as person below the age of 18 years. Also Article 257 (1) (c).

RIGHTS OF CHILDREN

Children have the rights conferred onto all persons by virtual being human beings however under Art.34 of the constitution specific rights accrue to them by virtual of being children and these include the following rights:

1. Right to know and be cared for by their parents or those entitled by law to bring them up.
2. Right to basic education which is the responsibility of the state and the parents of the child.
3. Right to non-deprivation by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.
4. Right to be protected from social or economic exploitation and not to be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical mental, spiritual, moral or social development.
5. Other rights are stipulated under Section 4 of the children's Act and the CRC.

WELFARE PRINCIPLE

The welfare principle as was laid down in the case of **J V C (1970) AC 668** is to the effect that in any matter relating to a child, the child's welfare is the paramount consideration.

This has been codified under **Article 3(1) of the Convention on the Rights of the Child** and **Section 3 (1) of the Children's Act** of Uganda as amended.

In **KAMUGISHA THEOPY V KAKITOKA PASCAL (1996)4 KALR 116**, court emphasized the fact that the interest of the child is paramount and so the paramount consideration in children's cases.

In **J V C (1970) AC 668**, where the matter was between the biological parents and the foster parents, the court stated that the rights and wishes of the parents whether unimpeachable or otherwise must be assessed and weighed on their bearing on the welfare of the child which is paramount in conjunction with all the other factors relevant to the issue. In this case it was in the child's best interest to stay in the custody of the foster parents in as much as the natural parents had a strong claim to have their wishes considered as normally the proper persons to have the upbringing of the child they have brought into the world.

In **RE B (1988) AC 199**, the House of Lords sanctioned an operation to sterilize a 17-year-old girl upon proof that due to limited intellectual capacity she was incapable of knowing the relationship between sexual intercourses and child birth. The operation was held to be her best interest.

In determining what is in the best interest of the child, the court according to S.3 (3) of the children's act as amended must have regard to:

- a) The ascertainable wishes and feelings of the child concerned with due regard to his or her age and understanding. Gillick's competence principle it's to the effect that where a child has sufficient understanding to make an informal decision about their life, they should be allowed to do so. The principle was established in the case of **GILLICKS V WEST NORFOLK AND WISBECH AREA HEALTH**, the child must understand the advice being given and what is involved.
- b) The child's physical, emotional and educational needs. Under physical needs, courts major concern is the child's security and not concerns of material prospects. The quality of the home is measured against time, energy devoted to care and upbringing. In **STEPHENSON V STEPHENSON**, the court stated that disadvantages of a material sort must be given little weight. Under emotional needs, the presumption leans in favor of the emotional needs to stay with both parents. Whereas the court in **TEOPISTA KAYONG V RICHARD SEKIZIYIVU (1979) HCB 261**, the court recognized that there is a strong notion that young children need to stay with their mothers however there is no rule of law to that effect and thus the best interest of the child be the paramount consideration. Young children were defined as children of tender years below the age of seven years.
- c) The likely effects of any change in the child's circumstances
- d) The child's sex, age, background and any other circumstances relevant in the matter. Courts say in guardianship applications will be more inclined to grant the guardianship/custody in applications for custody to applicant of the same sex as a child.

- e) Any harm that the child has suffered or is at the risk of suffering.
- f) Where relevant, the capacity of the child's parents, guardian or any other person involved in the care of the child and in meeting the needs of the child. Financial stability does not entitle the applicant to any order to automatic grant. What court must consider is the best interest of the child. A financial stable parent might have to surrender the child to the other in custody application if it's the view of the court that the child lives with the other parent. **IN AYIYA V AYIYA**, the court emphasized that it is not necessary that one who is rich will be in better position to look after the children but the psychological attitude towards the children and the loving and warm atmosphere in a home means more in the upbringing of a child.

APPLICATION OF THE PRINCIPLE WHERE THERE ARE TWO CHILDREN.

Where there are two children, the welfare of the child in issue is what is paramount.

IN BIRMINGHAM CITY COUNCIL V H, which related to a 15-year-old child and her baby who both had been made the subjects of interim care orders. The 15-year-old mother was aggressive and made attempts to harm self which caused the baby to be moved to foster parents. She sought contact with the baby and evidence was led that it was not in the baby's best interest that the contact with the 15-year-old mother continues but was in the mother's best interest that it continues. The issue before court was whose welfare was paramount. The baby or the mother? The court held that the baby's upbringing and thus it's its welfare which must be the courts paramount consideration. The fact that the parent is also a child does not mean that both parents and child's welfare is paramount and that each has to be balanced against the other.

PARENTAGE

Who is a parent?

In **RE W**, the court held that this takes into account recent developments in human assisted reproduction which made the earlier test of parentage which was blood ties or genetic link. The person who gave birth to the child was considered the mother and the person by whom she conceived the father. With procedures such as artificial insemination, insert fertilization, egg and embryo donation and surrogacy, the person who gives birth to child or by whom the person conceived may not necessarily be the parent.

In JOGNSON V CALVERT, in pursuance of a surrogacy agreement, one the commissioning mother's egg was fertilized in vitro with her husband's sperm and transferred to the surrogate who successfully carried it to term. During the pregnancy the surrogate and the commissioning couple fell out and each sought a declaration of parentage of the child. In holding that the commissioning parents were the child's legal parents, the court stated that it was.

OBJECTION MY LORD

Section 1 (cc) of the children's act as amended defines a parent to mean the biological mother or father or adoptive mother or father of a child.

PROOF OF PARENTAGE

At common law

A child born to a couple during a subsisting marriage was presumed to be a child of the couple. The man was presumed to be the father and the woman the mother. The presumption could be rebutted with evidence to the contrary.

In PRESTONE V PRESTONE (1956) 1 ALL ER 124, the court recognized the presumption but held that the man had successfully rebutted the presumption having established that within the one year when the child was born, he had not had sexual intercourse with the wife.

In MPRIWE V OLIVER NINSIMBIMANE HCCS NO.5 OF 1990, Tsekooko J held that the evidence of similarity in physical features between a child and alleged parent is admissible to prove paternity, although the evidence is not conclusive.

Under the Children's Act

Under **Section 71 of the Children's Act**, there is prima facie evidence of parentage were

1. The name of the father or the mother of a child is entered in the register of births in relation to a child.
2. An instrument executed as a deed or signed jointly or severally by each of the persons in the presence of a witness acknowledging parentage as either the mother or father.
3. An order of a court for maintenance against a person under any written law has been issued in respect of that child
4. An order made by a competent court outside Uganda in any affiliation or similar proceedings declaring or having the effect of declaring a person the mother or father of a child.
5. A reference, express or implied in a will written or oral where the person names the child as a daughter or son.
6. A statement, written or oral by a deceased person confided to a person in a position of authority indicating that the deceased is or was the father or the mother of a particular child.

Under **Section 71 (4)** a declaration of parentage by a court is conclusive proof of parentage

AN APPLICATION FOR A DECLARATION OF PARENTAGE

Forum

According to practice direction No.1 of 2011, magistrate grade one courts exercise jurisdiction over family and children's court

Under **Section 67**, of the children's act as amended, the application for a declaration of parentage is made to the family and children's court having jurisdiction in the place where the applicant resides.

WHO MAY MAKE THE APPLICATION?

According to **Section 67 of the children's Act**, the application may be made by:

- a) The mother of a child
- b) The father of a child
- c) The guardian of a child
- d) The child himself or herself through a next of friend
- e) The man alleged to be the father
- f) The woman alleged to be the mother of the child.

WHEN CAN THE APPLICATION BE MADE.

Under **Section 68 (1) of the children's Act**, the application may be made:

- a) During pregnancy
- b) Any time before the child attains 18 years of age.
- c) Within 3 years after the death of the alleged father or mother.

Under **Section 68 (2)**, the application may with leave of court be made at any time after the 3 years from the date of the death of the alleged father or mother.

PROCEDURE FOR APPLICATION FOR DECLARATION OF PARENTAGE

1. Under **Section 67 of the children's Act**, the application is by **complaint on oath** to a family and children court. Rule 20 of the children (family and children court rules, S.I no.59-2, the application for a declaration of parentage shall be by a complaint on oath as specified in form 2 in the schedule to the rules.
2. Under **Section 69 (5) of the Children's Act**, any person sought to be tested must be made a party to the proceedings.

OBJECTION MY LORD

3. The court to which the application is made must issue summons to the person alleged to be the father or mother of the child to appear before the court on a day named. **Section 69 (1) of Children's Act. Rule 21 of the rules**
4. On the appearance of the person summoned or on proof that the summons was duly served on him or her at his or her place of abode seven days or more before the hearing the court will hear the evidence of the applicant and also hear that of the alleged father or mother if any. **Section 69(2)**
5. If satisfied by the evidence of the applicant, the court may adjudge the person to be the mother or father of the child.

BLOOD TESTS AND SCIENTIFIC PROOF OF PARENTAGE

Under **Section 69(4) of the children's Act**, a court may on application or on its own motion during the proceedings for a declaration of parentage make an order any person to give a blood sample for the purpose of blood tests.

Section 69 (5) requires that the person sought to be tested must be made a party to the proceedings.

EFFECT OF DECLARATION OF PARENTAGE

Section 72(1) of the Childrens Act provides that a declaration of parentage by a court shall have the effect of establishing a blood relationship of father and child or of mother and child and the child shall be in the same legal position towards the parent as a child actually born in lawful wedlock

The declaration however does not of itself confer rights of custody of the child upon the declared parent. **Section72 (2) of the Children's Act**

NECESSARY DOCUMENTS

1. Complaint on oath (form 2 in the schedule to the rules)
2. Summons (form 3 in the schedule to the rules)

APPEALS

Under **Section 74**, a party that is not contented with the declaration of parentage may appeal to the chief magistrate's court in respect of the same.

ISAAC CHRISTOPHER LUBOGO

Complaint on oath

THE REPUBLIC OF UGANDA

FORM 2

APPLICATION FOR DECLARATION OF PARENTAGE

THE CHILDREN ACT

IN THE FAMILY AND CHILDREN COURT AT

MUKONO

IN THE MATTER OF LAWRENCE MUSIGIRE (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION

OF PARENTAGE

FAMILY CAUSE NO 01 OF 2022

COMPLAINT ON OATH

I, JOHN BYARUHANGA of SUI GENERIS AND CO. ADVOCATES, P.O BOX0000, KAMPALA, being the father apply for a declaration of parentage against MIRIA NAIKOBBA being the grandmother of KEVIN KAWINO ATEENYI on the following grounds:

1. That I am the father to Kevin kawino Ateenyi.
2. That the respondent, Miria Naikoba, the mother to my deceased wife has custody of Kevin kawino and won't allow me have his custody as the father.
3. That the respondent disputes that I am the father of the named minor and alleges my deceased wife told her so.
4. That it is in the best interest of the child that this declaration of parentage is made.

SWORN AT KAMPALA this 30th day of November, 2019 by the said JOHN BYARUHANGA.

COMPLAINANT

Before me

COMMISSIONER FOR OATHS.

OBJECTION MY LORD

SUMMONS.

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT

MUKONO

IN THE MATTER OF THE CHILDREN ACT AS AMMENDED CAP

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION

OF PARENTAGE

FAMILY CAUSE NO.01OF 2019

SUMMONS IN CHAMBERS

TO: MIRIA NAIKOBA

WHEREAS JOHN BYARUHANGA has instituted proceedings for a declaration of parentage, you are summoned to appear in the chambers of the magistrate grade one at the family and children court at Mukono, in person or by an advocate duly instructed on the 8th day of December 2019 at 9:00 o'clock in the forenoon to answer to the claim.

TAKE NOTICE that, in default of your appearance on the day above mentioned, the application shall be heard and determined and such order as is deemed necessary will be rendered in your absence.

GIVEN under my hand and seal of this court on the 1st day of December 2019

MAGISTRATE

CUSTODY

Section 1 (f) of the children’s Act as amended defines a custodian as a person in whose care a child is physically placed. Thus, custody means physical caring of a child. It means who lives with and has the right to make decisions concerning that child pertaining to all areas of parental responsibility.

In the case of **ALI ISSA V FAITH YUSUF**, the court observed that the word custody if used in connection with children concerns control and preservation and care of a child’s personal, physical, mental and moral integrity and are responsible for the child in regard to their basic needs and rights.

Section 5(1) of the children’s Act as amended impose a duty on any parent, guardian or any person having custody of a child and the duty confers onto the child the right to: education and guidance, immunization, adequate diet, clothing, shelter and medical attention. Also, **Article 34**.

Further under **Section 5(2)** the person having custody of a child shall protect the child from discrimination, violence, abuse and neglect.

Married couples living together have equal rights whereas parents who have divorced or separated or under any circumstances are not living with the child may apply to court to decide on who must have the custody of the child.

APPLICATION FOR CUSTODY

FORUM

The family and children’s court in the local jurisdiction where the child resides. (**Rule 5 of the fee rules. Section 14 of Children’s Act.**)

WHO CAN APPLY FOR CUSTODY ORDER?

- Mother of the child
- Father of the child
- Guardian
- Probation and social welfare officer.

PROCEDURE

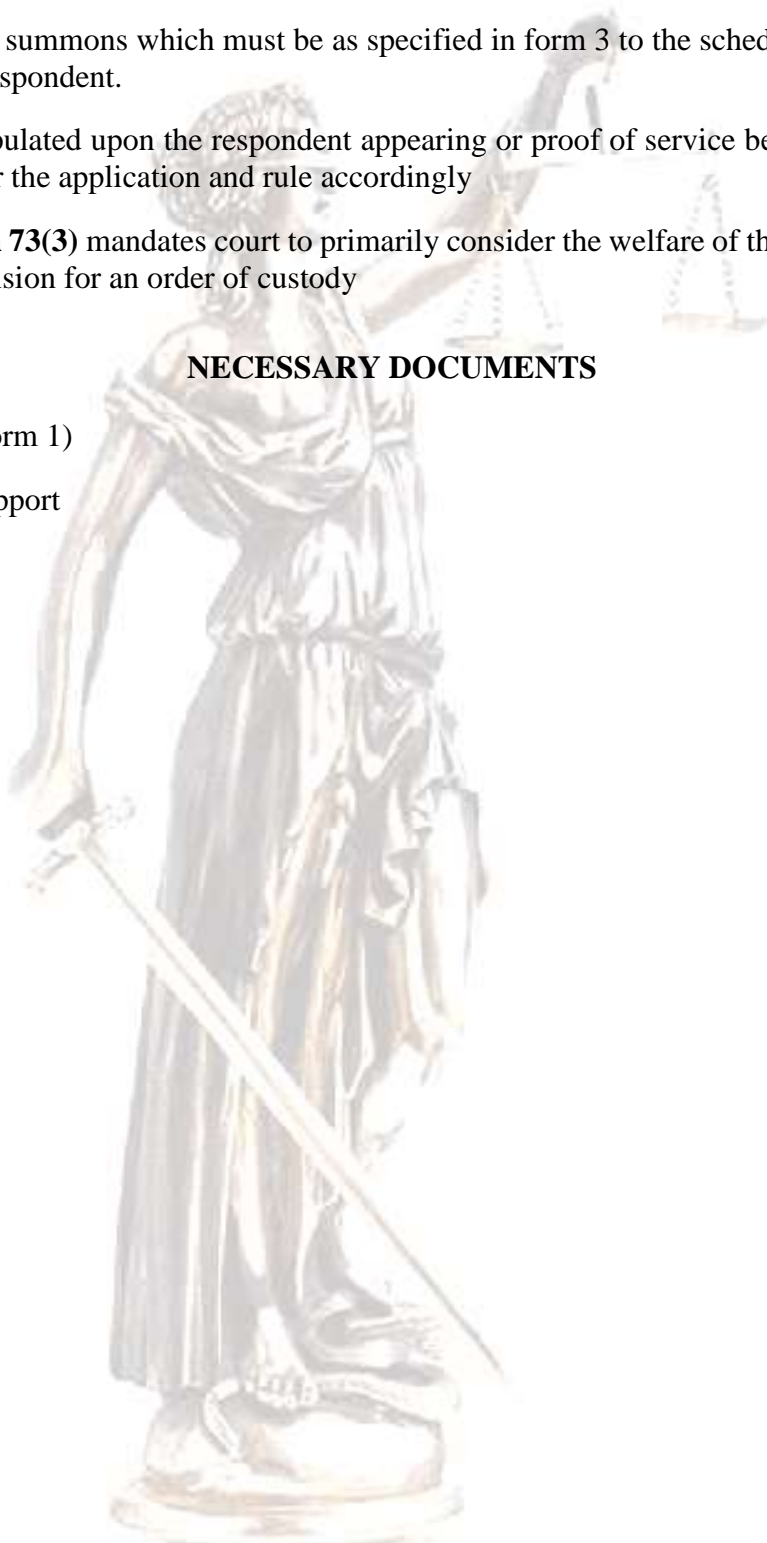
1. Under **Rule 19(3)** of the rules, the application is as specified in form 1 in the schedule to the rules.

OBJECTION MY LORD

2. **Rule 19(1)** requires that the application is supported by an affidavit and any reports or documents to be relied upon.
3. **Under rule 21** summons which must be as specified in form 3 to the schedule of the rules must be issued to the respondent.
4. On the day stipulated upon the respondent appearing or proof of service being filed, the court will proceed to hear the application and rule accordingly
 - **Section 73(3)** mandates court to primarily consider the welfare of the child when arriving at the decision for an order of custody

NECESSARY DOCUMENTS

1. Application (form 1)
2. Affidavit in support
3. Summons



ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDRENS COURT AT

MUKONO

THE CHILDREN'S ACT

IN THE MATTER OF KEVIN KAWINO ATEENYI

AND

IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER

FAMILY CAUSE NO.1 OF 2019

APPLICATION FOR A CUSTODY ORDER

I, JOHN BYARUHANGA OF SUI GENERIS AND CO ADVOCATES, P.O BOX0000, KAMPALA being the father apply for a custody order against MIRIA NAIKOBA being the grandmother of KEVIN KAWINO ATEENYI on the following grounds

1. That I am the father of the child and I have been taking care of all his needs for his life time.
2. That it is his best interest that he grows living together with his other two siblings who are in my custody
3. The respondent, Miria Naikoba in whose custody the child is now is a heavy drinker, and when drunk uses profane and lewd language which is likely to negatively affect the child.
4. That it is in the best interest of the child that this application is granted.

Dated this 30th day of November, 2019.

APPLICANT.

OBJECTION MY LORD

AFFIDAVIT IN SUPPORT.

IN THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER

FAMILY CAUSE NO. 01 OF 2019

AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR A CUSTODY ORDER

I, JOHN BYARUHANGA OF SUI GENERIS AND CO ADVOCATES, P.O BOX0000, KAMPALA do here by make wan oath and solemnly state as follows;

1. THAT I am a male adult Ugandan of sound mind aged 38 years and the applicant in this matter and I swear this affidavit in that capacity
2. THAT I am the biological father of the minor Kevin Kawino Ateenyi aged 5 years old. (Attached is the birth certificate of the said minor.)
3. THAT I lost my wife to post-natal complication three days after giving birth to the said minor. (Attached is a death certificate of Elizabeth Namukose my deceased wife.)
4. THAT my deceased wife's grandmother, Yayeri Babirye offered to look after the baby and I obliged given it was very tender.
5. THAT my mother-in-law, Miria Naikoba picked the minor from Yayeri Babirye and took over its custody.
6. THAT throughout the five years, I have materially and financially provided for Kevin. (attached are the receipts for all expenses ranging from baby diapers, clothes, toys, milk, medical expenses and Kevin's tuition, scholastic materials among others)
7. THAT I have and continue to visit Kevin every weekend in the company of her siblings
8. THAT Maria Naikoba who is in custody of Kevin is a heavy drinker who on many occasions returns to her home in a drunken state and uses profane and lewd language which will in the long negatively impact on the grow of Kevin.
9. THAT it is in the best interest of Kevin that this honorable court issues the order so that she can grow up with her siblings and in a loving and caring home.
10. THAT I swear this affidavit in support of my application for a custody order for Kevin.

ISAAC CHRISTOPHER LUBOGO

11. THAT what is stated herein above is true and correct to the best of my knowledge and belief.
SWORN AT KAMPALA by the said JOHN BYARUHANGA on this 30th day of November 2019.

DEPONENT.

Before me

COMMISSIONER FOR OATHS

Drawn and filed by

SUI GENERIS AND CO ADVOCATES.



OBJECTION MY LORD

SUMMONS

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

FAMILY CAUSE NO.01 OF 2019

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER

SUMMONS IN CHAMBERS.

TO: MARIA NAIKOBA

WHEREAS JOHN BYARUHANGA has instituted proceeding for a custody order for Kevin Kawino Ateenyi you are summoned to appear in the chambers of the magistrate Grade one court at Mukono in person or by an advocate duly instructed on the 10th day of December, 2019 at 9:00 o'clock in the forenoon to answer to the claim.

TAKE NOTICE that in default of your appearance on the day above mentioned, in the application shall be heard and determined and such order as is deemed necessary will be rendered in your absence.

GIVEN under my hand and the seal of this court on the 1st day of December 2019

MAGISTRATE

INTERIM CUSTODY ORDER

An interim custody order as stated under **Section 73A (3) of the Children's Act** be issued where the court is satisfied that:

- a) The child is suffering or likely to suffer harm if the order for the interim custody is not issued.
- b) The order is the best interests of the child.

The application for an interim order act stated under Section 73A (1) may be brought by:

- A probation and social welfare officer
- Mother of a child
- Father of the child
- Guardian of the child

PROCEDURE

The application is by notice of motion under **Order 52 of Civil Procedure Rule** and as required under **Section 73A (2)** of the children's act must be supported by an affidavit in support.

NECESSARY DOCUMENTS

- Notice of motion
- Affidavit in support
- Summons

FORUM

The family and children court with jurisdiction in the area where the child resides. (**Rule 5 of Rules**)

FCC COURT RULES.

Under **Rule 4 (1) (b)** of rules general principles on procedure that apply to CPR apply. Under O.52, where a procedure isn't stipulated, you proceed by notice of motion.

MAINTENANCE

OBJECTION MY LORD

Section 76 (8) provides that maintenance includes feeding, clothing, education and the general welfare of the child. Under **Article 34** and **Section 4** of the Children's Act, every child has a right to be maintained by his or her parents.

Under **Section 5 (1)** of the Children's Act, it's the duty of every parent, guardian or any person having custody of a child to maintain that child and in particular to things like education and guidance, immunization, adequate diet clothing, shelter and medical attention.

In the case of **RWABUHEMBA TIM MUSINGUZI V HARRIET KAMAKUMA CIVIL APPLICATION NO 142 OF 2009**, the court observed that parents have a fundamental right to care and bring up their children and such rights is a constitutional right and should not be considered in isolation.

APPLICATION FOR A MAINTENANCE ORDER

FORUM

Section 76 (5), states that the application for maintenance order is to the family and children court having jurisdiction in the place where the applicant resides.

WHO CAN MAKE THE APPLICATION?

Section 76(1) states that any person who has custody of a child and who is:

- a) The mother of the child
- b) The father of the child
- c) The guardian of the child

may apply for a maintenance order against the father or mother of the child. Under **Section 78(3)** it can be made and enforced against the estate of a deceased who has been declared the mother or father of a child under a parental declaration.

- Under **Section 76 (2)**, a child in respect of whom a declaration of parentage has been made may also make an application through a next of friend.

WHEN CAN THE APPLICATION BE MADE.

Subject to **Section 76 (3)** the application may be made:

- a) During a subsisting marriage
- b) During proceedings for divorce, separation or nullity of marriage.
- c) During separation.

- d) During proceedings for declaration of parentage
- e) After a declaration of parentage has been made.

Under **Section 76 (4)** the application may be made:

- a) At any time during pregnancy
- b) Before the child attains 18 years of age.

PROCEDURE

Section 76 (5) states that the application is made by **complaint on oath** to a family court

Section 76 (6) summons must be issued to the father or mother of the child to appear before the court on a day named in the summons

Section 76(7) on appearance of the person or on proof that the summons were served on the person or more days before the hearing, court will hear the evidence of the applicant and where the respondent is in court, also hear their evidence and if satisfied make the maintenance order for payment to the applicant:

- a) A monthly sum as determined by the court having regard to the circumstances of the case and the financial means of respondent.
- b) Funeral expenses of the child if it died before the making of the order
- c) Costs incurred to obtain the order.

RECOVERY OF MAINTENANCE MONEY

If after a month the sums ordered have not been paid and the respondent neglects all efforts to have him/her pay, a magistrate may by warrant under **Section 77 of Children's Act** direct:

- a) That an attachment of earnings be made.
- b) That the sum due, together with any costs incurred, be recovered by distress and sale or redistribution of the property of the father or mother unless he or she gives security by way of recognizance or otherwise to the satisfaction of court for his or her appearance before the court on a day appointed for the return of the warrant of distress, but not more than 7 days from the taking of the security.

VARIATION OF MAINTENANCE ORDER

Under **Section 78(1)** a maintenance order may on the application of the applicant at the time of grant or by the person against whom the order was made, court may vary by increasing the sums or decreasing the amount previously order having due regard to the circumstances.

OBJECTION MY LORD

NECESSARY DOCUMENTS

1. Notice of motion
2. Affidavit in support



ISAAC CHRISTOPHER LUBOGO

Omnibus application for declaration of parentage and a maintenance order.

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

FAMILY CAUSE NO.002 OF 2019

IN THE MATTER OF KEVIN KAWINO ATEENYI, (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF
PARENTAGE AND

IN THE MATTER OF AN APPLICATION FOR A MAINTENANCE ORDER

IN THE MATTER OF THE CHILDRENS ACT AS AMMENDED

COMPLAINT ON OATH

I, MERIDA KWAGALA OF SUI GENERIS AND CO. ADVOCATES, being the mother of Kevin Kawino Ateenyi apply for a declaration of parentage and an order of maintenance against JOHN BYARUHANGA being the father of Kevin Kawino Ateenyi on the following grounds:

1. THAT I had a love relationship with John Byaruhanga.
2. THAT the relationship resulted into the birth of a baby girl, Kevin Kawino Ateenyi.
3. THAT from the time I conceived until 2017, the respondent John Byaruhanga used to provide financial support for Kevin's needs
4. THAT after he discovered Kevin was epileptic, he stopped providing financial support stating that he had no epileptic history in his family.
5. THAT the respondent has since denied fathering Kevin and rendering any financial support for her needs.
6. THAT it's in the best interest of Kevin that declaration for parentage is made against john Byaruhanga and a maintenance order issued against him.

WHEREOF THE applicant prays for orders that:

- a) Declaration of parentage
- b) Maintenance of the child to be paid to the applicant
- c) Custody of the child to the applicant

SWORN at Kampala by MERIDA KWAGALA on the 30th day of November 2019,

OBJECTION MY LORD

APPLICANT

COMMISSIONER FOR OATHS.



INTERIM ORDERS AND ORDERS THAT CAN BE ISSUED FOR CARE, PROTECTION AND WELFARE OF THE CHILD

SUPERVISION ORDERS/INTERIM SUPERVISION ORDERS

Under **Section 19 (a) of the Children's Act**, a probation and social welfare officer or an authorized person may apply to an FCC for a supervision order placing a child under the supervision of a probation and social welfare officer while leaving the child in the custody of his or her parents or relatives.

APPLICATION

Under **Section 22** the applicant must satisfy themselves that

- a) The local government councils from village to sub county level where the child resides have dealt with the matter without success
- b) There is need for continuous supervision enforced by a court order before making the application.

The application is as provided in form 2 and in the schedule to the rules with a valid affidavit.

DURATION OF SUPERVISION ORDER

Under **Section 24 (1) of the Children's Act**, a supervision order shall be for one year though may be extended for further year on the application of the probation and social welfare officer.

DUTIES OF A SUPERVISOR WHILE A SUPERVISION ORDER IS IN FORCE

These are stated under **Section 23 of the children's Act** and they are:

- a) To be friendly to, advise and assist the supervised child
- b) To advise the parents
- c) To make plans for the child's future in consultation with the child and his or her parents or guardian.
- d) To apply to the court to discharge or vary the order if necessary.
- e) To take such reasonable steps as may be necessary.

CARE ORDER AND INTERIM CARE ORDER.

Under **Section 19 (b)** a probation and social welfare officer or an authorized person may apply to an FCC for a care order or interim care order placing a child in the care of the warden of an approved home

OBJECTION MY LORD

or with an approved foster parent in accordance with the foster care placement rules in the 2nd schedule to the act. (S.27 (1))

APPLICATION

Under **Section 27 (2)** the applicant must prove that:

- a) All possible alternative methods of assisting the child have been tried without success and the significant harm from which the child is suffering or is likely to suffer requires him or her to be removed from where he or she is living.
- b) The danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

DURATION

Section 29 (1) states that a care order shall be for a maximum of three years or until the child reaches 18 years whichever is shorter.

GROUND FOR MAKING A SUPERVISION OR CARE ORDER

These are stipulated under **Section 21 of the Children's Act** and they are:

- a) The child concerned is suffering or is likely to suffer significant harm
- b) That the harm or probability of harm, is attributable to
 - I. The care given to the child or likely to be given to the child if the order were not made, not being what it would be
 - II. The child's being beyond parental control.



ADOPTION OF CHILDREN

Introduction

Adoption is defined in Collin's Dictionary of law⁸ as the legal process by which a parent child relationship is created between an adult and a child; who is not biologically theirs.

Nigel Lowe and Gillian Douglas in Bromley's family law 11th edition, they define adoption at page 682 as the processes by which a child's legal parentage is entirely and irrevocably transferred from set of adults usually the birth parents and vested on other adults, namely the adoptive parents.

It involves the complete severance of the legal relationship between parents and child and the establishment of a new one between the child and the adoptive parents.

Adoption vests full parental responsibility exclusively in the adopters.

LAW APPLICABLE TO ADOPTION

- The constitution of the republic of Uganda (1995) as amended
- Children's act cap 59 as amended.
- The children (Adoption of children) rules.

RE: EDISON MUGAGA, ADOPTION CAUSE 15/2019, justice Mutonyi defined adoption as the creation of a parent-child relationship by a judicial order between two parties who are unrationed creating a lifelong relationship of parentage between the child and the adoptive parent.

DISTINCTION BETWEEN GUARDIANSHIP AND ADOPTION

⁸ 2nd Edition Pg. 14

OBJECTION MY LORD

1. **Section 51**, Adoption severs the legal ties between the child and his/her birth parents unlike guardianship where the ties of the child with his/her biological parents are not severed. **Section 43** states that guardianship order only vests the guardian with parental responsibility over the child.
2. Further under **Section 51**, of the children's act, the adoption order unless revoked under **Section 46A** is permanent and the child even upon attaining 18 years remains a member of the adoptive family and can under **Section 52(1)**, inherit the property of the adoptive parents upon their demise. While under **Section 43 H (2)**, a guardianship order only remains in force until the child attains 18 years.

Adoption is premised on the provision of **Section 6 of the Children's Act** that every parent shall have parental responsibility of his or her child. **Article 31(4)** makes it a right and duty of parents to care and bring up their children.

THE CHECKLIST FOR RESOLUTION INCLUDES THE FOLLOWING:

1. Whether the prospective adoptee can be adopted?
2. Whether the prospective adopter can adopt?
3. What is the forum, procedure and documents?

BELOW ARE THE PREREQUISITES AS ENUNCIATED IN THE CHILDREN'S ACT

- The applicant should be above 25 years or 21 years older than the child in question.
- Secondly, if the applicant is a foreigner, he or she should have stayed in Uganda for a period of at least 3 years.
- Thirdly, the applicant should have fostered the child for 36 months, under supervision.
- The applicant should not have a criminal record.
- A foreign applicant should have a recommendation concerning his or her suitability to adopt the child.
- The foreigner should satisfy court that his or her country of origin will recognize the adoption order.
- If the parents, guardians or person in custody of the child of the child can be got, they ought to consent to the adoption.
- If the child is above 14 years of age, he or she ought to consent to the adoption.

- A male adoptor should only adopt male children and a female adoptor should only adopt female children. This was stated in **O'Connor v. O'Connor, 146 A.D.2d 909**
- It must be noted from the onset that court looks at the welfare principle in considering adoption of a child.

IN RELATION TO WHO CAN BE ADOPTED;

The context of **section 2 of the Children's Act** shows that the person should be below 18 years and secondly, the child need not be a Ugandan to be adopted. This is fortified by **section 44 of the Children's Act**.

PROCEDURE OF ADOPTING CHILDREN

THE FORUM IS;

The Chief Magistrate's Court if all parties are Ugandan as provided for in **Rule 3 (1) of the Children (Adoption of Children) Rules SI 59-1**.

If the Respondent is non-Uganda, the forum is the High Court per **Rule 3 (2) of the Children (Adoption of Children) Rules SI 59-1**

THE PROCEDURE IS AS FOLLOWS

The prospective adopter files a Petition in Form B to the Rules, supported by an affidavit.

A consent Form of the Parents/ guardians/ persons in custody of the child should be attached. It is in form C to the rules.

A Consent Form of the child if the child is above 14 years should be attached. It is form D to the rules.

A Medical Examination in Form E should be attached.

Upon filing the Petition, a notice of hearing is obtained.

It must be noted that in the petition, the following matters should be addressed:

The particulars of the subject/ adoptor,

The capacity of the adoptor,

The age and citizenship of the adoptor,

OBJECTION MY LORD

That this is done pursuant to the welfare principle

One should aver that he or she is not receiving any award for the adoption.

WHO MAY APPLY

Section 45 (1) of Children's Act states that an adoption order may be granted to sole applicant or jointly to spouses

Where the application is by one spouse, **Section 45 (1) (b)** requires that the other spouse's consent is sought and obtained however the same maybe dispensed with by the court under **Section 45(2)** if the spouse whose consent is required cannot be found or is incapable of giving consent or the spouses are separated and living apart and the separation is likely to be permanent

Section 45(3) of Children's Act bars the issuance of an adoption order in favor of a sole male applicant in respect of a female child and the other way round except if the court is satisfied that there are special circumstances that justify the making of the order.

REQUIREMENTS FOR ADOPTION FOR A UGANDAN CITIZEN FOR A UGANDAN CHILD

1. Both applicants and the child must be Ugandan Citizens **Section 44(1)(a)**
2. AGE. **Section 45(1)(a)** states that the applicant or at least one of the joint applicants must have attained the age of twenty-five years (25) and is at least twenty-one (21) years older than the child.
3. FOSTER CARE

Section 45 (4) of the Children Act makes it a mandatory requirement that the applicant has fostered the child for a period of not less than 12 months under the supervision of a probation and social welfare officer. **IN RE; CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA H.C ADOPTION CAUSE NO.03 OF 2019**, the court noted that proof of foster care was subject to the issuance of a foster care order which should be presented in court. It was not sufficient that the report of the social welfare officer alleges that the applicants(s) fostered the children for a given period of time as was in the case. Further the requirement could be satisfied by the evidence of the child where they are of age. In this case the children stated that they had been in the care of their parents all through and not the applicants. The children were aged 14 and 17 years.

4. REPORT OF THE PROBATION AND SOCIAL WELFARE OFFICER.

This is a requirement under **Section 45(5)** of the Children's Act and report submitted must state the ability of the applicants to cater for the needs of the child presently and in future and whether or not the child has bonded with the applicants during the foster care period i.e. the suitability of the applicant to adopt the child. **IN RE: CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA**, the probation and social welfare officers report was found wanting as it alleged that the applicant were suitable adoptive parents yet they had never fostered the children. **In RE ARTHURSHYAKA BUTARE ADOPTION**

CAUSE NO.61OF 2013, the court ordered that formal report of the probation and social welfare officer be submitted before it grants the order.

5. CONSENT

Section 47 (1) OF Children Act requires that the consent of the parents of the child if known must be obtained. **In RE: CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA**, both parents consented to the application and were present during the hearing. Equally in **RE: ARTHUR SHYAKA BUTARE ADOPTION CAUSE NO.61 OF 2018**, the parents of the child consented to the adoption and gave evidence in court stating that it was in best interest of the child who had intellectual disabilities to be adopted by the grandmother who was a US citizen and go live with her in the USA as that would help to have his condition better managed and enable him grow into an independent adult albeit the intellectual disability. Consent is in the form stipulated in form C in the schedule to the rules. The children (adoption of children) rules S.1 59-1)

Under **Section 47(6) of Children Act**, where the child is at least 14 years of age, his or her consent to the adoption must be obtained unless it's impossible for him or her to express his or her wishes.

In RE: CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA, both the children were above 14 years of age and thus the court granted them an opportunity to express their wishes as to the application to which they consented to. Consent is given in the form stipulated in form D in the schedule to rules.

Under **Section 47 (7)**, the consent of any person who is not the parent of the child but has any rights or obligations in respect of the child by either an order of court, or agreement or under customary law must be obtained.

IN OCHAYA CHRISTOPHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA (a wild) H.C.M.A 0028/2017, the consent of the child's grandfather was required and only after it had been obtained was it granted.

Equally in **RE: BIRABWA MUTAKA ADOPTION CAUSE O.4/2018**, the maternal grandfather was called to court to give consent to the adoption.

DISPENSING WITH CONSENT

The consent of the parents required under **Section 47 (1) of Children Act** may be dispensed with under **Section 47 (2)** if the court is satisfied that the parent(s) are incapable of giving such consent or his whereabouts are unknown as was the case with the father of Lamaro Lillian in **OCHAYA CHRISTOPHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA (A CHILD) H.C.M.A 0028/2017**.

RE: BIRABWA MUTAKA ADOPTION CAUSE 014/2018, Justice Eva Luswata, dispensed with the consent of the mother noting that despite the mother and her previous situation of being in a foster care home she had never bothered to look out for her and had actually dumped her at her estranged lovers place

OBJECTION MY LORD

knowing he wasn't the father of the child. It could not be in the best interest of the child to be re united with such a person.

6. THE BEST INTEREST OF THE CHILD.

PROCEDURE

1. Under **rule 3(1) of the children (adoption of children) rules S.1 59-1**, the application for adoption is by petition to the chief magistrate's court in FORM A in the schedule to the rules supported by an affidavit (Rule 7)
 2. **Rule 3(3)** states that the petition is presented ex parte by the person or their advocate to the CM sitting in chambers and the CM shall give directions as to service, appointment of a guardian ad litem and may further consent as may be required.
 3. Under **Rule 5**, the petition must be served on the
 - a) Parent or parents of the child if any
 - b) The guardians of the child or if none
 - c) The person or persons having the actual custody of the child or if none
 - d) The person or persons liable to contribute to the support of the child
 - e) The child if of the age of 14 years or above.
- **Rule 6(1)** provides that service of the petition shall unless otherwise directed by the C.M be served by an officer of the court by delivering or tendering a copy of it signed by the registrar or the CM and sealed with the seal of the court to the person to be served.

Rule 6(2) requires that the service of every petition is verified by affidavit unless the CM directs otherwise.

INTERCOUNTRY ADOPTION

Section 46 (1) of the Children Act provides that a person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child subject to satisfying the requirements listed under the provision. Under **Section 46 (6)** intercountry adoption should be the last option for any child.

REQUIREMENTS FOR INTERCOUNTRY ADOPTION

The requirements discussed under adoption by citizens apply in addition to: **Section 46 (3)**

1. Applicant must have stayed in Uganda for at least one year. (**Section 46 (1) (a)**).
2. Has fostered the child for at least one year under the supervision of a probation and social welfare officer.

- The notes under adoption by citizens apply. However, under **Section 46 (4)** the court may in exceptional circumstances waive any of the requirements including that's one.

In RE: MUSINGUZI DAVIS ALIAS ELIJAH DAVID HARPER (A CHILD) ADOPTION CAUSE NO.0001 OF 2018, the applicants had only fostered the child for nine months. The court waived the requirement for 12 months because the applicants were to travel back to the USA in a short time and needed to start processing the child's travel documents so as to travel with it.

In the matter of adoption of Apolot Betty adoption cause no 33 of 2018, the applicant had not fostered the child for 12 months as she was away in the USA working but visited occasionally while the child was under the physical care of her appointed 3rd party. She provided for all the needs of the child. The court noted that it was in the best interest of the child that the requirement be waived given the bond exhibited between the applicant and the child while in court.

IN THE MATTER OF ADOPTION OF MIREMBE ANGEL BY RUDY RAY LEE AND JESSICA LEE JOE LEE, ADOPTION CAUSE NO.32 OF 2018, court noted that constructive fostering may be permissible in certain instances. Constructive fostering is where an adoptive parent appoints a capable 3rd party to do physical fostering while the needs of the child are met by the prospective adoptive parent. In this case, the adoptive parents had minor children and also were in permanent employment and it was not proper to expect them to put all these duties for 12 months thus there was a genuine cause for the constructive fostering and in that period the applicants had visited the child for four times staying four two weeks each time so as to bond with the child.

3. DOES NOT HAVE A CRIMINAL RECORD (S.46(1)(C))

In OCHAYA CHRISTOPHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA (A CHILD) H.C.M.A 0028 OF 2017, police report from the applicant's respective country reports (Uganda and Australia) were accepted as proof that they did not have a criminal record. Interpol reported have also been accepted as was in

- 4. Recommendation on the suitability of the applicants to adopt a child from their country of origin by a probation and welfare officer or other competent authorities. **Section 46 (1) (C) (d)**.

In RE: ARTHUR SHYAKA BUTARE ADOPTIVE CAUSE NO.61 OF 2018, the inter country home study report showing suitability of the applicant to adopt the child had not been submitted. Court order it be produced before it went on to grant the adoption order.

- 5. Satisfies court that his or her country of origin will respect and recognize the adoption order. **Section 46(1)(c)**
- 6. Consent under **Section 47 of Children Act**

OBJECTION MY LORD

FORUM FOR THE APPLICATION

Section 44 (1) (b) and Rule 3 (2) of the rules stipulate that the forum is the high court of Uganda.

PROCEDURE

- (as is in the adoption by citizens)
- Petition is as in the form in form B of the notes. (**Rule 3(2)**).

THE DOCUMENTS

Petition

Consent Forms

Affidavit (if petition is not verified)

CONSEQUENCES OF ADOPTION

The implications of adoption should be noted;

The rights of the natural parent cease, and the adopter gains rights of parental responsibility.

The child acquires the domicile and name of the adopter.

Where the adopter dies intestate, the property devolves to the adoptive child. If the distribution is unfair, the adoptive child can seek to apply to vary a will.

An adoptive child loses the right to inherit from its natural parents. This was held in **LUMU'S CASE AC 8 OF 2000**

Section 51 of Children Act states that an adoption order severs all ties between the child and the biological parents and the same is vested on the adoptive parents. The order is permanent and even after attaining the age of 18 the child remains a member of the adoptive family.

However, under **Section 46A (1)**, the court can on the application of the adopted child, a parent of the adopted child or guardian, the adoptive parent, any person who is consented to the adoption and the minister in case of an inter country adoption and the minister in case of an inter country adoptive, in exceptional circumstances rescind an adoption order.

Section 46A (2), states that the order can only be rescinded if it's in the best interest of the child or if the order was obtained through fraud.

Section 46A (3), states that where the adoption order is rescinded, the order shall cease to apply and all responsibilities, rights and other matters which had been terminated by the adoption order in respect of the child will be restored.

Extraction of an adoption order and registration of the order

Under Section 54 of the Children Act, the registrar of births and death is mandated to maintain an adopted children register. Thus, an adoption order must be extracted in the form prescribed under form H in the schedule to the rules for purposes of registration pursuant to Rule 17.

Upon registration of the order, counsel must obtain certified copies of the same and give a copy to his or her client.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ADOPTION CAUSE NO. OF 2005

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

IN THE MATTER OF NAMULI IRENEA CHILD OF BUTALEJA PARISH, BUTALEJA SUB-COUNTY, BUTALEJA DISTRICT

PETITION

The **JOINT PETITION OF WAGUBI EMMY and WAGUBI EMMA** both of St. Francis BUTALEJA Hospital P.O. Box 22004, BUTALEJA states as follows:

1. The Respondents are desirous of adopting the child **NAMULI IRENE** under the provisions of the Children Act Cap 59.
2. The joint Respondents are residents of BUTALEJA Professionals Village LC1, BUTALEJA Parish, BUTALEJA Sub-County, BUTALEJA District, Uganda and are citizens of South Africa who first arrived in Uganda in July 2000 and stayed up to January 2003 and went back to Italy and returned to Uganda in November 2004 and have been residents in Uganda since then.
3. THAT the Joint Respondents address while in South Africa is 1 Canteen Tentway, 09 Johannesburg, SOUTH AFRICA.
4. THAT the Joint Respondents, **WAGUBI EMMY and WAGUBI EMMA** are married to each other, having married in Italy on the 23rd day of April 1994 but do not have children (copies of the marriage certificate-cum-Wedding Certificate and its translation are annexed hereto and marked as Annexure "B" and "C" respectively).
5. THAT the Joint Respondents, **WAGUBI EMMY and WAGUBI EMMA** are by occupation Medical Doctors working at St. Francis Hospital BUTALEJA and both are fit to adopt the said children.
6. THAT the Joint Respondents are not related to the child **NAMULI IRENE** and the Child **Nakimuli Sicholastic** respectively.

ISAAC CHRISTOPHER LUBOGO

7. THAT the Joint Respondents, **WAGUBI EMMY** is 55 years of age and **WAGUBI EMMA** is 40 years of age (Copies of the Joint Respondent's Passports are attached hereto as Annexure "**D₁**" and "**D₂**" respectively).
8. THAT the Joint Respondents, **WAGUBI EMMY** have annexed a Certificate marked "**E₁**" and its translation as "**E₂**", **WAGUBI EMMA** a certificate marked "**E₃**" and its translation as "**E₄**", both to the effect that the Joint Respondents do not have a criminal record in Italy their country of origin.
9. THAT the Joint Respondents, have annexed certificates marked "**E₅**" and "**E₆**" respectively, both to affirm that the joint Respondents do not have any criminal record in Uganda or any other country.
10. THAT the Joint Respondents attach their recommendations of their suitability to adopt the said children from:
 - i) **Ogwang Bob**, Chairman LC1, BUTALEJA
 - ii) **Rt. Rev. Nanima Bob**, Bishop of Tororo Diocese.

(Copies of recommendations are attached hereto and marked as Annexure "**F₁**", and "**F₂** respectively).

11. THAT the said Respondents are resident with the child **NAMULI IRENE** aged 7 years (a copy of the child's birth certificate is attached hereto as Annexures "**G₁**").
12. THAT the child **NAMULI** is of the female sex, unmarried, a child of an unknown person, having been found abandoned at BUTALEJA TRADING CENTRE. (see a copy of the sworn statements of **HYALO BEN** the probation and social welfare officer, BUTALEJA attached hereto as Annexures' "**H₁**").
13. That the child is a citizen of Uganda, a resident of BUTALEJA, and now in the custody of the joint Respondents both of whom are residents at the stated address.
14. THAT the good health (copies of certificate of good health are attached hereto as Annexures' "**H₃**" and "**H₄**" respectively).
15. THAT the joint Respondents **WAGUBI EMMY and WAGUBI EMMA** of St. Francis BUTALEJA Hospital P.O. Box 22004, BUTALEJA are liable to contribute to the support of the child **NAMULI IRENE**.
16. THAT the said child **NAMULI IRENE** has not been the subject of an adoption order or an application or petition for an adoption order.
17. THAT the Respondents or either of them have neither received nor agreed to receive nor has any person made or given or agreed to make or give to the Respondents or either of them any payment or reward in consideration of the adoption of the said child **NAMULI IRENE**.
18. THAT the child **NAMULI IRENE** and has been fostered by the joint Respondents since the 4th day of November 2004 under the supervision of a Probation and Social Welfare Officer, whose report is attached to this petition and marked as Annexures "**I**".

OBJECTION MY LORD

19. That the joint Respondents have been granted guardianship of the child **NAMULI IRENE** by the High Court of Uganda at Kampala **vide High Court Family Cause No. 026 of 2005** (A copy of the Ruling and Orders are attached hereto as annexures “**J1**” and “**J2**” respectively).
20. That the joint Respondents’ contracts of service at St. Francis Hospital, BUTALEJA will terminate in March 2007 and the Respondents will relocate to South Africa, their home country thereafter. (Copy of the letter showing expiry of the Respondents’ contracts is attached hereto and marked as annexure “**K**”
21. That the joint Respondents will find it difficult and costly to stay in Uganda beyond March 2007 and to be able to foster the child **NAMULI IRENE** for the remainder of the required statutory period of 36 months.
22. That the joint Respondents would find it more difficult to obtain adoption of the children in issue in South Africa if the same is not granted to the joint Respondents by this Honorable Court while the joint Respondents are still in Uganda.
23. That both children would miss rights and benefits which accrue to south African citizens which otherwise would have accrued to them.
24. That the joint Respondents believe that the above do constitute exceptional circumstances where this Honorable Court should exercise its discretion to dispense with the statutory requirement for the Respondents to have fostered the children, the subject of the adoption for an aggregate period of 36 months under the supervision of a Probation and Social Welfare Officer.
25. That it is in the interests of the welfare of the child **NAMULI IRENE** that adoption of the said children be granted to the joint Respondents in the circumstances.
26. That the joint Respondents affirm that an adoption order made by this Honorable court will be respected and recognized in South Africa, the country of origin of the joint Respondents and produce letter from the Italian Consul annexed hereto as “**L**” as proof thereof.
27. It is proposed that the costs of this petition be paid by the Respondents **WAGUBI EMMY** and **WAGUBI EMMA**.

WHEREFORE, The Respondents pray:

- a) That an order for adoption of the child **NAMULI IRENE** by the Respondents be made under the Children Act with all the necessary directions.
- b) That the costs of this petition be provided for as above mentioned or otherwise as the court may direct.
- c) That such further or other order be made as the nature of the case may require.

Signed Respondent

Signed Respondent

All in the presence of; Witness

NAME:

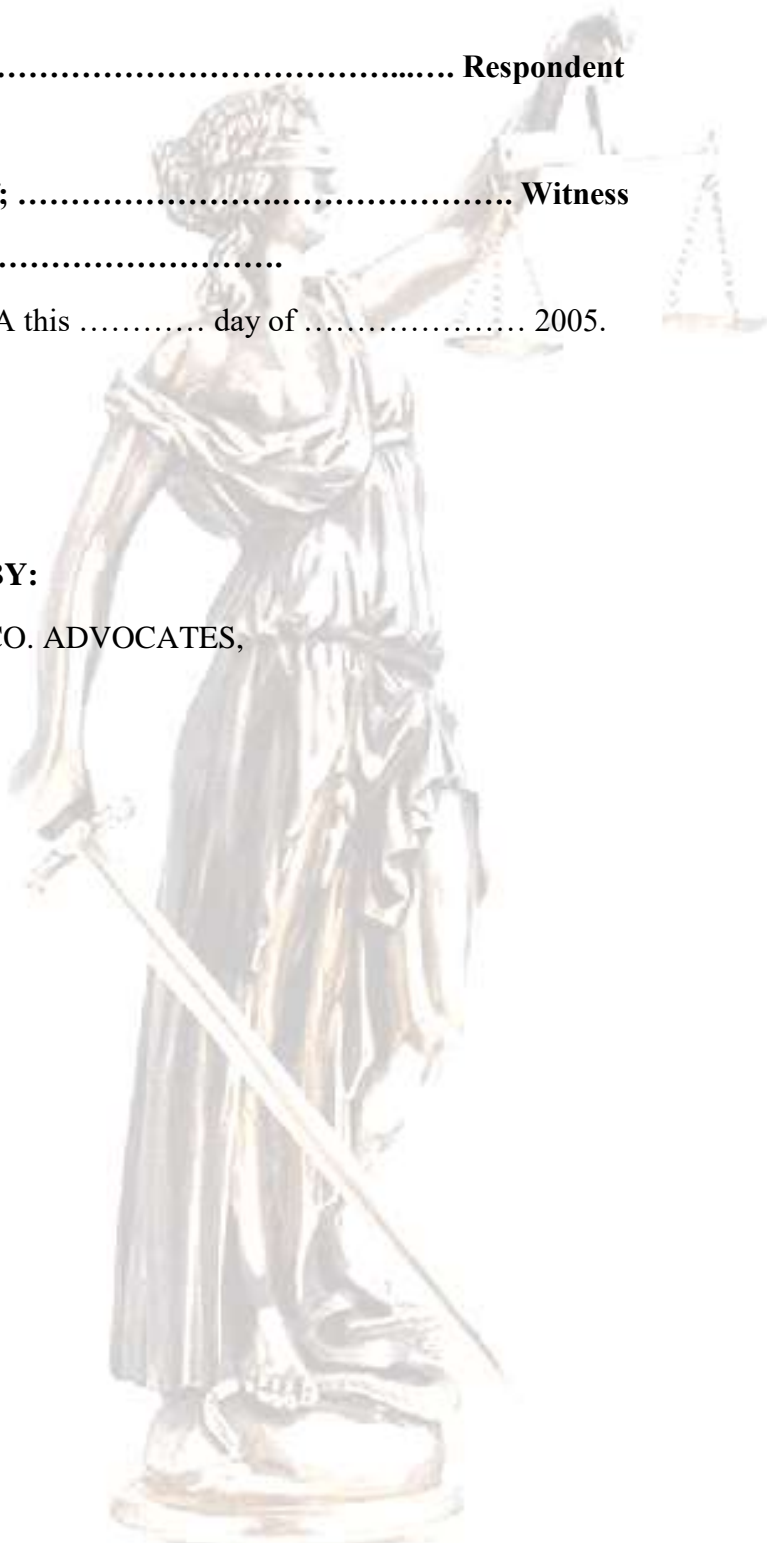
DATED at KAMPALA this day of 2005.

DRAWN & FILED BY:

SUI GENERIS AND CO. ADVOCATES,

P.O Box 0000,

KAMPALA.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

ADOPTION CAUSE NO. OF 2005

IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

IN THE MATTER OF NAMULI IRENEA CHILD OF BUTALEJA PARISH, BUTALEJA SUB-COUNTY, , BUTALEJADISTRICT.

RESPONDENTS' SUMMARY OF EVIDENCE.

The Respondents will state that they do not have any criminal record in South Africa or Uganda or any other country. The Respondents will further state that they have neither received nor agreed to receive nor has any person made or given or agreed to give or make to the Respondents any payment or reward in consideration of the adoption of the child **NAMULI IRENE**. The Respondents will also state that they have fostered the said children since 4th day of November 2004 under the supervision of the probation and social welfare officer and that they been granted guardianship of the said children. They will seek that the Honorable Court dispenses with the statutory requirement that they need to have fostered the children in issue for a period of 36 months due to exceptional circumstances of the instant case. And that it is in the interests of the welfare of the said children that the Respondents should be appointed guardians of the said children.

LIST OF WITNESSES:

1. WAGUBI EMMY
2. WAGUBI EMMA
3. Chairman LC1, BUTALEJA
5. His Lordship, Bishop of Tororo Catholic Diocese
7. Any other with leave of court

LIST OF DOCUMENTS TO BE RELIED ON:

1. The Respondent's entry permits
2. The Marriage Certificates of the joint Respondents
3. Translation of the Marriage Certificates
4. Passports of the joint Respondents
5. Certificates of Good Conduct of the Respondents
6. Translation of the certificates of Good Conduct
7. Certificates of Good Criminal Record from Interpol
8. Recommendation letters from Chairman LC1 BUTALEJA; Rt. Rev., Bishop of Tororo Catholic Diocese; Social Welfare Officer.
9. Birth Certificates of the Infant
8. Probation and Welfare Report
9. Sworn Statements of the Probation and Welfare Officer, Tororo
10. Certificates of Good Health of the infants
11. Ruling and Order of the High Court in Guardianship Application
12. Letter confirming expiry of the Respondents' contracts of service in Uganda
13. Letter from the South African Embassy
14. Any other to be tendered with leave of court.

LIST OF AUTHORITIES:

1. The Constitution of Republic of Uganda 1995.
2. The Children's' Act Cap 59
3. The Adoption of Children's Rules, S.I. No. 59-1
4. Re Namukasa Annie Sanyu Small Misc. Appl No. 58 of 1998.
5. Re Margaret Laker and Another Adoption cause No. 3/1998.
6. Re Ali Issa Abdi Misc. Appli. No. 904/1997.
7. In Re Moses Kirabo Clay. Adoption Cause No. 30 of 2004.

OBJECTION MY LORD

8. In Re M (an infant Civil S.C. Appeal No. 22 of 1994.
9. Edward Byaruhanga Katumba –Vs- Daniel Kiwalabye Rusoke, Court of Appeal Civil Appeal No. 2 of 1998.
10. Any other to be tendered with leave of court.

DATED at KAMPALA this Day of 2005.

.....
**FOR: SUI GENERISAND CO. ADVOCATES
COUNSEL FOR THE RESPONDENTS.**

DRAWN & FILED BY:

SUI GENERISAND CO. ADVOCATES,
P.O Box0000,
KAMPALA.

**THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF BUIKWE
ADOPTION CAUSE NO.01 OF 2018**

IN THE MATTER OF THE CHILDRENS ACT AS AMMENDED

AND

**IN THE MATTER OF LUKA MUKASA (A CHILD) OF
BUSEMEYI VILLAGE, LIVERU IN BUIKWE DISTRICT**

PETITION FOR ADOPTION OF A CHILD

The petition of Kenneth Okot of SUI GENERIS AND CO ADVOCATES, P.O BOX0000, KAMPALA and Suzan Okot his spouse of the same address states as follows:

1. The petitioners are desirous of adopting the child LUKA MUKASA under the provisions of the children's act.
2. The petitioners are resident at Busemeyi village, Lweru sub county Buikwe District of Uganda and are citizens of Uganda
3. The petitioner is legally married (annexed is marriage certificate)
4. The petitioner Kenneth Okot is by occupation a career missionary and the co-petitioner Susan Okot is by occupation a career missionary
5. The petitioner Kenneth Okot is 45 years of age (1st Jan 1994) and the co –petitioner Susan Okot is 40 years of age (6th June 1979). Annexed are their birth certificates)
6. The petitioners have resident with them the following persons namely, Samuel Okot (son) aged 3 years.
7. The petitioners Kenneth Okot and Susan Okot are not related to the child
8. The child, Luka Mukasa is of male sex, unmarried, a child of Mukasa Musa, whose whereabouts are unknown and of Sarah Nankya who is deceased, a citizen of Uganda, aged 8 years, having been born at Busemeyi village, Luweru Buikwe district now in the actual custody Kenneth Okot and Suzan Okot of Busemyi village, luweru sub county, Buikwe district under the guardianship of Kenneth Okot and Suzan Okot of Busemeyi village, Luweru sub county in Buikwe district
9. The petitioners Kenneth Okot and Suzan Okot annex the following consents required under the children's act.
 - a) Name of person, relationship, age of consent
10. The child, Luka Mukasa has not been the subject of an adoption order or of an application or petition for an adoption order.

OBJECTION MY LORD

11. The petitioners have not nor has either of them received or agreed to receive and no person has made or given or agreed to make or give to the petitioners or either of them any payment or reward in consideration of the adoption of the child, LUKA MUKASA.
12. The child, LUKA MUKASA has been fostered by the petitioners since the 21st June 2017, under the supervision of ZAINA NAMATA, approbation and social welfare officer, whose report is attached to this petition.
13. It is proposed that the costs of this petition shall be paid by the petitioners.

The petitioners pray:

- a) That an order for adoption of the child LUKA MUKASA by the petitioners be made under the children act with all necessary directions
- b) That the costs of this petition be provided for as above mentioned or otherwise as the court may direct
- c) That such further or other order be made as the nature of the case may require.

Signed by

KENNETH OKOT
PETITIONER

SUZAN OKOT
CO-PETITIONER

Witnessed by

1. SUI GENERIS

2. ZAINA NAMATA

ADVOCATE
SOCIAL WELFARE OFFICER BUIKWE DISTRICT.

DISTRICT PROBATION AND

- Application should be verified by an affidavit in support
- Attach all documents to be relied on
- Summary of evidence

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
ADOPTION CAUSE NO.01 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59 AS AMENDED AND
IN THE MATTER OF LUKA MUKASA (A CHILD) OF

BUSEMEYI VILLAGE, LWERU SUB COUNTY, BUIKWE DISTRICT

PETITION FOR ADOPTION OF A CHILD

The petition of Kenneth Okot of SUI GENERIS AND CO ADVOCATES P.O BOX0000, KAMPALA, In Uganda and 40 ORR ST. ATTENBORO MB 02663, UNITED STATES OF AMERICA and Susan Okot his spouse, of the same address states as follows.

1. The petitioners are desirous of adopting the child LUUKA MUKASA under the provisions of the children act.
2. (a) The petitioner Kenneth Okot of Busemeyei village, Luweru sub county Buikwe District, Uganda is a citizen of Uganda and stays at the mentioned address.
(b) The co-petitioner, Suzan Okot of Busemeyei village, Luweru sub county, Buikwe district, Uganda is a citizen of the United States of America who first arrived in Uganda on 10th October 2010 and has stayed at the above-mentioned address.
3. The petitioner Kenneth Okot was married to the co-petitioner, Suzan Okot on the 6th June 2015 (marriage certificate is attached to this petition as annexure A)
4. The petitioner Kenneth Okot is by occupation a career missionary and the co-petitioner Suzan Okot is by occupation a career missionary
5. The petitioner Kenneth Okot is 45 years of age (1st Jan 1974) and the co-petitioner Suzan Okot is 40 years of age (6th June 1979). (annexed are their birth certificates)
6. The petitioner, Kenneth Okot and the co-petitioner Suzan Okot are not, nor is either of them related to the child
7. (a) The petitioner Kenneth Okot annexes marked “Annexure C” from Uganda police showing that he does not have a criminal record and affirms he does not have a criminal record in Uganda or any other country.
b) The co-petitioner Suzan Okot annexes a certificate marked “D” that she does not have a criminal record from the Texas police department of the United States of America and affirms that she does not have a criminal record in Uganda or any other country.
8. The petitioner Kenneth Okot and Suzan Okot attach a recommendation concerning their suitability to adopt a child from (name recommended) of the probation and welfare office of Texas in USA, the country of origin of the petitioner.
9. The petitioners have resident with them the following person, namely, Samuel Okot their son aged 4 years.
10. The child, Luuka Mukasa is of the male sex
 - A child of Mukasa Musa, whose whereabouts are unknown

OBJECTION MY LORD

- And of Sarah Nankya aged 8 years having been a citizen of Uganda, aged 8 years having been born at Busemeyi village on the 14th February 2011, resident at Busemeyi village, Luweru sub county Buikwe district now in actual custody of Kenneth Okot and Suzan Okot of Busemeyi village, Luweru sub county Buikwe district under the guardianship of Kenneth Okot and Suzan Okot of Busemeyi village, Lweru sub county in Buikwe district.

11. The petitioners Kenneth Okot and Susan Okot annex the following consents marked “C” as required under the children act

a) Name of person relationship of date of consent

Consenting child

12. The child LUUKA MUKASA has not been the subject of an adoption order as of an application or petition for an adoption order
13. The petitioners have not nor has either of them received or agreed to receive and no person has made or given or agreed to make or give to the petitioners or either of them any payment or reward in consideration of the adoption of the child LUKA Mukasa.
14. The child, LUUKA MUKASA has been fostered by the petitioners since the 21st June 2017 under the supervision of Zaina Namata, a probation and social welfare officer, whose report is attached and marked “E”
15. The petitioners affirm that an adoption order made by this honorable court will be respected and recognized by the United States of America the country of origin of the co-petitioner Suzan Okot and produces a sworn statement annexed marked “F” to that effect.
16. It is proposed that the costs of this petition shall be paid by the petitioners, Kenneth Okot and Suzan Okot.

The petitioners pay

- a) That an order for the adoption of the child, LUKA MUKASA by the petitioners be made under the children act with all necessary directions
- b) That the cost of this petition be provided for as above –mentioned or otherwise as the court may directly and
- c) That such further or other order who made as the nature of the case may require.

DATED this 5th day of December 2019

Signed by

KENNETH OKOT SUSAN OKOT

PETITIONER CO-PETITIONER

In witness of

SUI GENERIS ZAINA NAMATA

SUI GENERIS AND CO ADVOCATES DISTRICT PROBATION AND SOCIAL WELFARE OFFICER
BUIKWE DISTRICT.ADVOCATE

- Verify with affidavit
- Summary of evidence
- Summons.



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
ADOPTION CAUSE NO.01 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59
AS AMENDED AND
IN THE MATTER OF LUKA MUKASA (A CHILD) OF
BUSEMEYI VILLAGE, LWERU SUB COUNTY, BUIKWE DISTRICT

ADOPTION ORDER

On reading the petition of KENNETH OKOT AND SUZAN OKOT, and the affidavit of KENNETH OKOT AND SUZAN OKOT and the exhibits annexed to them which included, a marriage certificate for the petitioners, birth certificates of the petitioner, the child's birth certificate, certificate of good conduct from their respective country police departments, probation and social welfare reports and on hearing (name person heard) and the evidence of:

a) Names and address.

And the court being satisfied that the declarations contained in the petition are true and being also satisfied with the undertaking of Kenneth Okot and Suzan Okot as to the care and protection and other provisions to be made for the child, LUKA MUKASA and being further satisfied that for the benefit of the child he could be adopted by Kenneth Okot and Suzan Okot and that all the requirements of the children act have been complied with:

IT IS HEREBY ORDERED that:

Kenneth Okot and Suzan Okot be authorized to adopt the child.

And it is ordered that the parties to their proceedings other than Kenneth Okot and Suzan Okot recover their costs against Kenneth Okot and Suzan Okot, the costs to be taxed by the registrar and it is ordered that Kenneth Okot and Suzan Okot pay the amount of the costs when taxed to the registrar this court within 14 days after the date of the certificate of taxation

And it is ordered that the parties to these proceedings other than Kenneth Okot and Suzan Okot recover their costs against Kenneth Okot and Suzan Okot, the costs to be taxed by the registrar this court within 14 days after the date of the certificate of taxation.

And it is directed that the registrar of births and death shall make an entry recording this adoption in the adopted children register in the form set out in form H.

Dated this 5th day of December 2019 at Mukono.

JUDGE OF THE HIGH COURT.



GUARDIANSHIP

A guardian in **Section 1(k) of the Children's Act** as a person vested with the parental responsibility of a child. The fallacy with guardianship is that the child does not take on the rights from the guardian in relation to inheritance.

In the matter of ONEN CLIFF MILLS AND LAKER JOY ONEN, MISC APP NO.22 OF 2018, Stephen Mubiru J defined guardianship as a legal relationship between a competent adult (guardian) and a person who because of incapacity such as minority, is incapable of taking care of his or her own affairs (the ward).

He further defined a guardian as a person who is given the legal power to make decisions for another person because he or she is considered not competent to decide for himself/herself

Section 1 (W) of the Children Act as amended defines a guardian as a person having parental responsibility for a child.

Functions of a guardian

In the matter of ONEN CLIFF courted that the functions of a guardian are:

1. Make decisions on behalf of a ward relating to legal, financial, shelter, education, food and health care decisions though he or she may be required to seek court approval for various decisions especially those regarding the investment and disposal of the property of the ward.
2. Guardian acts as legal parent of the ward for the entirety of the guardianship. Although the guardian has the same responsibilities to care for the child as a parent would a guardianship does not sever the legal relationship that exists between a child and his or her biological parents. Instead, it co-exists with that legal relationship.

DUTIES OF GUARDIAN

1. Utmost good faith (men case)
2. Avoid conflict of interest
3. Duty to act in the best interest of the child. (onen case)

TYPES OF GUARDIANSHIP

1. Legal guardianship

- Section 43A and 43B of the Children Act.

2. Customary guardianship.

➤ **Section 43C of the Children Act**

- **Section 43C (1)** states that family members may appoint a guardian of a child in accordance with their customs, culture or tradition where both parents of the child are deceased or cannot be found, the surviving parent is incapacitated or the child has no guardian or any other person having parental responsibility for him or her.

The person as per **Section 43C (2) Acts** as a trustee in respect of the property of the child.

3. Testamentary guardian.

This is a guardian appointed in the last will of the deceased. Such a person is recognized under common law as a testamentary guardian.

4. Guardian by agreement.

A parent of a child may pursuant to **Section 43D (1) of Children Act** by agreement/deed appoint any person to be a guardian.

The appointment is only effective under **Section 43D (2)** if the agreement/deed is dated and signed by the parent in the presence of two witnesses one of whom must be a probation and social welfare officer and other must be a local councilor at LC 1 level.

HOW TO APPLY FOR LEGAL GUARDIANSHIP

FORUM

Pursuant to Section 43B (b) of Children Act, an application for legal; guardianship is made to the high court.

WHO CAN APPLY FOR LEGAL GUARDIANSHIP?

- 1) Applicant must be a citizen of Uganda. **Section 43A (2)**
- 2) Must be above the age of 18 years.

CONSIDERATIONS FOR GRANT OF LEGAL GUARDIANSHIP

There are pursuant to S.43F (1) and they are:

- a) There is no known relative or Next of kin of the child.
- b) The relatives or next of kin are unwilling or unable to take parental responsibility of the child
- c) All alternative care options available to the child have been exhausted

OBJECTION MY LORD

- d) The child is suffering or likely to suffer significant harm under present custody.
- e) Wishes of the child having regard to their age.
- f) Consent of the child to the guardianship where the child is 12 years and above
- g) Applicant has continuously lived in Uganda for at least 3 months. (**Section 43F (2)(a)**)
- h) Applicant has no criminal record (**Section 43F(2)(B)**)
- i) A recommendation concerning his or her ability as a guardian from a probation and social welfare officer or other competent authority in Uganda or applicant's county of residence (**Section 43F (2)(c)**).

PROCEDURE

The petition is pursuant to **Section 43B(C) of Children Act** by petition in Form 1 set out in the 3rd schedule and subject to **Section 43B(d)** be accompanied by a report of the probation and social welfare officer

An affidavit verifying the petition must be deponed

Where you want to sell the property of a minor

- Petition for legal guardianship
- Extract an order
- Write a formal letter to the registrar of title at ministerial zonal office where land is located requesting it to be registered in guardians' names
- You can transact in the property in guardians' names
- You can transact in the property for the best interest of the child once registered.

IT MUST BE NOTED THAT THE RESPONSIBILITY COVERS THE FOLLOWING:

Parental responsibilities

Parental appointments

Cultural Obligations

IN RELATION TO CAPACITY TO APPLY TO BE A GUARDIAN,

It must be noted that there is no clear-cut legal provision on this. To this end therefore, on the strength of the case of; **IN THE MATTER OF AYL MAYANJA; MISC. APPLICATION 20 OF 2003** the following person can apply to be guardians:

Biological parents;

Any relative;

Any person not related to the child;

Any person above 18 years of age; of sound mind

It must be noted that court follows the welfare principles before one is appointed as guardian to the child.

PROCEDURE FOR APPLYING FOR GUARDIANSHIP

Application is by notice of motion supported by an affidavit. This is because there is no clear-cut procedure and therefore, we are enjoined to use the default mode of application under **Order 51** of the **Civil Procedure Rule SI 71-1**. This is fortified by the case of **RE KANGAME TERES (AN INFANT) (1996) HCB 69** where court held that the procedure in applying for a guardianship order is by notice of motion supported by an affidavit.

DOCUMENTS:

- Notice of Motion supported by an affidavit;
- Summary of evidence;
- List of Authorities;
- List of Documents;
- List of witnesses;

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

MISCELLANEOUS APPLICATION NO OF 2005

IN THE MATTER OF NAMULI IRENE

AND

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP

BY DR. BOB DOYA

NOTICE OF MOTION

OBJECTION MY LORD

(Under Articles 139 (I) and 34 (I) and (2) of the 1995, Sections 14, 33 and 39 of the Judicature Act, Cap 13, Section 98 of the CPA Cap 71, Sec 3,4, 5, and 6 of the Children Act Cap 59, and 0.51 r.r. 1,2 and 3 of the CPR S.1 71-1).

TAKE NOTICE that this Honorable Court will be moved on theday of2006 atO'clock in the forenoon or so soon thereafter as Counsel for the Applicants can be heard in an application for orders:

1. THAT the Applicant be appointed guardian of the infant, **Namuli Irene**
2. THAT the Applicant be granted custody of the said infants.
3. THAT costs of this application be provided for.

TAKE FURTHER NOTICE that this application is premised on the following grounds:-

1. THAT the infant' parents are unknown and the said infant is in dire need of care and protection.
2. THAT the welfare of the said infant will be better served if the infant is placed under the guardianship and custody of the Applicant.
3. THAT applicant is a suitable person and has the means to cater for the infant.
4. THAT it is in the best interests of the infant that the Application be granted.

TAKE FURTHER NOTICE that further and other grounds of the Application are contained in the affidavit of **DR. BOB DOYA** dated the day of2005 and filed herein which shall be read and relied upon at the hearing of this Application.

DATED at KAMPALA this..... day of.....2005.

.....
FOR: SUI GENERISAND CO. ADVOCATES
COUNSEL FOR THE APPLICANTS

GIVEN UNDER my Hand and the Seal of the Court this.....day of.....2005.

.....
DEPUTY REGISTRAR

(FAMILY)

DRAWN & FILED BY:

SUI GENERISAND CO. ADVOCATES,

P.O.BOX0000, KAMPALA

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
MISCELLANEOUS APPLICATION NO. OF 2005
IN THE MATTER OF NAMULI IRENE – INFANT
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP
BY DR. NAMUKASA MARIA ROSE

OBJECTION MY LORD

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION:

I, **DR. NAMUKASA MARIA ROSE** of St. Francis BUTALEJA Hospital P.O. Box 22004, BUTALEJA, do hereby swear and sincerely state as hereunder: -

1. THAT I am an adult female Italian citizen of sound mind and the **2nd** Applicant herein and swear this affidavit as such.
2. THAT the plight of the infant, **Namuli Irene** was drawn to our attention when I visited BUKOTO Babies Home in September 2003 whereat I were informed by a social worker volunteer at BUKOTO Babies Home which I verily believed to be true that the said infant was abandoned children with unknown parents. (See a copy of Sworn Statements of Ntege James, Probation & Social Welfare Officer, Mukono, attached hereto and marked as **Annexure “C1”**).
3. THAT I was further informed by the authorities of BUKOTO Babies Home which we verily believed to be true that the said infant was in dire need of care and protection.
4. THAT after thorough discussions and mutual consultations, I applied and was granted Fostership of the said infant by the Family and Children Court of BUTALEJA and have fostered the said infant since **29th day of December 2003**. (See copies of the orders attached hereto and marked as **Annexures’ “D1”, and “D2”,** respectively).
5. THAT after thorough discussions and mutual consultations, I have decided to apply for guardianship of the said infants.
6. THAT I am better placed to cater for the welfare of the said **Namuli Irene**, aged 4 years respectively while under my guardianship and physical custody (See Birth Certificates of the said infant marked as **Annextures “D3”**
7. THAT the Applicant is desirous of taking the said infant with him to Kenya upon the expiry of his respective contracts.
8. THAT I have clearance from the Kenya High Commission and Certificate of Good Conduct from the Kenyan Director of Public Prosecutor shows that the orders of the High Court of Uganda would be recognized by the Kenyan Juvenile Court and my suitability to adopt the infant. (See copies of the Certificates of good conduct and their translations attached as **Annextures “E1”, “E2”, “E3”, and “E4”** and a letter from the Kenyan High Commission, attached hereto and marked as **Annexure “F1”**).
9. THAT the 1st Applicant and I do not have a criminal record in Uganda or any other country. (See Clearance Certificate from Interpol for both Applicants, marked as **Annextures “G1” and “G2”** respectively).

ISAAC CHRISTOPHER LUBOGO

- 10. THAT the child welfare and adoption society do not object and have thus recommended our guardianship of the infant, **Namuli Irene** (See recommendation from child welfare and adoption society annexed hereto and marked as **Annexure’s H**”).
- 11. THAT the said **Namuli Irene**, is of good health and have not been subject of guardianship order before. (See copies of certificates of good health annexed hereto and marked as **Annexures “H1”** and **“H2”** respectively).
- 12. THAT I have neither received nor agreed to receive and no person has made or given or agreed to make or give me any payment or reward in consideration of the guardianship of the child, **Namuli Irene**.
- 13. THAT the welfare and interests of the infant will be better served when I am granted the order of guardianship and physical custody of the said infant. (See Welfare Guardianship Report and recommendations annexed hereto and marked as **Annexures “I1”, “I2”, “I3”, “I4”, and “I5”** respectively).
- 14. THAT I depone this affidavit in support of my application to this Honorable Court for Order of Guardianship.
- 15. THAT whatever I have stated in **paragraphs 1, 2, 3, 4, 5, 8, 9, 10, 11,12, 13, 14, and 15** are correct and true to the best of my knowledge and belief and whatever I have stated in paragraphs **6 and 7** is true and correct according to my information from the sources disclosed therein.

SWORN at Kampala by me the said }
DR. NAMUKASA MARIA ROSE }
 this.....day of.....2005. }

DEPONENT
 BEFORE ME: -

A COMMISSIONER FOR OATHS

DRAWN & FILED BY:
 SUI GENERIS and co. Advocates
 P.O.BOX0000

OBJECTION MY LORD

Kampala



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.02 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59 AS
AMENDED AND
IN THE MATTER OF KAKURU LUCAS AND KATO DEO
(CHILDREN) OF KAUGA VILLAGE, MUKONO DISTRICT

PETITION FOR GUARDIANSHIP

The petition of NATURINDA DORCUS OF SUI GENERIS AND CO ADVOCATES, P.O BOX0000, and KAMPALA AND NEISER STREET 20 JEVER GERMANY states as follows:

1. The petitioner is desirous of obtaining legal guardianship of the children, Kakuru Kucas and Kato Deo under the provisions of the children act
2. The petitioner Natukunda Dorcus of kauga village, Mukono district is a citizen of Uganda and stays in Uganda at kauga village, Mukono district
3. The petitioner is unmarried
4. The petitioner Naturinda Dorcus is by occupation a coffee exporter
5. The petitioner is 45 years of age (6th June 1974). Attached and marked annexure “A” is my birth certificate
6. The petitioner Naturinda Dorcus is related to the children kakuru Lucas and Kato Deo being their paternal aunt.
7. The petitioner Naturinda Dorcus annexes a certificate marked “B” that she does not have a criminal record and affirms that she does not have a criminal record in Uganda or any other country.
8. The petitioner Naturinda Dorcus attached a recommendation concerning her suitability to be a huardian to the children from Zaina Namata, the probation and social welfare officer of Mukono
9. The petitioner has no other person resident with her except the children.
10. The children Kakuru Lucas and Kato Deo are:
 - a) Of the male sex
 - b) Unmarried

OBJECTION MY LORD

- c) Children of Jackson Twesigye whose whereabouts are unknown and of Jovita Ankunda of Naguru, Nakawa division, Kampala.
- d) They are citizens of Uganda
- e) One year of age having been born at Mukono the 2nd December 2018
- f) Resident at kauga,mukono district
- g) Now in the actual custody of the petitioner, Naturinda Dorcus and under her guardianship

11. The children have not been the subject of a guardianship order or of an application or petition for a guardianship order.

12. The petitioner has not received or agreed to receive and no person has made or given any payment or reward in consideration of the child.

13. The petitioner undertakes that:

- a) She shall care for kakuru Lucas and Kato Deo as though they were my own children
- b) She will bring them up in accordance with the Anglican religion
- c) She will look after their health and allow them to be medically examined as required by the district probation and social welfare office
- d) She shall allow an officer of the district probation and social welfare office or representative of the ministry to visit my home and to see the child at any time.
- e) She shall inform the district probation and social welfare office immediately if the child is ill or is missing or is involved in an accident or in any kind of trouble.
- f) She shall inform the district and social welfare office immediately if she plans to change residence and address.
- g) She understands that an officer of the district probation and social welfare has the right to remove the child from our home in certain circumstances.

14. The petitioner affirms that this guardianship order made by this honorable court will be respected and recognized by Germany the petitioner's other country of residence.

15. It is proposed that the costs of the petition shall be paid by the petitioner Naturinda Dorcus.

The petitioner prays

- a) That an order for guardianship the children Kakuru Lucas and Kato Deo, by the petitioner be made under the children act will all necessary directions.
- b) That the petitioneris authorized to SELL the land described asand registered in the name

ISAAC CHRISTOPHER LUBOGO

- c) That the cost of this petition be provided for as above mentioned or otherwise as the court may direct and
- d) That such further or other order be made as the nature of the case may be

Dated this 5th day of December 2019

Signed by

NATURINDA DORCUS

PETITIONER

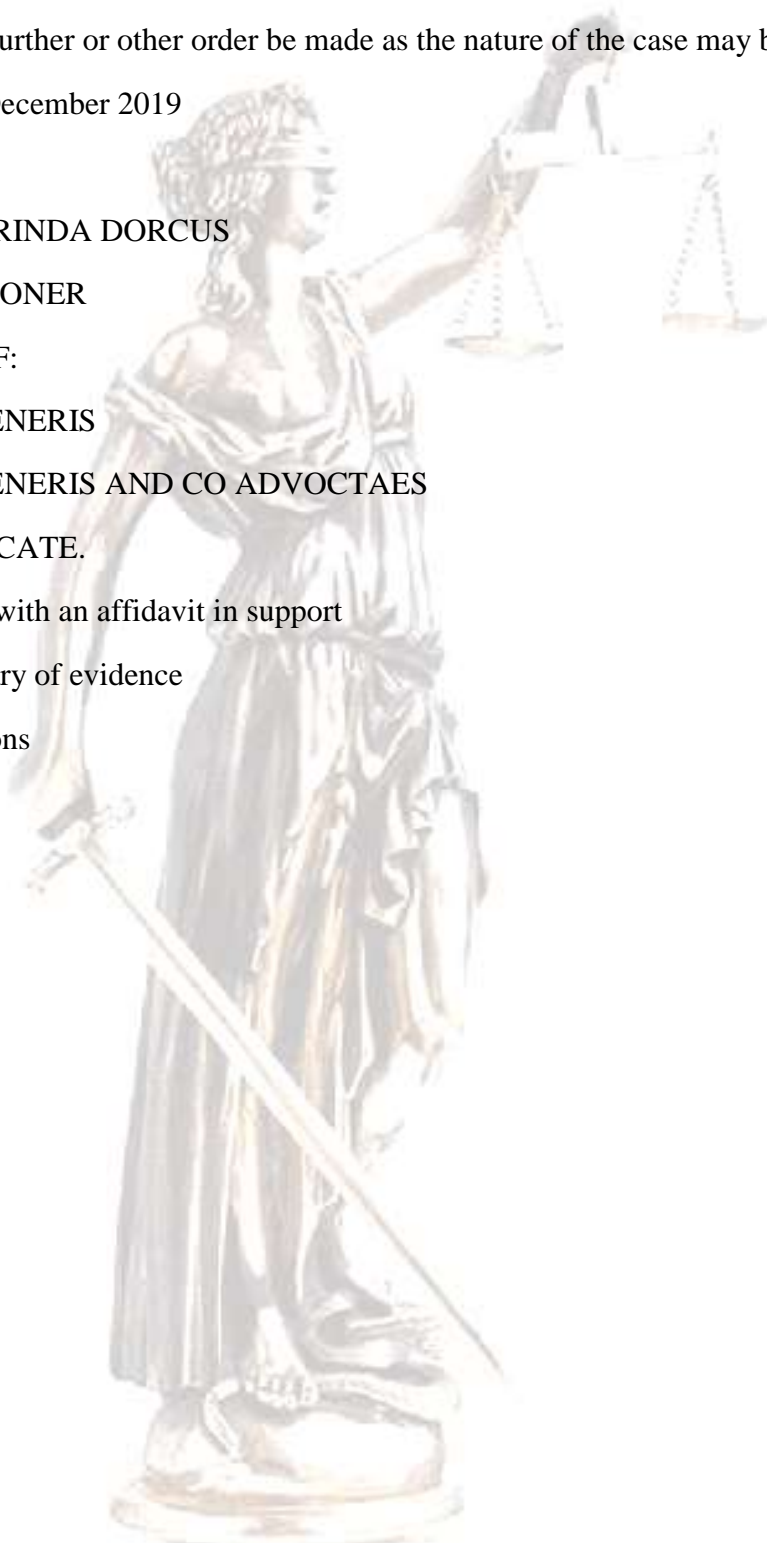
IN THE WITNESS OF:

SUI GENERIS

SUI GENERIS AND CO ADVOCATAES

ADVOCATE.

- Verify with an affidavit in support
- Summary of evidence
- Summons



OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
MISCELLANEOUS APPLICATION NO OF 2005
IN THE MATTER OF NAMULI IRENE– INFANT
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP
BY DR. NAMUKASA MARIA ROSE

SUMMARY OF EVIDENCE:

The Applicant a Kenyan doctor at Butaleja Hospital in Uganda. The applicant is seeking legal guardianship and custody of the foundling, namely **Namuli Irene**, currently in her fostership. The applicant is well suited to cater for the foundlings' welfare. The Applicant's home country will respect the orders of this Honourable Court.

LIST OF WITNESSES:

1. DR. NAMUKASA MARIA ROSE
2. Officers from Butaleja Hopital, Kampala
3. Any other with leave of court.

LIST OF DOCUMENTS TO BE RELIED ON:

1. Passports of the Applicant.
2. The Marriage Certificate of the joint Applicant.
3. Certificates of Good Conduct of the Applicants.
4. Translation of the Certificates of Good Conduct.
5. Letter from the Kenyan High Commission.
6. Recommendation letter from Child Welfare and Adoption Society.
7. Certificates of Good Health of the infants.

8. Birth Certificates of the infants.
9. Recommendation from LC1 Chairman, Butaleja Professionals.
10. Probation and Welfare Report.
11. Certificates of Good Conduct from Interpol.
12. Fostership documents.
13. Fostership Order.
14. Any other to be tendered with leave of court.

LIST OF AUTHORITIES:

1. The Constitution of the Republic of Uganda, 1995.
2. The Judicature Act Cap 13.
3. The Children Act Cap 59.
4. The Civil Procedure Act Cap 71.
5. The Civil Procedure Rules S.1 65-3
6. In Re Jane Namukasa - an infant H.C Misc. Applic. No. 78 of 1991.
7. In Re Okot Lawrence Ikeda and Beatrice Ikeda – Both infants H.C Misc. cause. No. 229 of 1993.
8. In Re Prossy Nalugwa – an infant H.C Misc. Applic. No. 500 of 1997.
9. In Re Sarah Namakula Misc. Applic. No. 91 of 1993.
10. In Re Erisa Lukwago Junior C.V FC 1 of 2003.
11. Any other with leave of court.

DATED at KAMPALA this..... day of.....2006.

.....
FOR: SUI GENERIS AND CO. ADVOCATES
COUNSEL FOR THE APPLICANT

DRAWN & FILED BY:

OBJECTION MY LORD

SUI GENERIS AND CO. ADVOCATES,
P.O. BOX 0000, KAMPALA.



GUARDIANSHIP ORDER EXTRACTED.

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.2 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59
AS AMENDED) AND
IN THE MATTER OF A PETITION FOR LEGAL
GUARDIANSHIP OF KAKURU LUCAS AND KATO DEO
(CHILDREN) BY DORCUS NATURINDA**

ORDER.

This petition coming up for final disposal before Justice SUI GENERIS, in the presence of Dorcus Naturinda, the petitioner, Kakuru Lucus and Kato Deo (children) and Joel Lumala, counsel for the petitioner.

IT IS HEREBY ORDERED THAT:

DORCUS NATURINDA is hereby appointed the LEGAL GUARDIAN OF KAKURU LUCAS AND KATO DEO (CHILDREN).

GIVEN under my hand and the seal of this Honorable court this 5th day of December 2019

REGISTRAR

Extracted by

SUI GENERIS AND CO ADVOCATES.

OBJECTION MY LORD

**GUARDIANSHIP ORDER EXTRACTED WHERE THE GUARDIAN
SEEKS TO TRANSFER PROPERTY REGISTERED IN MINOR'S
NAMES.**

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.3 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59
(AS AMENDED AND
IN THE MATTER OF A PETITION FOR LEGAL
GUARDIANSHIP OF TOFA RUKUNDO (A CHILD)
BY BETH BEKUNDA**

ORDER

This mother coming up for final disposal before justice SUI GENERIS on this 5th day of December 2019 in the presence of both Bukunda, the petitioner, TOFA RUKUNDO (A CHILD) AND Lumala Joel, counsel for the petitioner.

IT IS HEREBY ORDERED THAT:

1. Beth Bekunda is hereby appointed LEGAL GUARDIAN of Tofa Rukundo (Aged 7)
2. Beth Bekunda is authorized to sell land described asand registered in the name of Tofa Rukundo (a child)
3. Beth Bekunda shall apply the proceeds of the sale of the said land for the welfare of Tofa Rukundo (a child)
4. This order shall be registered with URSB and the ministry of Gender, Labor and social develot.

GIVEN UNDER my hand and seal of this honorable court this 5th day of December 2019.

REGISTRAR

Extracted by:

SUI GENERIS AND CO ADVOCATES.

CHECKLIST

**MATTERS TO CONSIDER BEFORE GRANTING
CUSTODY OF CHILDREN GENERALLY**

The law applicable to this area of study includes the following;

1. The Constitution of the Republic of Uganda 1995
2. The Judicature Act cap 13
3. The Civil Procedure Act Cap 71
4. The Civil Procedure Rules SI 71-1
5. The Children Act Cap 59
6. The Children (Family and Children's Court) Rules SI 59-2
7. The Evidence Act Cap 6

The checklist for resolution includes the following:

1. Whether X can be granted custody of the children?
2. What is the forum, procedure and documents?

DISCUSSION

Custody of children is vested in the parents of a child. Court follows section 4 of the Children's Act in granting of custody. Thus, court follows the welfare principle. This is fortified by **NAKAGWA VS KIGUNDU [1978] HCB 310**. IN **ESTHER NAJJUMA MISC. APPLIC 21/2003**, court held that in looking at the welfare principle, court should put into consideration, the likely effects of any changes in the child's circumstances.

Court held further in **KAYONGA VS SEKIZIYIVU [1978] HCB 240** that where the children are of tender years, custody goes to the mother. In addition, court held in **HOFFMAN VS HOFFMAN (1970) EA 100** that a father's superior position is irrelevant in matters of custody. In **NYAKAIRU VS NYAKAIRU [1979] HCB 261**; it was stated among other things that a mother is a fit and proper person to have custody of the children unless it is shown that she is not a fit and proper person.

OBJECTION MY LORD

FORUM

The forum is the Family and Children's Court. This is because it is empowered to handle all matters affecting children.

PROCEDURE

The procedure is as follows;

The application is by way of petition to the Family and Children's Court in Form 1 to the Rules; supported by an affidavit

This petition is served on the Respondent who is expected to reply to the averments in the petition.

DOCUMENTS

Petition in Form 1 to the Rules

Affidavit

It must be noted that in this petition, one can include additional prayers like supervisory orders, care orders and maintenance order.

Secondly, if one has custody, then there is no need to apply for a custody order. One may however apply for a maintenance order.

MAINTENANCE OF CHILDREN

The law applicable to this area of study includes the following;

1. The Constitution of the Republic of Uganda 1995
2. The Judicature Act cap 13
3. The Civil Procedure Act Cap 71
4. The Civil Procedure Rules SI 71-1
5. The Children Act Cap 59
6. The Children (Family and Children's Court) Rules SI 59-2
7. The Evidence Act Cap 6

The checklist for resolution includes the following:

3. Whether X can be granted maintenance of the children?
4. What is the forum, procedure and documents?

DISCUSSION

Maintenance of children is premised on Article 31(4) which imposes a responsibility on the parents to care for their children. This is fortified by the case of **MAYAMBALA VS MAYAMBALAHCCA 3 OF 1998**

The procedure for application for maintenance is by application by a person with custody of the children. This is premised on **rule 19 of the Family and Children's Court Rules**.

The Application takes the format of Form 2 to the Rules, and is supported by an affidavit.

PROVING PATERNITY & DECLARATION OF PARENTAGE

The law applicable includes the following:

1. The Constitution of the Republic of Uganda 1995
2. The Judicature Act cap 13
3. The Civil Procedure Act Cap 71
4. The Civil Procedure Rules SI 71-1
5. The Children Act Cap 59
6. The Children (Family and Children's Court) Rules SI 59-2
7. The Evidence Act Cap 6

The checklist for resolution includes the following:

1. Whether X has capacity to apply for a declaration of parentage?
2. What are the consequences of parentage?
3. What are the forum, procedure and documents?

Declaration of parentage is provided for in **section 67 of the Children Act Cap 59**. According to this section, for one to have capacity to make this application, the following should be proved:

OBJECTION MY LORD

1. One must be the mother or the father of the child in question
2. It should be before the child attains 18 years of age
3. Thirdly, it should be within three years after death of parent
4. The declaration can also be sought during pregnancy.

The consequences of declaration of parentage are clear in the act; thus; it establishes a blood relationship between the father or mother and the child.

Secondly it does not however confer custody on the person declared as a parent.

MPIRIRWE VS NINSABIMANA (1994) 4 ALR 88 enunciates some principles towards the jurisprudence of declaration of parentage, thus; court looks at closeness and resemblance, prior consistent statements and acts, and parents' names on the birth certificates.

Court noted further in **MWAMBO VS WANDOA (1965) EA 243** that Loose morals are not a defence, and that evidence should be corroborative in effect that it shows the man to be the father of the child. Court held further in **MOORE VS HEWITT (1947) KB 831** that if there is proof of association of person with the applicant, this can be good corroborative evidence.

In **SIMPSON VS COLON (1964) 1 ALL ER 262** court held that the question of resemblance is a guiding factor. In **CT VS MV (1969) EA 375**, court held that where a father admitted having sexual intercourse with the applicant within 4 months; the admission and the time span showed that the father was the parent of the child.

THE PROCEDURE FOR DECLARATION OF PARENTAGE IS AS FOLLOWS:

One fills out a complaint on oath form and submits it to the Chief Magistrate who will issue summons to person alleged to be mother or father of the child.

THE FORUM:

This is the Family and Children's Court as evidenced in section 16 of the Children's Act

THE DOCUMENT(S)

Form 2 in the schedule to the Rules



FORM 2: FOR DECLARATION OF PARENTAGE

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN'S COURT

IN THE MATTER OF

AND

IN THE MATTER OF AN APPLICATION FOR A

DECLARATION OF PARENTAGE

COMPLAINT ON OATH

I BEING THE Of the child do hereby apply for a declaration of parentage against being the of the child on the following grounds:

.....
.....
.....

sworn at this day of 2006

Complainant

Before me

Commissioner for oaths

Drawn and filed by:

SUI GENERIS and Co. Advocates

P.O.BOX0000,

Kampala, Uganda

SUCCESSION

This is governed by;

Succession Act Cap 162

Administration of Estates (Small Estates) (Special Provisions) Act Cap 156

Administrator General's Act Cap 157

Administration of Estates (Small Estates) (Special Provisions) Act Cap 156

Admin. of Estates (Persons of unsound mind) (Procedure) Rules SI 155-1

The Admin. of Estates (Small Estates) (Special Provisions) Rules SI 156-1

The Administrator General's Act Cap 157

The Administrator General's (Fees) Rules SI 157-1

The Evidence Act Cap 6

Succession is divided into either testate or intestate succession.

TESTATE SUCCESSION

The issues to consider under testate succession include the following:

(a) If one is desirous of making a will.

Whether X has capacity to make a will?

Who are the beneficiaries to the will?

Whether the property in question can be disposed of by will?

What additional information is needed to complete the will?

What is the formalities should be taken to make the will?

(b) If the will has already been made

Whether the will is valid?

OBJECTION MY LORD

Whether the beneficiaries named can gain under the will?

Whether the property in question can be validly disposed of by will?

Jurisdiction and applicability of the administration of estates (small estates) (special provisions) act

The succession Act provides in section 235 that the jurisdiction to grant probate and letters of administration shall be exercised by a High Court and a Magistrate's court in accordance with the Administration of Estates (Small Estates) (Special Provisions) Act





TESTATE SUCCESSION

Testacy is where a person dies when he has disposed of his property by a valid testamentary disposition commonly referred to as a will.

Section 36(1) of the Succession Act Cap 162 provides that every person of sound mind and not a minor may by will dispose of his property. A will is defined as a testamentary disposition of one's property. This is fortified by **HAJJI SULAITI VS HAJJATTI SANYU**⁹ by Byamugisha J.

A codicil on the other hand is defined in **section 2 (c) of the Succession Act** as an instrument explaining, altering or adding to a will and which is considered as being part of the will. A form of the will is provided for in the 4th schedule to the Act.

CAPACITY TO MAKE A WILL

Capacity to make a will is enunciated in **BANK VS GOODFELLOW**¹⁰ where court held that one should understand the effect of a will and not simply the fact that one can make a will.

It must be noted further by virtue of **Section 47 of the section Act** that a will or any part of a will, the making of which has been caused by fraud or coercion, by importunity as takes away the free agency of the testator is void.

Principles for interpretation of wills were laid out in **RASHIDA BEGUM VS. ADMINISTRATOR GENERAL AND KARRAM DIN**¹¹ thus;

1. The intention of the testator should be collected from a consideration of the whole will. This is further fortified by **Halsbury's Laws of England Vol 34 para 240**.

⁹*HCCS 718 of 1995*

¹⁰*(1870) 5 QB 579*

¹¹*(1951) EACA 102*

OBJECTION MY LORD

2. Words are given the meaning which is rendered necessary in the circumstances, in the first place without reference to or regard to the consequences of any rule of law or construction.
3. Court may then make reasonable inference from a particular passage; comparing the inference with what is apparent in the other parts of the will. This power of inference is however limited.
4. Court also takes into consideration surrounding circumstances, especially where the circumstances deprive the words of reasonable application.

THE PROPERTY SO DISPOSED OF BY WILL

Another cardinal rule to not about wills is enunciated in **JAMES KATENDE AND 2 OTHERS VS DAN BYABAKAMA**¹² where Kireju J held that the testator should dispose of property or any interest belonging to the testator at the time of his or her death. This therefore means that any disposition by the testator of property in which he has no interest at the time of his death must fail. This should be read in conjunction with section 139 of the Succession Act.

BENEFICIARIES UNDER A WILL

CHILDREN

Children of a testator are entitled to benefit from under a will. Court held IN **KAJUBI VS KABALI (1944) EACA 341** that children include both legitimate and illegitimate children and so all children of a testator can benefit under the will.

SPOUSES

Spouses are entitled to benefit from under the will provided they were not separated from the testator at the time of making the will. This is fortified under section 30(1) of the Succession Act. A case to illustrate this is **MBOIJANA AND MBOIGANA HCCS 879 OF 1990 AND RWABAGANDA VS BAHEMURWABUSHA**¹³. It must be noted that having children with a woman does not entitle her to benefit from under the will. This was the principle in **Male vs Namanda**¹⁴

¹²HCCJ Vol 2 Pg 127

¹³(1978) HCB 244

¹⁴[1982] HCB 140.

DEPENDANTS

Section 37 of the act provides that every person shall by his will dispose of property making reasonable provision for the maintenance of his or her dependent relatives. This section is however qualified by section 38 (2) which provides that provision for maintenance shall be made by an order under section 38 (1); where the deceased's estate produces income; by way of periodic payments.

It must be noted that by virtue of **section 38(2)(a)(i)**, that if the defendant relative is a wife or husband, the order shall terminate on his or her remarriage.

Section 38(2)(a)(ii) provides that, If the dependent relative is a daughter who is unmarried or cannot maintain herself by reason of some mental or physical disability; the order terminates on her remarriage or cessation of disability; **Section 38(2)(a)(iii)** provides that, If the defendant relative is an infant son or son who is incapable of maintaining himself by reason of some mental or physical disability; the order terminates on attaining majority age or cessation of disability; whichever is later.

Section 38(2) (b) provides that, in case the deceased estate does not produce any income or sufficient income; the applicant shall be authorised to receive a share as he would be entitled if the testator had died intestate. The mode of division would be subject to **Section 27 of the Succession Act**.

It must be noted further that for court to entertain this application, it must be made within 6 months from the date of representation in regard to the estate of the deceased. If it is after six months, one must seek leave of court to bring the application. This is premised on **Section 39(1) of the Succession Act**. It must be noted however, without prejudice to the foregoing that there is a reservation to the general rule which is to the effect that where letters of administration are revoked and probate is granted; the time begins to run from the date of grant of probate.

The persons and properties named in the will must be named in a will and they should be described definitely and in relation to the testator. **Section 61 of the succession Act** provides that the wording of the will shall not necessarily have any technical terms but the wording should be such that the intentions of the testator can be known from the wording. **Section 67** provides that where the words of the will are unambiguous, but it is found by extrinsic evidence finds they admit of applications are only of which could have been intended, the extrinsic evidence may be taken to show which of these applications was intended.

It must be noted however that where there is an ambiguity or deficiency on the face of the will; no extrinsic evidence as to the intentions of the testator shall be admitted;¹⁵ and the testator's intentions must be effected as far as possible.¹⁶ The society practice is to make wills in triplicate or quadruplicate; they are usually kept with banks, lawyers, firms or close friends. Court held in **ADMINISTRATOR GENERAL VS TEDDY BUKIRWA**¹⁷ that once a will is kept poorly and is suspect of having been subject to alteration; the same may be excluded from the Estate in event of dispute.

¹⁵ Section 68 of the Succession Act.

¹⁶ Section 74 of the Succession Act.

¹⁷(1992-93) HCB at pg 192

REVOCATION OF WILLS

A will may be revoked by its maker at any time when he or she is competent to dispose of his or her property by will. The cardinal rule is evident in **NSUBUGA AND OTHERS VS NSUBUGA AND OTHERS HCCS 1081 OF 1988** where Tsekoko J (as he then was) held that although the testator in the instant case used to be confused; he was never mad and was completely in his right mind and the signature therein was that of the testator and as a consequence; the will was valid. **section 56(1) of the succession act**; which provides that every will is revoked by the marriage of the maker; except if it is a will made in exercise of an appointment; whereby the property over which the power of appointment is exercised would not; in default of the appointment pass to his or her executor or administrator or to the person entitled. This principle is followed **FARASIA RWABAGANDA VS DONASIO BAHEMURWABUSHA (1978) HCB 244**.

Section 57 of the Succession Act provides that a will can be revoked by burning tearing or otherwise destroying of the will or codicil by the testator or by some person in his or her presence and by his or her direction, with the intention of revoking it. This is fortified by **ADMINISTRATOR GENERAL VS NORAH NAKIYAGA AND OTHERS AC 554 OF 1990**.

It must be noted further that a will is invalid for non-attestation as per the requirements of section 50(1)(c) of the Succession Act.

A principle which should not go unnoticed; is evident in **ADMINISTRATOR GENERAL VS TEDDY BUKIRWA AND ANOTHER (199-93) HCB 192** where Court held that if circumstances under which a will is alleged to have been made, attested and kept are shrouded in mystery and court cannot establish whether the will is made by the testator, this leads to exclusion of that will from the estate of deceased

Executors are usually named in a will to take care and manage the estate of the deceased. **The procedure to management of the estate is as follows:**

1. Report the death of the deceased testator with full particulars as to the properties, as far as ascertainable to the Administrator General. This is done pursuant to section 4 of the Administrator General's Act.
2. Petition the High Court for Probate in English with the will annexed and stating the time of the testator's death, that the writing annexed is the testator's last will and testament and that it was duly executed, the amount of assets likely to come to the petitioner's hands and that the petitioner is the named executor in the will. This is done pursuant to section 244 of the succession Act. An affidavit in support of the petition has to be made.
3. When it is filed in court, it is advertised in the Uganda gazette and a newspaper in circulation for a period of seven days, under **section 262 of the succession Act**.

4. Where no caveat is lodged under **section 253 and 254 of the Succession Act**, the court will grant probate to the executors.





INTESTATE SUCCESSION

A person dies intestate in respect of all property which has not been disposed by him through a valid testamentary disposition, as enunciated under **Section 25 of the Succession Act**.

It must be noted that all property in an intestate's Estate is managed and held in trust by the personal representatives (persons appointed by law to administer the Estate of a deceased) of the deceased for those persons entitled to it (beneficiaries) as provided for under section 25 of the succession act.

Entitlement to intestate's property is governed by sections **Section 27 to 45 of the Succession Act**. Spouses are entitled to benefit from under the will provided they were not separated from the testator at the time of making the will. This is fortified under section 30(1) of the Succession Act. A case to illustrate this is **MBOIJANA AND MBOIGANA HCCS 879 OF 1990 AND RWABAGANDA VS BAHEMURWABUSHA (1978) HCB 244**.

THE ISSUES WHICH ARISE FOR RESOLUTION UNDER THIS SAID TOPIC INCLUDE THE FOLLOWING:

Who can apply for letters of administration?

What additional information is needed to effect the above?

What formalities should be followed in obtaining letters of administration?

THE MAJOR DOCUMENTS INCLUDE

Report of Death to the Administrator General

Certificate of No objection (Granted by the Administrator General's Office) Petition for letters of Administration supported by an affidavit

Who may apply;

Court held in **NDUGWA VS NANSIKOBI**¹⁸ that in applying for letters of administration, factors such as consanguinity, nature of interest, safety of the estate and probability of proper administration are taken into consideration.

Court held in **KEMUTONGO VS KATURAMU**¹⁹ that the widow, or a surviving spouse is the most appropriate person to apply for letters of administration. This is the same principle in **RE KIBIEGO (1972) EA**

It must be noted that proof of a valid marriage must be adduced for purposes of granting a widow letter of administration. This is fortified by **ERINESTO BABUMBA VS NAKASE CS 173 OF 1985**. therefore, if there is a customary marriage whereby the bride price was not completed, then such an individual would not benefit from under the estate.

DEVOLUTION OF THE RESIDENTIAL HOLDINGS

This is covered under **Section 26 of the succession Act** which provides that the residential holding occupied by a person dying intestate as his or her principle residence shall be held by his personal representative upon trust for his or her legal heir subject to the rights and terms set out in the second schedule to the Act.

THE PROCEDURE FOR APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION

1. Report the death of the deceased with full particulars as to the properties, as far as ascertainable to the Administrator General. This is done pursuant to **Section 4 of the Administrator General's Act**.
2. Apply to the Administrator General for a Certificate of no objection, showing that the Administrator General, the rest of the family and defendants do not object to grant of letters of administration to you
3. Petition the High Court for letters of administration in English, and stating the time of the testator's death, the family or other relatives of the deceased and their respective residences, the right in which

¹⁸(1980) HCB 79

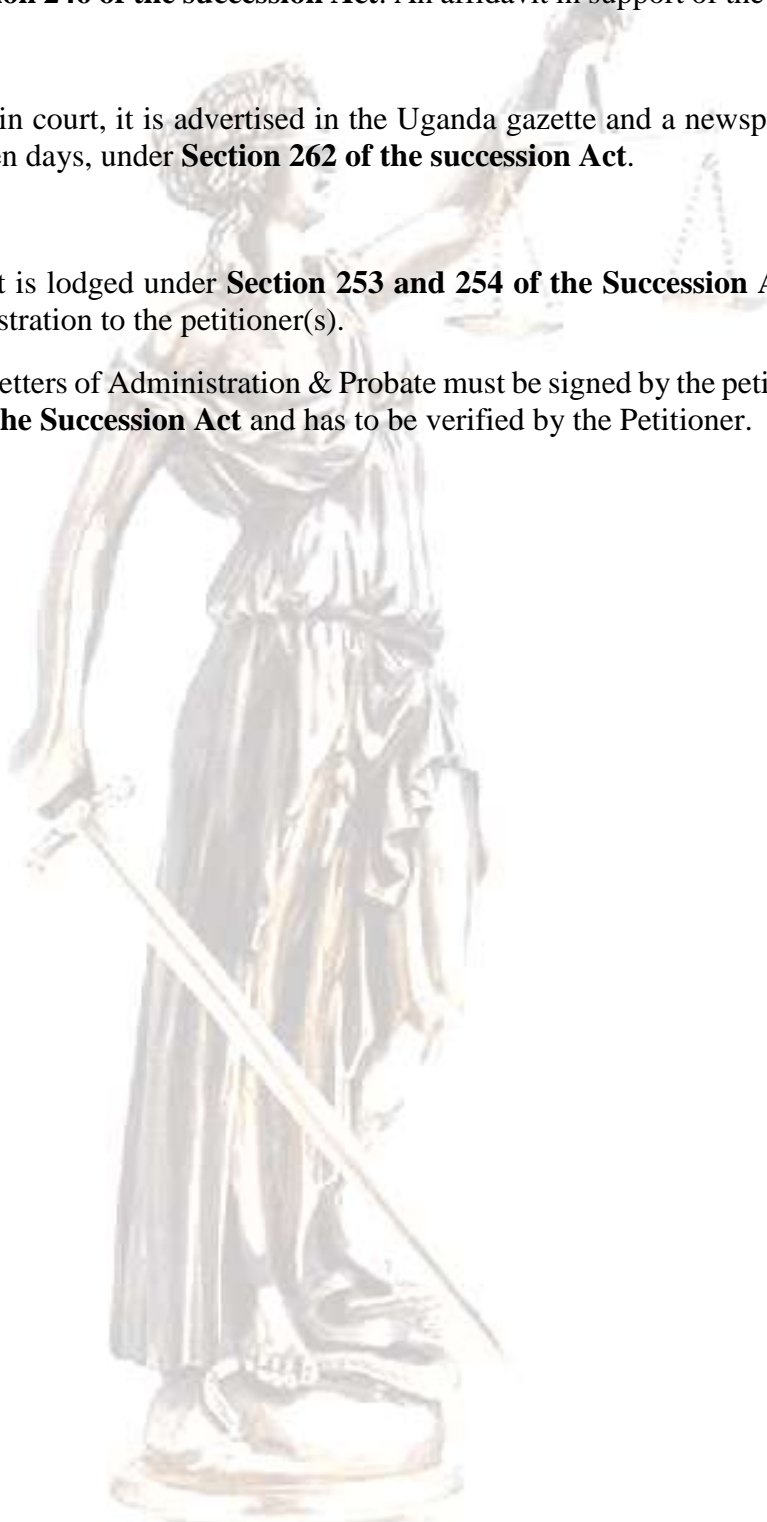
¹⁹(1992-1993) HCB 155

OBJECTION MY LORD

the petitioner claims, that the deceased left some property within the jurisdiction of the court to which the application is made and the amount of assets likely to come to the petitioner's hands. This is done pursuant to **Section 246 of the succession Act**. An affidavit in support of the petition has to be made.

4. When it is filed in court, it is advertised in the Uganda gazette and a newspaper in circulation for a period of fourteen days, under **Section 262 of the succession Act**.
5. Where no caveat is lodged under **Section 253 and 254 of the Succession Act**, the court will grant letters of administration to the petitioner(s).

The petitions for both letters of Administration & Probate must be signed by the petitioner and his advocates under **Section 247 of the Succession Act** and has to be verified by the Petitioner.



ISAAC CHRISTOPHER LUBOGO

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT TORORO

PROBATE AND ADMINISTRATION CAUSE NO..... OF 2006

**IN THE MATTER OF THE ESTATE OF THE LATE GEORGE SEWANYANA
SEFULUYA BOLINGO FORMERLY OF**

BUDUMBULU EAST, NALUWERERE, TORORO, UGANDA

AND

**IN THE MATTER OF A JOINT APPLICATION FOR PROBATE BY DR. D.G.
BOLINGO AND JANET PHOEBE BOLINGO NAMED AS EXECUTOR AND
EXECUTRIX RESPECTIVELY.**

PETITION FOR PROBATE

WE, DR. D.G. BOLINGO AND JANET PHOEBE BOLINGO of C/O MESSRS. B & CO. ADVOCATES, P.O BOX0000, KAMPALA, UGANDA do hereby apply to this Honorable Court for grant of probate of the Will of the late **OKELLO BOLINGO** who died at on the day of 2006 and state as follows: -

1. THAT, the writing annexed to this application is his last will and testament and was duly executed. See will attached hereto and marked Annexures "A".
2. THAT, the late **OKELLO BOLINGO** is survived by **NYADOI BOLINGO** widow; **EPODOI BOLINGO** widow; **DR. D.G. BOLINGO** Son; **JANET PHOEBE** Daughter; **FRED BOLINGO** Son; **SAMUEL BOLINGO** Son; **RUTH BOLINGO** Daughter; **GEOFFREY BOLINGO** Son; **DORA BOLINGO** Daughter; **HARRIET BOLINGO** Daughter and **JOSELINE BOLINGO** Daughter.
3. THAT, the deceased left the following property: -
 - (a) Residential Buildings at Malaba, Naluwerere, Tororo.

OBJECTION MY LORD

(b) Commercial Building called “Intercontinental Building” at Naluwerere, Tororo.

(c) Land at Naluwerere, Tororo comprised in LRV 1889, Folio 2, Block 3, Plot 229.

4. THAT, the said **OKELLO BOLINGO** at the time of his death had a fixed place of abode at Malaba East, Naluwerere, Tororo, Uganda within the jurisdiction of this Honorable Court.

5. THAT, this application is made by us; **DR. D.G. BOLINGO AND JANET PHOEBE BOLINGO** a son and daughter respectively, named as **Executor and Executrix** of the Will of the late **GEORGE SEWANYANA SEFULUYA BOLINGO** and we believe that the value of the said estate is likely to be close to Ug. shs. 25,000,000/=.

6. THAT, we do hereby solemnly and sincerely declare that what is stated in the said application is true to the best of our own knowledge and belief and we make this solemn declaration consciously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 2000.

DECLARED at Kampala by the said

DR. D.G. BOLINGO AND JANET PHOEBE BOLINGO thisday of2006

DR. D.G. BOLINGO
1ST APPLICANT

JANET PHOEBE BOLINGO
2ND APPLICANT

BEFORE ME:
.....

A COMMISSIONER FOR OATHS

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

PETITIONER

DRAWN & FILED BY:

Sui Generis & Co. Advocates,

P.O Box0000,

KAMPALA.



LETTERS OF ADMINISTRATION

Sui Generis and Company Advocates

P.O.BOX0000

Kampala

14th November, 2005

To: The Administrator General,
Kampala.

Dear Madam,

**RE: APPLICATION FOR A CERTIFICATE OF NO
OBJECTION TO THE ESTATE OF THE LATE ABBAGA
MABUGA**

We represent **KIRABO SUSAN**, DAUGHTER to the above-named deceased who intends to apply for Letters of Administration.

The deceased died intestate on the **28th April, 2005** at BUKOTO Hospital Kampala, Uganda and was buried on **29th April, 2005** at Nadiket Seminary, Kampala. Enclosed herein are the necessary documents to enable the applicants to acquire a **Certificate of No Objection**.

We, therefore, pray that the Administrator General issues the said **Certificate of No Objection** to our client.

Yours faithfully,

FOR: SUI GENERIS & CO. ADVOCATES.

cc. KIRABO SUSAN.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
PROBATE AND ADMINISTRATION CAUSE NO. OF 2005
IN THE MATTER OF THE ESTATE OF THE LATE
ABBAGA MABUGA FORMERLY OF BUKOTO KAMPALA – UGANDA
AND
IN THE MATTER OF AN APPLICATION FOR LETTERS OF
ADMINISTRATION BY KIRABO SUSAN, DAUGHTER OF THE DECEASED
PETITION FOR LETTERS OF ADMINISTRATION

1. I, **KIRABO SUSAN**, of C/O of Ms. SUI GENERIS & Co. Advocates, P.O Box0000 Kampala, Uganda do hereby apply for letters of Administration to the estate of the **ABBAGA MABUGA** (hereinafter called the deceased) who died on the **28th day of April, 2005**. The Medical Certificate of the cause of death is annexed hereto and marked **Annexure “A”**.
2. The deceased was single and a Radio Presenter.
3. The deceased is survived by a Brother, sister and other relatives namely: -
 - (i) **Ms Agwang Mary** sister aged 52 years of Iyolwa, Tororo District.
 - (ii) **Mr. Emmanuel Wadiba** brother aged 50 years of Kibuye Kampala.
 - (iii) **Ms KIRABO SUSAN** daughter aged 40 years of Seeta Mukon
4. The deceased left the following property: -
 - (i) Registered land comprised in Mailo Register Mawokota Block 111 Plot 222 land at Ntinda, Kampala currently registered in the names of one **Okoth Obore**.
 - (ii) Personal effects (see attached list marked **Annexure “B”**).
 - (iii) Bank accounts namely:
 - (a) Standard Chartered A/c No. 3555669023611.
 - (b) Barclays Bank City Branch A/c No. 0259954566225
5. The deceased at the time of his death had a fixed place of abode at BUKOTO within the jurisdiction of this Honourable Court.

OBJECTION MY LORD

- 6. The approximate value of the estate is in the region of **U Shs. 400,000,000/=** (four hundred million only).
- 7. This application is brought by me as a **DAUGHTER** to the deceased and the Administrator General and other surviving relatives not object to my application as evidenced by Certificate of No

Objection issued under his hand and consents annexed hereto and marked **Annextures “C” “D” and “E”** respectively.

DATED at KAMPALA this day of2005.

KIRABO SUSAN

APPLICANT

VERIFICATION

I, **KIRABO SUSAN**, do solemnly Certify that all what is contained hereinafter is true and correct to the best of my knowledge.

KIRABO SUSAN

APPLICANT

BEFORE ME: -

A COMMISSIONER FOR OATHS

Drawn & filed by:

sui generis & co. advocates,

P.o box0000,

KAMPALA.

ISAAC CHRISTOPHER LUBOGO

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
PROBATE AND ADMINISTRATION CAUSE NO. OF 2005**

**IN THE MATTER OF THE ESTATE OF THE LATE
FORMERLY OF BUKOTO KAMPALA – UGANDA**

AND

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION BY
KIRABO SUSAN, DAUGHTER OF THE DECEASED**

NOTICE

TAKE NOTICE that an application for letters of administration to estate of the late **ABBAGA MABUGA** has been lodged in this Court by **KIRABO SUSAN, DAUGHTER** of the deceased.

The Court will proceed to grant the same if no caveat is lodged with the Registrar **within fourteen (14) days** from the date of publication of this notice unless cause be shown to the contrary.

DATED at KAMPALA this day of 2005.

REGISTRAR

DRAWN & FILED BY:

Sui Generis & Co .Advocates,

P.O Box0000,

KAMPALA.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
PROBATE AND ADMINISTRATION CAUSE NO. OF 2005
IN THE MATTER OF THE ESTATE OF THE LATE
FORMERLY OF BUKOTO KAMPALA – UGANDA

AND

**IN THE MATTER OF AN APPLICATION FOR LETTERS OF
ADMINISTRATION BY KIRABO SUSAN, DAUGHTER OF THE DECEASED**

DECLARATION

I, **KIRABO SUSAN**, of C/O of Sui Generis & Co. Advocates, P.O Box0000 Kampala, Uganda **DO HEREBY SOLEMNLY AND SINCERELY DECLARE** that the Late **ABBAGA MABUGA** formerly of BUKOTO Kampala, Uganda died on **28th April, 2005** at BUKOTO Hospital and that I am a DAUGHTER to the deceased and I shall **FAITHFULLY ADMINISTER** the estate and effects of the deceased by paying his just debts and distributing the residue of his estate and effects according to the law.

THAT I shall make a true and perfect inventory and render a just and true account thereof whenever required by law to do so.

DECLARED at **KAMPALA** on the day of 2005.

KIRABO SUSAN, _____

APPLICANT

BEFORE ME:-

A COMMISSIONER FOR OATHS

DRAWN & FILED BY:

ISAAC CHRISTOPHER LUBOGO

Sui Generis & Co. Advocates,
P.O Box0000,
KAMPALA.



OBJECTION MY LORD

COPY OF WILL

THE REPUBLIC OF UGANDA

THE LAST WILL OF

THIS is the **LAST WILL** and **TESTAMENT** of of P.O. Box Kampala, Uganda voluntarily made by me in full and sober state of mind revoking all former Wills and Testamentary dispositions hereto fore made by me.

1. **I DO DECLARE AS FOLLOWS: -**

a) I I am the son of my mother the Late and my father of District, Uganda.

b) I have written the following voluntarily with a sound mind while conscious, I have not been forced by anybody.

2. I am married to my only wife, of Village, District Uganda and both of us are currently residing at, District, Uganda.

3. I do have the following issues born of my said wife, viz:

-
-
-

4. I do possess the following properties: -

a) **Immovable:**

(i) Unregistered Land at

(ii) A permanent residential house, at bordered as follows:

◆ On the Eastern part with

- ◆ On the Western part
- ◆ On the Northern part with
- ◆ On the Southern part with

Measuring approximately 1 (one) acre.

(iii) A Commercial Building at which is bordered as follows:

- ◆ On the Eastern part with **Lubowa**.
- ◆ On the Western part with the **Main Road (Biina Road)**.
- ◆ On the Northern part with **Mulokole**.
- ◆ On the Southern part with **Akiiki**.

b) Movable:

(i) Vehicles thus;

-
-
-

(ii) Cash in **Bank Ltd** **Branch A/c No.** in respect of which I am sole signatory.

(iii) Cash in **Ltd.** **Branch A/c No.** in respect of which I am sole signatory.

(iv) A running Life Policy Insurance No. with

5. **I DO GIVE, BEQUEATH and DEVISE** my above said immovable and movable properties to my dear wife and children to own them jointly in equal proportions.

6. **I DO HEREBY APPOINT AND NOMINATE:**

OBJECTION MY LORD

(I) My dear wife, of....., District, Uganda to be my sole **EXECUTRIX** of this **MY WILL**.

(II) In case both my wife and I die in common calamity, God forbid, **I DO APPOINT, NOMINATE** the following to be my **JOINT executrixes**:

1., and

2.

7. **I DO HEREBY APPOINT, NOMINATE AND ANNOINT** my Dear Son..... to be my customary Heir.

8. **I DO HEREBY CATEGORICALLY STATE THAT NO PERSON** other than my above said **EXECUTRIXES** should have a say on the Execution of this **MY WILL**.

9. **IT IS MY SINCERE WISH** that upon my death I should be buried at my country home at in accordance with

10. **FOR AVOIDANCE OF DOUBT, NONE OF THE DEPENDANTS I HAVE BEEN SUPPORTING OTHER THAN MY ABOVE** said lawful children should take any benefit of this **MY WILL**.

11. Copies of this **MY WILL** are kept as follows:

(i) ORIGINAL deposited with

(ii) A copy deposited with the

(iii) A copy deposited with

IN WITNESS WHEREOF I, TESTATOR have hereunto set my Hand this day of the year 2005

THE SIGNATURE of the said was affixed hereto as his **LAST WILL and TESTAMENT** in the joint presence of the Two who in his presence at his request and in the presence of each other hereunto Sub-scribed our names as witnesses.

1ST WITNESS (NAME & SIGNATURE)

2ND WITNESS (NAME & SIGNATURE)

DRAWN BY:

Sui Generis & Co. Advocates,

P.O Box0000 **KAMPALA**



OBJECTION MY LORD

FORM OF CAVEAT.

As per S.254, the caveat is in the following form

“Let nothing be done in the matter of the estate of, late of, deceased who died on theday of 20 atwithout notice to of.....

NOTICE TO BE PUBLISHED.

Rule 2 and 5 of the judicature (administration of estates) rules S.1 13-7. (First schedule)

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

ADMINISTRATION CAUSE NO.....OF 2020.

IN THE MATTER OF THE ESTATE OF THE LATE TIMOTHY KITAYIMBWA

TO ALL whom it may concern.

TAKE NOTICE than an application has been lodged in this court by NANKINGA RESTY OF KOLOLO, KAMPALA, Uganda, for probate of the will to the estate of the above-named deceased.

The court will proceed to grant the probate of the will, if no caveat is lodged with the registrar within fourteen days from the date of publication of this notice, unless cause is shown to the contrary.

Dated at Kampala this 3rd day of February, 2020

DEPUTY REGISTRAR/MAGISTRATE.

ISAAC CHRISTOPHER LUBOGO

PLAINT FOR REVOCATION OF A CAVEAT

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

CIVIL SUIT NO. 2387 OF 2020

(Arising from probate administration cause no.283 of 2020)

RESTY TENDOPLAINTIFF

SANTA NAMULONDODEFENDANT

PLAINT

1. The plaintiff is a female adult Ugandan of sound mind and the widow of the late Geoffrey Semakula whose address for purposes of this suit is SUI GENERIS AND CO ADVOCATES, P.O BOX0000, and KAMPALA.
2. The defendant is a female adult Ugandan presumed to be of sound mind and the plaintiffs' advocates undertake to effect service of court process upon him.
3. The plaintiffs claim against the defendant is for vacation of a caveat lodged against the defendant is for vacation of a caveat lodged against the petition for letters of administration and costs for the suit.
4. The plaintiff's cause of action against the defendant is for unlawful lodgment of a caveat against the petition for letters of administration.
5. The facts giving rise to the cause of action are as follows:
 - a) The plaintiff and the deceased were legally married on the 26th day of January 2020. (Annexure A)
 - b) They then lived together in their matrimonial home at Bweyogerere and were blessed with two issues: martin aged 20 and Harriet aged 18.
 - c) In 2019, the plaintiff left for the United Kingdom to pursue a master's degree of law at the University of Manchester. (Attached and marked annexure "B" is the admission letter and marked Annexure "C" is a photocopy of her master's transcript.)
 - d) In January 2020, the deceased past on leaving no will behind. (Attached hereto is a copy of the death certificate marked annexure "D").

OBJECTION MY LORD

- e) Following the death of the deceased, the plaintiff as the wife of the deceased applied for letters of administration to the estate of the deceased.
- f) The defendant without any color of right caveated the application for the grant of letters of administration.

6. The plaintiff avers that actions of the defendant have caused and continue to lead to waiting of the estate of the deceased.

7. The defendant was issued with a notice to vacate the caveat but she did not heed to the notice. (Attached and marked Annexure "E" is the notice to vacate the caveat issued to the defendant.)

8. The facts giving rise to this suit arose within the jurisdiction of this honorable court at Kira Wakiso district.

WHEREFORE the plaintiff prays for judgement against the defendant for orders that:

- a) The defendant's caveat be vacated
- b) Cost of the suit.

Dated at Kampala this 3rd day of February 2020

M/S SUI GENERIS AND CO ADVOCATES
COUNSEL FOR THE PLAINTIFF

Drawn and filed by

SUI GENERIS AND CO ADVOCATES

P.O BOX0000, KAMPALA

UGANDA.

SAFE CUSTODY OF WILLS

This is governed by **Section 337 of the Succession Act** and the succession (safe custody of wills) rules S I 162-1.

Section 337 (1) stipulates that the will may be kept with the chief registrar or deputy registrar of the high court.

It is prudent practice that more than one copy of the will is made and the other copies are kept with the testator's advocate, bank or trusted friend.

This practice is aimed at ruling out suspicions in the will presented after the testator's death is a forgery.

GRANT OF PROBATE

Under **Section 182 of the succession Act**, probate can only be granted to an executor appointed by the will.

Section 2 (5) defines probate to mean the grant by a court of competent jurisdiction authorizing the executor named in the testator's last will to administer the testator's estate.

Section 235 states that the jurisdiction to grant probate and letters of administration is exercised by the high court and a magistrate court in accordance with the administration of estates (small estates) (special provisions) act.

The petition for grant of probate

The application for grant of probate is by petition as provided under **Section 244 of the succession Act**. It must be written in the English language with the will annexed and stating:

- a) The time of the testator's death
 - b) That the writing annexed is the testator's last will and testament and that it was duly executed.
 - c) The amount of assets which are likely to come to the petitioners' hands
 - d) That the petitioner is the executor named in the will.
- **Section 238** provides that the civil procedure rules are applicable to their proceedings and so the petition must be accompanied by a summary of evidence.

WHERE WILL IS NOT IN ENGLISH

OBJECTION MY LORD

Under **Section 245**, the translation of the will must be annexed to the petition. The translation must be annexed to the petition. The translation must be verified.

“I SUI GENERIS, do declare that I read and perfectly understand the language and character of the original and that the above is a true and accurate translation of it.”

DECLARANT

Before me

COMMISSIONER FOR OATHS.

VERIFICATION OF THE PETITION

Pursuant to **Section 247**, the petitioner must verify the petition.

VERIFICATION OF PETITION BY ONE WITNESS TO THE WILL

Under **Section 248**, one witness at least must verify the petition when procurable.

PROCEDURE FOR OBTAINING PROBATE.

1. Obtain a death certificate to prove death of the testator. This may be obtained from the hospital if the testator died there. Then if it was in any place, then L.C should issue a letter certifying the death of the person.
2. Obtain a copy of the will which must be in English or have it translated if it is not in English and the translation verified
3. valuation/estimation of the value of the testator's estate to determine the court with the appropriate jurisdiction to grant probate
4. Draft the petition with the necessary annexures
5. Lodge at the court registry for assessment of court fees.

6. Pay the court fees and then file the petition with court and obtain a court file number.
7. Issue a notice of intention to apply for probate by advertising in the gazette, any newspaper of wide circulation in Uganda as per Rule 2 of the judicature (administration for estates) rules S.I 13-7

The form of the notice is as provided in the first schedule to the rules.

UNDER Rule 3 of the judicature (administration of estates) rules S.I 13-7, probate cannot be granted before the lapse of 14 days from the date when the notice was issued on upon lapse, the petitioner must adduce evidence of the notice.

8. If there is no caveat lodged on the application then the probate is granted if everything pertaining to the petition is in order. The form of caveat to be lodged is provided under **Section 253**
9. On grant executor must distribute the estate as per the will.
10. File a complete report with the court on the distribution. **Section 278 (1)**

REVOCAION OF LETTERS OF ADMINISTRATION/PROBATE

Pursuant to **Section 234 (1)** of the succession act, the letters of administration any be revoked or annulled for just cause.

Just cause is defined to mean:

- a) That the proceedings to obtain the grant were defective in substance
- b) That the grant was obtained fraudulently by making a false suggestion or by concealing from the court something material to the case. In **ROMANO SALIM OGWANGA AND 5 ORS V SAIDA ATALA²⁰**, Justice Remmy Kasule stated in order to impeach the letters on grounds of fraud, the fraud must be specifically pleaded and the allegations of fraud must be specifically pleaded and the allegations of fraud must be strictly proved. The standard of proof is more than a mere balance of probabilities.
- c) That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant, though the allegations was made in ignorance or inadvertently.
- d) That the grant has become useless and inoperative through circumstances.
- e) That the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with part xxxiv of this act or has exhibited under that part an inventory or account which is untrue in material respect.

²⁰HCT -02-CV-CS-0020,2005

OBJECTION MY LORD

PROCEDURE

- I. File a suit by way of plaint seeking orders for revocation of the letters of administration.

CITATION

Applications by the plaintiff to temporary withdraw the letters pending disposal of the suit.

NECESSARY DOCUMENTS

- i. Notice of intention to sue
- ii. A plaint
- iii. Summary of evidence.

In **AMECHO V TWALIB AND 2 ORS H.C.C.S NO.9 OF 2008**, it was held that it is trite law that a grant remains valid until revoked even if obtained by fraud so long as the grant remains unrevoked; the grantee represents the estate of the deceased.

RICHARD BABUMBA AND 13 ORS V JAMES SSALI BABUMBA H.C.C.S NO.78 OF 2012

Amendment of letters of administration/probate

Amendment of letters of administration is made pursuant to **Section 98 of the civil procedure Act, Section 33 of the judicature act and Order 52 rules 1 and 2 of the Civil Procedure Rule.**

In **JOSEPH BUYE AND 3 ORS V DR. SAMUEL SSENYANGE²¹**, court was moved under the aforementioned provision so as to cancel two executors from the probate having not been around to carry out such activities.

PROCEDURE

- Lodge a notice of motion with a valid affidavit
- Pay court fees.

DOCUMENTS

- Notice of motion
- Affidavit

EXERCISE OF POWER BY JOINT ADMINISTRATORS/EXECUTORS

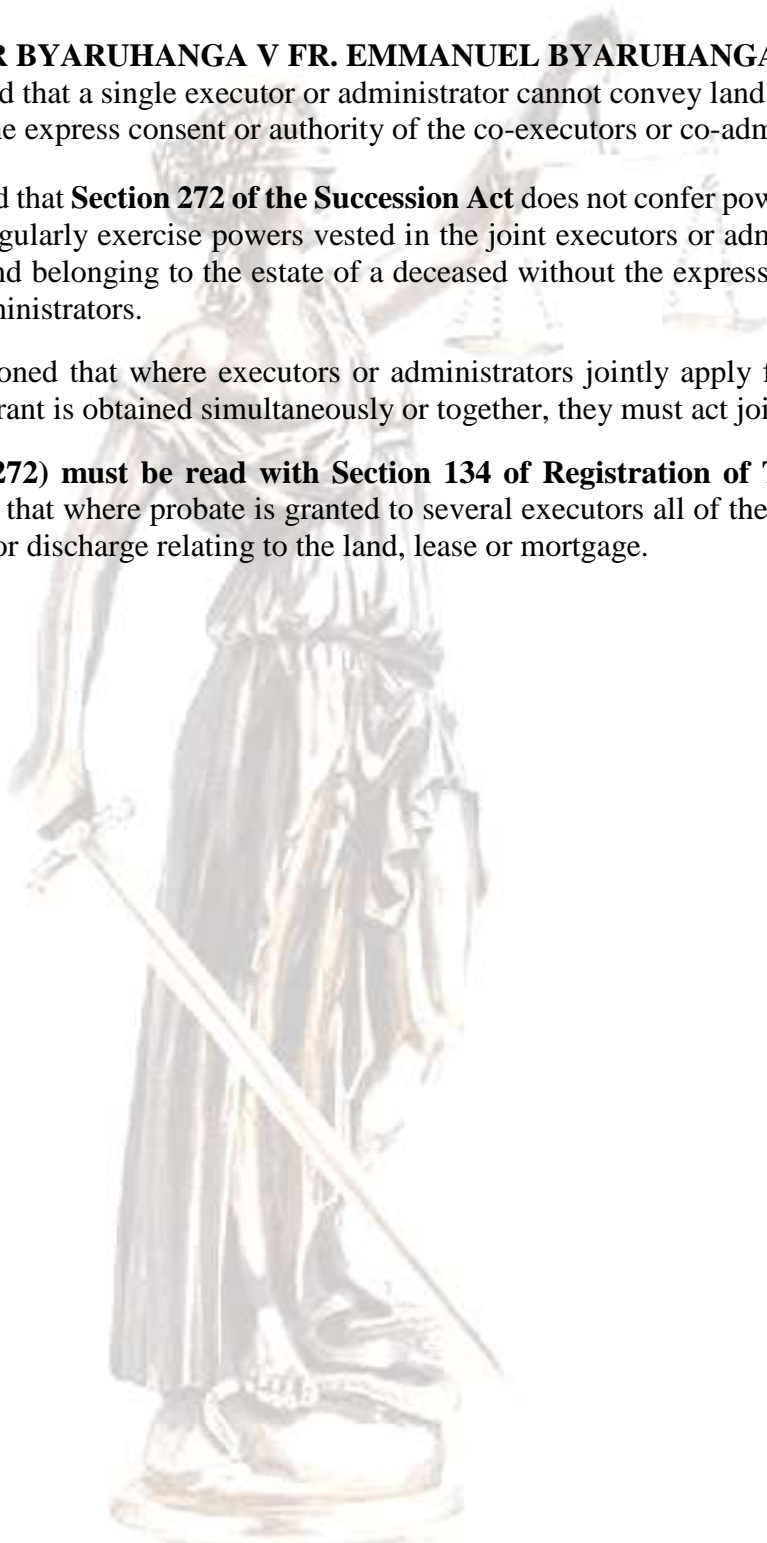
²¹H.C.M CAUSE NO.15 OF 2015

IN SILVER BYARUHANGA V FR. EMMANUEL BYARUHANGA AND RUDEGA²²,
the supreme court held that a single executor or administrator cannot convey land of a deceased person
without the express consent or authority of the co-executors or co-administrators.

The court stated that **Section 272 of the Succession Act** does not confer powers on a single executor or administrator to singularly exercise powers vested in the joint executors or administrators with respect to conveyancing of land belonging to the estate of a deceased person without the express consent or authority of co-executors or co-administrators.

The court reasoned that where executors or administrators jointly apply for probate or letters of administration and a grant is obtained simultaneously or together, they must act jointly at all times.

The **Section (272) must be read with Section 134 of Registration of Title Act** (in respect of transfers) which states that where probate is granted to several executors all of them must concur in every instrument, surrender or discharge relating to the land, lease or mortgage.



²²CIVIL APPEAL NO.9 OF 2014



LODGMET AND REMOVAL OF CAVEATS

Caveats are lodged if there is any opposition to the grant of letters of administration.

A caveat is lodged pursuant to **Section 253 of the Succession Act**. Form of caveat is provided in S.254 supported by an affidavit with grounds.

Under **Section 255** of the succession act, no proceedings in relation to the petition can take place until after reasonable notice requiring the caveator to vacate the same has been given.

The caveat before placing a caveat must have a caveatable interest.

In ADONG SUZAN AND 2 ORS V OTACK RAYMOND²³, the defendant who was not related to the deceased lodged a caveat against the grant of letters to the plaintiffs' children to the deceased. His ground was that the application included customary land. Karia J, held that the defendant not being in any way related to the deceased was not entitled to lodge a caveat forbidding the grant. Court awarded 2,000,000 general damages were awarded against the defendant for preventing the proper management of the estate causing losses to the plaintiff.

Removal of caveat (Suit is instituted pursuant to Section 265 and it by ordinary plaints as its contentious)

Procedure

1. Issue a notice to the caveator requiring them to remove the caveat or commence a suit to have the caveat vacated pursuant to **Section 255 of the succession Act**. The notice mandatory as failure to issue the same makes the subsequent suit filed liable for dismissal on a preliminary point of law.

²³HCT -02- CU -0089-2002HC

In **THE MATTER OF THE ESTATE OF THE LATE JUSTICE DAVID KIRUNDA, HCMA NO.252 OF 2014**, justice Percy night Tuhaise citing the decision in **MARGRET KABAHUNGULI V ELIAZALI TIBEKINGA AND ANOR²⁴**with approval held that the notice in section 255of the succession act is a mandatory statutory notice which must be effected on the caveator notifying him of an intended suit should he or she fail or refuse to remove the caveat.

2. Where the caveator fails to heed to the notice then the petitioner can bring a suit under Sectio265 of the succession act in which they will be plaintiffs and the caveator defendants.
3. Drafting of plaint and the necessary accompanying documents. Order 6 rule 2 of the Civil Procedure Rule.
4. Lodgment for assessment of court fees.
5. Payment of court fees. Judicature (court fees) rules rule 4.
6. Filing of the plaint and the accompanying documents and the receipts of payment.
7. Extracting summons to file a defense. Order.5 rule 1 of the CivilProcedure Rules.
8. Serving the summons onto the defendant within 21 days. Order 5 Rule 1 Civil Procedure Rules
9. Affidavit of service deponed and filed on court record. Order 5 Rule 16 of Civil Procedure Rules.

RESEALING OF PROBATE OR LETTERS OF ADMINISTRATION

Resealing of probate or letters of administration applies to grants made in other commonwealth counties other than Uganda where the deceased had some of his properties in Uganda.

PROCEDURE

1. Have the copies of the grant certified by the common wealth court issuing them or obtain the original grant. **Section 5 of the Probate (Resealing) Act Cap 160**
2. Draft an application letter for resealing addressed to the deputy registrar of the high court
 - On the letter attach a copy of the certified grant that is to be resealed, a will if any pursuant to Rule 3 of the Probate (resealing) rules S.1 .160-1
3. Make oath as per rule 4(b) and the form of the Oath is prescribed in form c of the schedule and attach it to the application.
4. Pay probate duty as required by Section 3 of the probate (resealing) act and attach evidence of payment to the application

²⁴HCAC 08/95

OBJECTION MY LORD

5. Payment of requisite fees which are UGSHS 45 as per Rule 5 of the rules and attach the evidence of payment to the application.
6. File the application with the high court registrar
7. under Rule 4 (a), advertisement of the application if directed by the registrar and the advertisement is as prescribed under form C.

ADMINISTRATION OF ESTATES OF MISSING PERSONS AND PERSONS OF UNSOUND MIND

WHO IS A MISSING PERSON?

Section 1 (f) of the Estates of Missing Person's Management Act Cap 159, defines a missing person who disappears from Uganda without making provision for the administration of his or her estate and investigations have shown that his or her whereabouts are unknown.

Who can apply to manage estates?

Section 2 (1) of the Estates of Missing Persons Management Act, is to the effect that where a person in the act referred to as a "missing person" disappears without making provision for the admin of their estate on the maintenance of his/her dependent relatives if any and is not heard of within 6months, any relative of the missing person may with the concurrence of the family of the missing person, apply the court to be granted an order to manage his estate but the court may, if it considers it necessary or desirable, grant an order to more than one relative to manage the estate jointly.

Section 2(c) of the Estates of Missing Persons Management Act defines a family member to include a parent, grand parent, uncle, first cousin, child, grandchild, wife's or husband of a missing person.

Section 1(2) of the Estates of Missing Persons Management Act postulates that an order of management of an estate a missing person shall not be granted to any person under the age of 21 years.

PROCEDURES, FORUM AND DOCUMENTS NECESSARY

FILING OF APPLICATION

Section 4 of the Estates of Missing Persons Management Act provides that an application for grant of an order under the act must be made subject to such modification as may be necessary in the same form as an application for grant of letters of administration.

Section 246 of the Succession Act provides that an application for Letters of Administration shall be made by petition.

Section 247 of the Succession Act postulates that a petition for Letters of Administration must in all cases be subscribed by the petitioner and his/her advocates, if any and must be verified by the petitioner.

The application for administration of estate of missing person is made by way of petition, verified by the petitioner.

Jurisdiction

This is stipulated under **Section 3 of the Act**:

- a) M.G 2 where the total value of the estate does not exceed 10,000 shillings
- b) M.G. 1 where the total value of the estate exceeds 10,000 shillings but does not exceed 20 million
- c) CM where value of the estate exceeds 20 million but not above 50 million.

What are the powers and duties of a manager of the estate of a missing person?

Section 1 (d) defines a manager to mean any person to whom an order to manage an estate of a missing person is granted under the act.

1. Under **Section 8(1)** a manager has general and special power for the management of the estate of the missing person as appears to court to be necessary and stipulated in the order of the appointment or any subsequent order.

Section 8 (2) bars any manager without the permission of court from:

- a) Mortgaging, charging or transferring by will, sale or gift, involves, surrender, exchange or otherwise any immovable property of a missing person.
- b) Lease any such property for term exceeding three years
- c) Invest any property of a missing person in any securities other than those authorized by the trustee's Act.

2. Under **Section 11(1)**, the manager has a duty to collect all debts owing to the estate by issuing a notice to the debtor in writing, showing the amount due and to have it settled within the notice period. The notice should be verified with an affidavit.

3. Under **Section 13 (1)**, the manager has the power to appoint an agent for the efficient and economic management of the estate, on such terms and remuneration as she considers reasonable in the circumstances.

4. Furnish court with inventory and annual accounts as per **Section 15 (1)**

- Person can by petition impugn the accuracy of any inventory.

DUTIES OF THE MANAGER

1. Under **Section 12(3)**, they have a duty to clear the outstanding insurance premiums and pay the regular premiums within 3 months from date of appointment or else the policy, if any will lapse.

OBJECTION MY LORD

2. **Section 15(1)** obliges a manager to furnish an inventory within 6 months from their date of appointment or on such other time as the court may order and also furnish an account annually.

PRESUMPTION OF DEATH AND DEATH

Under **Section 20** upon lapse of 3 years from date of disappearance, the missing person is presumed dead.

WHEN PERSON DIES (PROCEDURE)

1. Report to the A.G within one month of the confirming the death. **Section 21 (1)**, the report should be accompanied by all accounts and any other documents relating to the estate. **Section 21 (2)**

Under **Section 21 (1) of the Act**, the manager must report the presumption of death within one month, in writing to the administrator general and then cease to manage the estate.

Section 47 (2) of the registration of persons act **no.4 of 2015**, a person is presumed dead in accordance with **subsection (1)**, any person who would have been duty bound under **Section 43** to give notice of the death of the person of presumed dead may apply for an order of presumption of death in a court of competent jurisdiction and order shall issue and be served upon the authority and shall have the same effect as a certificate of death.²⁵

PERSONS OF UNSOUND MIND OR MENTAL ILLNESS

Legal issues:

1. Who is a person who has a mental illness?
2. Who can administer the estate of a person of unsound mind?
3. What are the remedies available to a person seeking to administer the estate of another of unsound mind?
4. What is the procedure, forum and documents necessary?
5. What ethical issues may arise in the course of executing such a remedy?

Law applicable:

1. The Constitution of the Republic of Uganda, 1995 as amended.

²⁵re yekoyasi, hcma no.6 of 2017

2. CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)
3. Mental Health Act, 2018
4. The Mental Health Act (Commencement) Instrument No. 25 of 2021. The Magistrates Court Act, Cap. 16
5. Succession Act, Cap 162
6. The Judicature (Court Fees) Rules
7. Principles for the protection of persons with mental illness and improvement of mental health care. Adopted by General Assembly resolution 46/119 of 17th December 1991 Office of the High Commissioner for Human Rights
8. Case law

WHO IS A PERSON WITH MENTAL ILLNESS?

Section 2 of the Mental Health Act 2018 defines a “Person with Mental illness” as a person who is proven, at a particular time by a mental health practitioner to have mental illness at that particular time and includes a patient. The person must be proven to have a mental illness by a medical practitioner – Refer to **Re: RHONA KIBUKA MUSOKE (A PERSON OF UNSOUND MIND) AND IN RE: AN APPLICATION FOR THE ADMINISTRATION OF HER ESTATE BY NORAH LWANGA AND 2 ORS (HCT-00-FD-MC 1 OF 2009)**

The same section defines “mental illness” to mean a diagnosis of a mental health condition in terms of accepted diagnostic criteria made by a mental health practitioner or medical practitioner authorized to make such diagnosis, mental health conditions include but are not limited to depression, bipolar, anxiety disorders, schizophrenia and addictive behavior due to alcohol/substance abuse among others.

It is important to note that the Mental Health Act under **SECTION 77 REPEALED THE MENTAL TREATMENT ACT CAP 279 AND THE ADMINISTRATION OF ESTATES OF PERSONS OF UNSOUND MIND ACT CAP 155.**

Black’s Law Dictionary 8th Edition defines an “*Insane*” to mean; Mentally deranged; suffering from one or more delusions or false beliefs that (1) have no foundation in reason or reality, (2) are not credible to any reasonable person of sound mind, and (3) cannot be overcome in a sufferer’s mind by any amount of evidence or argument. Refer to - **SSEBULIBA KIWANUKA V MUSISI KIWANUKA (MISCELLANEOUS CAUSE 249 OF 2019)**

Section 2 of the Mental Health Act 2018 defines a “Mental Health Practitioner” to mean a Psychiatrist, a registered psychiatry nurse, psychiatry clinical officer, a mental health social worker and a clinical psychologist.

OBJECTION MY LORD

Section 55(1) of the Mental Health Act 2018 provides that a determination of the mental health status of a person shall be carried out, where it is required for proceedings before a court of law or for any other official purpose.

Therefore, the determination of who is of unsound mind shall only be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner as envisaged in **Section 55(2) of the Mental Health Act 2018**.

It has to be noted that the determination shall be based on only the factors which are exclusively relevant to the mental health status of the patient and not any social, economic, cultural religious or other factors as **Section 55(3) of the Mental Health Act 2018** stipulates.

In the case of **ABIRIA EMMANEL V. AFEMA RICHARD (HIGH COURT MISCELLANEOUS APPLICATION 0053 OF 2015)**, Mubiru J opined

“A person is deemed to be of unsound mind for purposes of these proceedings if he or she is afflicted by a total or partial defect of reason or the perturbation thereof, to such a degree that he or she is incapable of managing himself or herself or his or her affairs”

This is the standard suggested in **WHYSALL V WHYSALL [1960] P.52** where Phillimore J, expressed the following opinion as to the degree of insanity which had to be found;

“if a practical test of the degree is required, I think it is to be found in the phrase...’incapable of managing himself and his affairs’...and that the test of ability to manage affairs is to be required of the reasonable man. The elderly gentleman who is no longer capable of dealing with the problems of a “take-over bid” is not, in my judgment, to be condemned on that account as ‘of unsound mind’”.

Conclusively therefore under **Section 55** of the Mental Health Act 2018 and the decision of Justice Mubiru in **ASERU JOYCE AJJU VS ANJOYO AGNES HCMA 001 OF 2016**, an application of this kind ought to be supported by some medical evidence in the nature of a certificate of some doctor, who has had a reasonable opportunity of seeing the condition of the alleged to be of unsound mind.

WHO CAN ADMINISTER THE ESTATE OF A PERSON OF UNSOUND MIND?

Principle No. 3 of the **UN General Assembly, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 17 December 1991, A/RES/46/119**, provides that all persons with mental illness have a right to be protected from economic, sexual and other exploitation whether physical or other abuse and degrading treatment.

Section 51 (2) of the Mental Health Act, 2019 provides for performance of duties and rights against a person of Unsound mind to be in the best interest of the patient.

Section 61(3) of the mental Health Act, 2019 provides that a person who can be appointed a manager of the estate of a person of unsound mind shall be a relative, a concerned person, a mental health practitioner or a lawyer.

The person must first be adjudged to be a person of unsound mind by a magistrate court or must be a person detained under **Section 113 and 177 of the Magistrate court** before the high court can determine the suitability of the applicant to manage the estate of such a person, the high court would rely on such findings of the Magistrate before appointing a suitable person to manage the estate of such a person.

Section 60(3) (b) of the Mental Health Act 2018 provides that a person with mental illness may be stopped from managing his or her affairs by court on application by a relative or a concerned person determines that the person is not able to manage his or her affairs.

Section 2 of the act defines a relative to mean a spouse, parent, guardian of a person with mental illness whether by marriage or relationship established by law.

Section 62 of the Mental Health Act 2019 provides that where a person with mental illness is not capable of managing his or her court shall appoint a personal representative to manage the estate of the person with mental illness to act in the best interest of the person with mental illness

A. What are the remedies available to a person seeking to administer the estate of another of unsound mind?

After establishing that a person is of unsound mind, a relative or any other person permitted under the Act may have the following remedies;

INTERIM REMEDY

CAVEAT BY THE SPOUSE / CAVEAT BY THE REGISTRAR OF TITLES

As an interim remedy, the person for instance a spouse intending to manage the estate may begin by lodging a Caveat on the registered properties of the unsound person so as to forbid the latter from disposing them carelessly. The caveat may be lodged under **Section 139 Registration Title Act** or move the Registrar of Titles to lodge the Caveat under **Section 170 (a) Registration Title Act:**

Section 139 (1) of the Registration of Titles Act 230 states that;

- (1) Any person claiming any estate or interest in land under the operation of this Act by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.

OBJECTION MY LORD

In other instances, the personal representative may obtain an **Injunction** under **Ordre 41 rule 1 (by chamber summons)** and may also seek an interim order forbidding the selling off of property by the unsound person, depending on the circumstances. The interim order is sought by way of a Notice of Motion accompanied by an affidavit in support.

B) TREATMENT OF THE PERSON.

Section 20 provides for Treatment and care of out-patients at primary health centers

A primary health center shall provide treatment for mental illness to all patients taken to the health facility for treatment or care. Treatment for mental illness at a primary health centre shall only be administered on a person with mental illness after that person gives informed consent to the treatment. (3) A patient who is willing to receive treatment and care under this part but is not in position to give informed consent by him or herself, shall be entitled to assisted care and treatment in accordance with this Act. In this case, the patient can give informed consent to the representative so that he/she be treated in accordance with this section.

Section 22 provides for the Emergency admission and treatment. A person qualifies for emergency admission and treatment where that person has mental illness and as a result of which he or she is likely to inflict serious harm on himself or herself or on another person or has behavior which may lead to a serious financial loss to himself or herself, a lasting or irreparable harm to an important personal relationship held with another person as a result of damage to the reputation of the person, serious damage to the reputation of the person or damage to property. A person who qualifies for emergency admission and treatment shall be given immediate care and treatment at a health unit or a mental health unit.

A person who qualifies for emergency admission shall be received by the medical practitioner or mental health practitioner on duty at the health unit or mental health unit where the person is taken. Where no medical practitioner or mental health practitioner is available at a health unit or mental health unit where one is taken for emergency admission, the person shall be received for admission by a health worker on duty at the health unit or mental health unit. A person who is admitted shall be assessed within twelve hours and the emergency treatment shall be for a period of not more than three days after assessment.

Where a patient needs emergency treatment beyond the period of 3 days or where the patient cannot after the stipulated period be treated as a voluntary, assisted or involuntary patient, the emergency treatment shall be continued for a period of not more than five days.

Section 46 provides for the use of special treatment options. Special treatment options such as electroconvulsive therapy, seclusion, psychosurgery and bodily restraint shall be provided only after exhaustion of all other treatment options. These procedures shall be applied under the authorization and supervision of a psychiatrist.

LONG TERM REMEDY

Section 60 (1) of the Mental Health Act, 2019 provides that persons with mental illness have the right to enjoy the capacity on equal basis with others in all aspects of life. This includes the right to manage their property. The general rule on management of the property is provided for under

Section 60 (2) of the Mental Health Act that provides that a person with a mental illness has the right to manage his or her affairs. However, in this case, Modesta therefore has two options

1. BEING APPOINTED AS THE PERSONAL REPRESENTATIVE OF THE MENTAL ILLNESS PATIENT.

A personal representative is defined under **Section 2 of the Mental Health Act, 2019** to mean a person appointed in writing by a person with mental illness to act on his or her behalf or a person appointed by court to act on behalf of a person with mental illness, where the person with mental illness has the capacity to execute a particular task.

Under **Section 61(1)**, the person with mental illness is insulated with the right to appoint a personal representative for the purpose of managing his estate. Under **Subsection 3**, the person may be a relative, a concerned person, mental health practitioner or a lawyer appointed through advance directive when the person with mental illness is capable to make the appointment. Under **Subsection 2**, this person is required to make decisions taking into account the best interests of the person with the mental illness

Where the unsound person is incapable of exercising their decision to appoint a personal representative, the intending relative may do the following;

2. APPOINTMENT OF PERSONAL REPRESENTATIVE BY COURT.

This option stems from the exception to the general rule under **Section 60(2)**. Under **Section 60(3) of the Mental Health Act**, a person with mental illness may be stopped from managing his affairs where;

a. Court on the application of a relative or concerned person determines that the person is not able to manage his or her affairs. In **ASERU JOYCE AJJU VS ANJOYO AGNES HCMA 001 OF 2016**, Justice Mubiru noted that the test of ability to manage affairs is to be required of the reasonable man. Therefore, a man that cannot manage his affairs is a person of unsound mind.

Under **section 62(1) of the Mental Health Act**, where the court has declared that the person with a mental illness is unable to manage their estate, they have not appointed a personal representative, it shall appoint a suitable relative to be his or her personal representative. Under **subsection 2**, the personal representative shall manage the estate of the person with mental illness or be the guardian of the person with mental illness Under **Section 63(1) of the Mental Health Act**, the court shall grant the personal representative general or specific powers, to manage the state of the person with mental illness. In **The Matter of KHALID LATIFF (Person of Unsound Mind) (Civil Miscellaneous Application No.026 Of 2017)**, the applicant for example sought that the respondent be adjudged mentally ill so that she is appointed the manager to his estate with powers to dispose of the property of his estate only for purposes of paying debts due to crane bank and DFCU bank. Therefore, one may be appointed as a manager with powers to deal with these properties.

3. APPOINTMENT OF PERSONAL REPRESENTATIVE BY THE BOARD.

A person with mental illness may be stopped from managing his or her affairs where- (a) the Uganda Mental Health Advisory Board established under **SECTIONS 4 AND 5 OF THE MENTAL HEALTH ACT, 2018**, orders that the person with mental illness is not able to manage his or her affairs after it is established by two mental health practitioners, Appointed By The Board.

Section 60(7) of the Mental Health Act provides that where an order that a person with mental illness is not capable of managing his affairs has been pronounced, this decision shall be reviewed by the board in the next meeting until the order is revoked.

WHAT IS THE PROCEDURE, FORUM AND DOCUMENTS NECESSARY?

A **spouse** or any other person mentioned in the Act may initiate the process of being granted the powers by Court to administer the property of her mentally ill person. This can be started by making an application to the Board to make a report and determine the mental status of the respondent.

Section 55 of the Mental Health Act 2019 provides for such determination to be carried out where it is required for proceedings before court of law and for any other official purpose.

Section 55 (2) of the Mental Health Act 2019 provides that such determination shall only be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner.

In the case decision in **RE CATH CART (1892)1 CL 466 at PG 471 Lord Lindley LJ** stated that the test is whether the person's insanity is so marked and of such nature that he or she is unable to manage him or herself and their affairs.

With the report from the board, then an applicant may go to court making an application to be granted the powers to administer the property of such person with a mental illness.

In the case of **ASERU JOYCE AJJU V ANJOYO AGNESS MISCELLLEANOUS APPLICATION NO. 01 OF 2016** it was stated that **Rule 3(2) of the repealed Act** provides that such applications have to be accompanied with the following supporting documents: an affidavit of Kindred and Fortune in Form A in the first schedule to the rules , a certificate in Form B in the First schedule to the rules by the superintendent of the medical Hospital were the person of unsound mind is a patient, an affidavit by a medical practitioner stating that he or she personally examined the person and that person is of unsound mind.

Court has the duty to ascertain that for the applicant to be found to be a suitable manager of the patient's estate, they should satisfy court that they are capable of preventing the potential abuse, neglect and exploitation of the respondent. They should be capable of taking control over the respondent's estate, his personal welfare and make decisions in the best interest of the respondent and their dependents.

Further the other guiding criteria is that the applicant should be an adult of sound mind and their interests should not be averse to those of the respondent in the estate for which he or she proposes to act as manager.

In the case of **THE ESTATE OF KIGGUNDU JAMES (PERSON OF UNSOUND MIND) H.C.M.C 18 OF 2015** Court was that the person must first be adjudged to be person of unsound mind by a Magistrate's Court Under **section 4 of the Mental Treatment Act** now repealed or the person detained under **Section 113 & 117 of the Magistrate's Court Act** before the High Court can determine the suitability of the applicant to manage the estate of such persons.

The procedure is by a **notice of motion** Supported by an affidavit from the applicant as per **Order 52 rule 1** of the civil procedure rules. The hearing shall be as for applications under the same Act.

Section 62 of the Mental Health Act provides for the appointment of a personal representative of person with mental illness.

Section 62(2) of the Act provides that a personal representative shall:

- (a) Manage the estate of the person with mental illness and
- (b) Be a guardian of the person with mental illness and of the dependents of that person.

Section 63 of the Act provides for the responsibilities of personal representative appointed by court'

- (1) Court shall grant a personal representative general or specific power, to manage the estate of the person with mental illnesses
- (2) Notwithstanding subsection (1), a personal representative shall not, without the special permission of the court-
 - (a) Mortgage, charge or transfer, by sale, gift, surrender 'exchange, or by any other means, mortgage, charge or transfer any movable or immovable property of the person with mental illness;
 - (b) Lease any property of the person with mental illness for a term exceeding five years; or
 - (c) Invest funds of the person with mental illness in any security except a security authorized by law'.

A personal representative shall not invest any funds belonging to the person with mental illness in any company or undertaking in which the personal representative has an interest in or purchase immovable property for the person with mental illness without the authority of court.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

MISCELLANEOUS CAUSE NO.....OF 2022

IN THE MATTER OF THEOPHILUS WATMON (A PERSON WITH MENTAL ILLNESS)

AND

IN THE MATTER OF APPOINTMENT OF A PERSONAL REPRESENTATIVE TO MANAGE
THE ESTATE OF THEOPHILUS WATMON

MODESTA WATMON.....APPLICANT

VERSUS

THEOPHILUS WATMON (A PERSON WITH MENTAL ILLNESS) RESPONDENT

NOTICE OF MOTION

(Under Section 98 of the CPA, 0.52 R1, 2 & 3 of the CPR, Section 60(3)(b) Sec 62(1),(2), (5) Sec 63 of the Mental Health Act,2018)

TAKE NOTE that this Honorable Court will be moved on the..... Day of 20..... at o'clock in the fore/afternoon or soon thereafter as counsel for the applicant shall be heard on an application seeking for the following:

1. An order that the respondent be mentally assessed.
2. A declaration that the respondent is a person with mental illness.
3. A declaration that the respondent is incapable of managing his own affairs.
4. An order authorizing the applicant to manage the estate of the respondent.

TAKE FURTHER NOTICE that the grounds upon which this application is based are contained in the affidavit of Modesta Watmon, which shall be read and relied upon at the hearing but briefly the grounds are;

ISAAC CHRISTOPHER LUBOGO

- a) That the applicant is the wife to Theophilus Watmon, who is suffering from a mental illness and the respondent in this application.
- b) That the applicant and the defendant are blessed with six children namely: Matthew Watmon aged 28, Myles Watmon aged 25, Martin Watmon aged 22, Michelle aged 18, Molly Watmon aged 16 and Morgan Watmon aged 12.
- c) That the defendant has a number of properties including business savings in a Business group totaling to about 60,000,000 (Uganda shillings sixty million Shillings), a plot of land in Wakiso District Kyadondo Block 543 Plot 335) valued at 15,000,000 (Uganda Shillings Fifteen Million Uganda Shillings, and a motor vehicle from Japan at the cost of 30,000,000/= (Uganda Shillings Thirty Million Only) which has not yet been cleared.
- d) That the defendant has started to sell off some of his property very cheaply to his close business associates.
- e) That the applicant would like to secure all this property and ensure that it is safe and protected, ensure that the children continue with education and to recover all money that is overdue to him from his debtors.
- f) That the defendant has been un able to run his affairs owing to his illness but together with the son Mathew Watmon are opposed to the fact of the defendant's deteriorating mental health and medication.
- g) That the applicant is qualified to perform the duties should she be appointed as a manager of defendant's estate.
- h) That it is necessary that the applicant be appointed as a personal representative to manage the estate of his husband.
- i) That it is in the interest of justice that this application is granted.

DATED at Mbarara this 22nd day of August 2022

.....firm g7&Co advocates.....

(COUNSEL FOR THE APPLICANT)

Given under my hand and seal of this honorable court this 22nd day of August 2022

.....

REGISTRAR

Drawn and filed by:

OBJECTION MY LORD

M/s Sui Generis & Company Advocates

Mbarara City

Mbarara

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

MISCELLANEOUS CAUSE NO.....OF 2022

IN THE MATTER OF THEOPHILUS WATMON (A PERSON WITH MENTAL ILLNESS)

AND

**IN THE MATTER OF APPOINTMENT OF A PERSONAL REPRESENTATIVE TO MANAGE
THE ESTATE OF FRANCIS THEOPHILUS WATMON**

MODESTA WATMON.....APPLICANT

VERSUS

THEOPHILUS WATMON (A PERSON WITH MENTAL ILLNESS)...RESPONDENT

MELANIE MALINGA.....APPLICANT

VERSUS

FRANCIS XAVIER MALINGA (PERSON WITH MENTAL ILLNESS) RESPONDENT

AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION

I, **MODESTA WATMON** of M/s Sui Generis & Company Advocates P.O BOX 111, Mbarara City, do solemnly make oath and state as follows;

1. That I am a female adult Ugandan of sound mind, a resident of Kakiika in Mbarara District and the wife to the defendant and the applicant in this matter, and swear this affidavit in that capacity.
2. That my husband Theophilus Watmon has been sick since June 2018, and I noticed this illness from changes in his behaviour.
3. That he has suffered from serious insomnia, to which the doctor prescribed sedatives, frequent hallucinations, many times he responds to voices and speaks to invisible people, and is now hot tempered and hates some of the family members.
4. That I sought medical advice and he has received some medical treatment and care from specialists in Mulago.
5. That my husband Theophilus and I are blessed with six children namely: Matthew Watmon aged 28, Myles Watmon aged 25, Martin Watmon aged 22, Michelle aged 18, Molly Watmon aged 16 and Morgan Watmon aged 12.
6. That my husband has a number of properties including business savings in a Business group totaling to about 60,000,000 (Uganda shillings sixty million Shillings), a plot of land in Wakiso District Kyadondo Block 543 Plot 335) valued at 15,000,000 (Uganda Shillings Fifteen Million Uganda Shillings, and a motor vehicle from Japan at the cost of 30,000,000/= (Uganda Shillings Thirty Million Only) which has not yet been cleared.
7. That he has started to sell off some of his property very cheaply to his close business associates.
8. That I would like to secure all this property and ensure that it is safe and protected, ensure that the children continue with education and to recover all money that is overdue to him from his debtors.
9. That my husband is however fond of my son Matthew in whom he used to confide and both of them are opposed to the fact of my husband's deteriorating mental health and medication.
10. That it is in the best interest of justice that I am authorized to manage the estate of the respondent.
11. That all that I have stated herein is true and correct to the best of my knowledge and belief.

SWORN at Mbarara this 22nd day of August 2022

.....Modesta Watmon.....

MODESTA WATMON

DEPONENT

BEFORE ME

.....
COMMISSIONER FOR OATHS

Drawn and filed by:

Sui Generis & Company Advocates

P.O BOX 111

Mbarara City



WHAT ETHICAL ISSUES MAY ARISE IN THE COURSE OF EXECUTING THE REMEDIES?

- Lack of due diligence and incompetent service

As advocates we have a duty to perform our services diligently and competently. **REGULATION 12 OF THE ADVOCATES (PROFESSIONAL CONDUCT) REGULATIONS** is to the effect that every advocate must advise his clients in their best interest, and no advocate should knowingly or recklessly encourage a client to enter into, oppose or continue any transaction in respect of which a reasonable advocate would advise that to do so would not be in the best interest of the client or would be an abuse of court process. Competent advice is therefore crucial as an ethical consideration in such circumstances.

- Lack of accountability

Regulation 29 of the Advocates (Professional Conduct) Regulations requires that every advocate shall account to his or her clients promptly and correctly for all monies held in respect of clients and in accordance with the Advocates Accounts Rules set out in the First Schedule to the Act.

In the case of **LUMWENO & CO. ADVOCATES V TRANS-AFRICA ASSURANCE COMPANY LTD CIVIL APPEAL-2004/95 [2014] UGCA 99**, it was provided that the professional fees of an advocate are paid pro-ratable in line with the work done by an advocate for his or her client. That the fees go on rising in respect to the stage of the pleadings and J Kakuru JA held that an advocate is not required to refund instruction fees where a client withdraws instructions from the advocate who acted upon such instructions.

- Exploitation the client's ignorance.

This is an unethical practice because in most instances the clients have little knowledge about how some of these proceedings are conducted and some clients are illiterate and they will believe whatever the lawyer says. Lawyers sometimes take advantage of this ignorance to exploit the client which is contrary to Regulation 11 of the Advocates (Professional Conduct) Regulations an advocate shall not exploit the inexperience, illiteracy or other personal shortcomings of a client for his or her personal benefit.

- Being negligent with the client's work.

Regulation 6 of the Advocates (Professional Conduct) Regulations provides that an advocate shall be personally responsible for the client's work. This entails a duty not to delegate the work without supervision. Also, Regulation 2(2) provides that an advocate shall not unreasonably delay to carry out the clients instructions.

- Lack of confidentiality towards the client's case and documents.

Regulation 20 of the Advocates (Professional Conduct) Regulations prohibits advocates from making announcements or comments to newspapers or media concerning on-going litigation.

Regulation 7 of the same regulations also prohibits advocates from disclosing information obtained from clients while carrying out instructions.

- Advocate's failure to appear in court

Regulation 5 (1) of the Advocates (Professional Conduct) Regulations provides that every advocate shall, in all contentious matters, either appear in court personally or brief a partner or a professional assistant employed by his or her firm to appear on behalf of his or her client.

- **Untimely work**

Regulation 2(2) of the Advocates (Professional Conduct) Regulations is to the effect that an advocate shall not unreasonably delay carrying out of instructions received from his or her clients. Failure to meet deadlines can be fatal in a legal case. Therefore, the advocate will ensure that he or she carries out Melanie's instructions within the set time.



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE
AT ENTEBBE
DIVORCE CAUSE NO.001 OF 2022
GRACE AKOROMWIGURU.....PETITIONER
VERSUS
LUGAMBO HENRYRESPONDENT

PETITION FOR DIVORCE

This is the humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX, KAMPALA and it shows

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality, Wakiso District and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe Municipality, Wakiso district.
3. THAT your humble petitioner professes the Anglican religion.
4. THAT your petitioner was in the month of May 2015, was lawfully married to the respondent in a customary marriage under the Karamojong customs at the home of the parents of the petitioner in Moroto district,
5. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at All saint's church at Nakasero in the district of Kampala, and that
 - a) The marriage was solemnized under the provisions of the Marriage Act cap251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe Municipality and there is one issue of the marriage to wit Lubogo Juniorborn on the 1st September 2016.
6. THAT your petitioner's husband, LUBOGO HENRY, in or about the months of AUGUST 2017, SEPTEMBER 2017, FEBRUARY 2018, MARCH 2018 AND OCTOBER 2022 at their matrimonial home in Entebbe Municipality, Wakiso district violently assaulted your petitioner by striking her in the face, abdomen area, back and on the head with his enhanced fists, using a but on some occasions and his shoes at times.

7. THAT your petitioner's husband, LUBOGO HENRY, in or about the months of AUGUST 2017 TO OCTOBER 2022 at their matrimonial home in Entebbe municipality, Wakiso district insulted your petitioner by blaming her for all his problems, for being Karamojong and calling her good for nothing. This has caused your petitioner mental and emotional anguish.
8. THAT all avenues, forums and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results. (attached as Annexure 'A' is a copy of the minutes from one of the mediation meetings called by our relatives)
9. THAT due to the continued cruelty of the respondent to the petitioner, the marriage between the two of them has irretrievably broken down.
10. THAT the matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
11. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceeding nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) The marriage of your petitioner with the respondent be dissolved and a decree nisi be granted
- b) That the petitioner may have the custody of the issue of the marriage
- c) That the respondent be ordered to pay alimony of UGX. 1,000,000 per month to the petitioner and pay UGX. 1,000,000 per month to the petitioner for maintenance of the issue of the marriage.
- d) That the respondent pays the costs of and incidental to the petition
- e) That your petitioner may have such further and other relief as the court may deem fit.

DATED at KAMPALA, this 26th day of October 2022

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Drawn and filed by;

_____ before me

SUI GENERIS AND CO. ADVOCATES, _____

P.O BOX0000, KAMPALA

COMMISSIONER FOR OATHS



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE
AT ENTEBBE
DIVORCE CAUSE NO.001 OF 2022
GRACE AKOROMWIGURU.....PETITIONER
VERSUS
LUGAMBO HENRYRESPONDENT

SUMMARY OF EVIDENCE

The petitioner shall adduce evidence to the effect that the respondent, LUBOGO HENRY, has been cruel to her thereby causing her emotional and psychological torture.

LIST OF DOCUMENTS

The petitioner will adduce the following documents in support of the petition.

1. The marriage certificate
2. Minutes from the previous mediation meetings
3. Any other with the leave of court.

LIST OF WITNESSES

The petitioner shall testify and call the following witnesses.

1. Akoromwiguru Grace
2. Any other with leave of court

LIST OF AUTHORITIES

1. The Divorce Act
2. Any other authority with leave of court.

Dated at Kampala on this 27th day of October 2022

PETITIONER

Drawn and filed by

SUI GENERIS AND CO ADVOCATES

P.O BOX0000, KAMPALA



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE
AT ENTEBBE
DIVORCE CAUSE NO.001 OF 2022.

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

SUMMONS TO FILE AN ANSWER TO THE PETITION.

TO: LUGAMBO HENRY

WHEREAS, the above-named petitioner has instituted a suit against you upon the claim, the particulars of which are set out in the copy of the petition attached here to

YOU ARE HEREBY required to file a response in the said suit within 15 days from the date of service of summons on you in the manner prescribed under O.9 r 1 of the civil procedure rules S.1 71-1 (as amended)

SHOULD YOU FAIL to file an answer on or before the date mentioned, the petitioner may proceed with the said suit and judgement given in your absence.

GIVEN UNDER my hand and seal of the court on this 25th day of October 2022 at Entebbe

MAGISTRATE

Caveat (S.13 of MA, S.27 OF CMRA)
THE REPUBLIC OF UGANDA
IN THE MATTER OF THE MARRIAGE ACT
CAP. 251
AND
IN THE MATTER OF A CAVEAT FORBIDDING THE
SOLEMNISATION OF A MARRIAGE
TO: THE REGISTRAR OF
MARRIAGES AT KAMPALA.

CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE

TAKE NOTICE that I, LUGAMBO HENRY, being the lawful husband of GRACE AKOROMWIGURU who intends to contract another marriage at Christ the king church, hereby forbid the same for the following reasons.

1. That grace is already married to me having solemnized a marriage on 29th December 2015 at all saint's church Nakasero.

My address for purposes of service under this caveat is SUI GENERIS and co advocates, P.O BOX0000 KLA.

Dated at Kampala this 25th day of October 2022.

SIGNED by the said

LUGAMBO HENRY
(CAVEATOR)

Before me

COMMISSIONER FOR OATHS.

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBEE
AT ENTEBBE

MATRIMONIAL CAUSE NO. 002 OF 2022.

GRACE AKOROMWIGURU.....PETITIONER

VERSUS

LUGAMBO HENRYRESPONDENT

**PETITION FOR RESTITUTION OF CONJUGAL RIGHTS AND
PROVISION OF MAINTENANCE**

(Under S.20 (1) and (2) of the D.A and O.22 rule 29 of civil procedure rules)

This is the humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX0000, KAMPALA and these are as follows:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates under take to effect service on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and is a resident of Entebbe municipality, Wakiso district
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015; lawfully married to the respondent at Christ the king church in the district of Kampala and that:
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe municipality and there are two issues of the marriage to with LUGAMBO JUNIOR AGED 20 YEARS AND AKIROMO JUNIOR AGED 3 YEARS.
5. THAT, the respondent, LUGAMBO HENRY has not from the month of AUGUST 2017, to date not provided maintenance to the petitioner nor to the children.
6. THAT the respondent, LUBOBA HENRY has since the 14th day of AUGUST 2015 refused and still refuses to render her conjugal rights albeit living in the same house and sleeping in the same bed.
7. THAT the petitioner has taken all necessary steps to have the respondent, LUBOGO HENRY restore her conjugal rights but with no success in sight.

8. THAT the matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.

Your petitioner therefore humbly prays for a decree that;

- a) The respondent be ordered to provide maintenance for the wife and the children at a rate of UGX. 1,000,000 per month.
- b) The respondent be ordered to render the petitioner her conjugal rights
- c) The respondent pay the costs of and incidental to this petition.

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Drawn and filed by;

SUI GENERIS AND CO. ADVOCATES

P.O BOX0000, KAMPALA

before me

.....

COMMISSIONER FOR OATHS.

Attach

- 1. Summary of evidence
- 2. Summons to file a reply
- 3. Mediation summary.

SEPARATION AGREEMENT.

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE DIVORCE ACT, CAP 249
AND IN THE MATTER OF THE CONTRACTS ACT, 2010
SEPARATION AGREEMENT

THIS AGREEMENT IS MADE THIS 27th day of October 2022.

BETWEEN

GRACE AKOROMWIGURU aged 24 years whose address for purposes of this agreement shall be SUI GENERIS COMPANY ADVOCATES, PILKINGTON ROAD, KAMPALA. (Hereinafter referred to as the wife)

AND

LUBOGO HENRY aged 35 years, resident of lubowa, Entebbe, Wakiso district (Hereinafter referred to as the husband)

WHEREAS the husband and wife lawfully contracted a marriage on the 15th day of October 2015 at All saint's cathedral Nakasero in Kampala

AND WHEREAS they have since lived and cohabited together at their matrimonial home in Entebbe municipality and have two issues from the marriage to wit, Lubogo Junior aged 3 years and Lubogo Grace aged one year (Hereinafter referred to as the children)

AND WHEREAS the relationship between the two has broken down and thus they are desirous of separating and agree to live separately as agreed in this agreement.

THIS AGREEMENT IS THEREFORE WITNESSETH AS FOLLOWS:

1. NON MOLESTATION.

1.1 The parties mutually agree that there shall be no molestation of one by the other during the continuance of this agreement.

1.2 In the event that any of the parties violates the provision of clause 1.1 above, the party in breach shall pay damages of UGX 5,000,000 to the other innocent party.

2. MAINTENANCE OF WIFE AND CHILDREN.

2.1 The husband shall provide for the maintenance of children and the wife at a rate UGX.2,000,000 per month

2.2 The maintenance in clause 2.1 above shall be paid on every 28th day of the month and shall be deposited on the above account provided by the wife from time to time.

2.3 Failure to comply with clause 2.2 above, the sum in clause 2.1 shall attract an interest of 10% for each day after the 28th day to the day when the full sum due that month shall be paid.

3. LIVE A PART.

The parties agree that they shall continue to live separately in consideration for having each other's consortium.

4. DUM CASTA CLAUSE

Name of the parties to this agreement shall be at liberty to have sex with another person during the subsistence of this agreement.

5. MATRIMONIAL PROPERTY

5.1 each party shall be entitled to take property constituting wearing apparel and personal effects

5.2 the wife shall be entitled to retain the matrimonial home during the subsistence of this agreement

5.3 all other properties constituting matrimonial property at the time of execution of this agreement shall continue to be held jointly and for the benefit of both parties

5.4 the party deriving any income from any of the properties mentioned in clause 5.3 shall have to account to the other party for all revenues earned from the properties and shall relinquish half of the income earned to the other party as their share in the income earned to the other party as their share in the income earned from the property.

5.5 All properties acquired by the parties during the subsistence of this agreement shall not be construed as constituting matrimonial property during the subsistence of this agreement or thereafter.

6. DURATION

6.1 This agreement shall unless otherwise expressly agreed upon by the parties in writing run for a period of two years from the date of execution.

6.2 Notwithstanding clause 6.1, the parties may by mutual consent terminate this agreement at any time during its subsistence.

7. CUSTODY OF THE CHILDREN.

7.1 The parties agree that the wife shall have custody of the children while the husband shall have visitation rights at all times

7.2 In exercise of his visitation rights in clause 7.1 above, the husband shall ensure that he gives at least a days' notice to the wife and shall ensure the visits are in a reasonable time

7.3 For avoidance of doubt, reasonable time shall be construed to be between 9:00am and 7:00pm.

8. AMENDMENT.

No provision in this agreement shall be varied or deemed to be varied except where there is an express agreement to that effect in writing signed by the parties.

9. DISPUTE RESOLUTION.

9.1 All disputes arising under this agreement shall be referred to a mediator within 10 working days from the date when the dispute arose.

9.2 The mediator referred to in clause 9.1, shall be a mediator appointed by CADER upon application by either party,

9.3 The mediation referred to clause 9.1, shall not exceed 30 days from the first day when the mediation is commenced.

9.4 Where the parties fail to reach a settlement in respect of the dispute, they shall refer the matter to court of competent jurisdiction for resolution of the dispute.

10. LAW APPLICABLE.

This agreement shall be governed by the laws of the republic of Uganda.

IN WITNESS WHEREOF, the parties have appended their signatures hereto on the date and year first mentioned above.

SIGNED BY:

AKORIMO GRACE
(WIFE)

SIGNED BY:

LUBOGO HENRY
(HUSBAND)

In the presence of

in the presence of

KIZITO DERRICK
ADVOCATE

LUMALE JOEL
ADVOCATE

Drawn by
SUI GENERIS AND CO ADVOCATES
P.O BOX0000, KAMPALA
UGANDA.



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE
AT ENTEBBE

MATRIMONIAL CAUSE NO 003 OF 2022

AKIROMO GRACEPETITIONER

VERSUS

LUBOGO HENRYRESPONDENT

PETITION FOR SEPARATION

(Under section 14 of the divorce act cap 249 and rule 4 of the divorce rules)

This is the humble petition of GRACE AKOROMWIGURU whose address for purposes of this petition shall be SUI GENERIS AND CO. ADVOCATES, P.O BOX0000, KAMPALA and it show:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe municipality, Wakiso district.
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at all saint's cathedral at Nakasero in the district of Kampala and that
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251
 - b) After the marriage, your petitioner hired and cohabited with the respondent, LUBOGO HENRY at kiwanga village, Entebbe municipality and there is one issue of the marriage to will LUBOGO JUNIOR born on the 1st September 2016.
5. THAT your petitioner's husband, LUBOGO HENRY, in or about the month of AUGUST 2017,SEPTEMBER 2022, at their matrimonial home in Entebbe municipality ,Wakiso district, violently assaulted your petitioner by striking her in the face ,abdomen areas, back and her head with calendared fits and his belt.
6. THAT all avenues and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results (Attach evidence if any)

7. THAT due to the respondent's cruelty to the petitioner, the marriage between the two has broken down.
8. THAT this matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
9. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceedings nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) Your petitioner be judicially separated from LUBOGO HENRY, the respondent
- b) The petitioner be granted custody of the issue of the marriage
- c) The respondent be ordered to pay a monthly maintenance for the child at a rate of UGX 1,000,000 per month.
- d) The respondent be ordered to pay alimony to the petitioner at a rate of UGX1,000,000 per month
- e) That the respondent pay the costs of and any other costs incidental to this petition.
- f) Any further remedies as the court may deem fit.

PETITIONER

I, AKIROMO GRACE, certify that the statements above are true to the best of my knowledge, information and belief.

PETITIONER

Drawn and filed by:

before me

SUI GENERIS & CO ADVOCATES,

P.O BOX0000, KAMPALA,

COMMISSIONER FOR OATHS.UGANDA.

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF NAKAWA AT NAKAWA
ADOPTION PETITION NO. 299 OF 2011

AND

IN THE MATTER OF THE CHILDREN ACT, CAP. 59

AND

IN THE MATTER OF ADOPTION OF, KAMPALA DISTRICT

AND

IN THE MATTER OF A PETITION BY

ADOPTION ORDER

THIS ADOPTION PETITION coming up for hearing this 7th day of March, 2013 before **HER WORSHIP JOY KABAGYE BAHINGUZA, CHIEF MAGISTRATE** in the presence of Counsel for the Petitioner/Applicant and upon perusal of the pleadings and hearing of Counsel, **IT IS ORDERED that: -**

Ruth Among is hereby appointed the adoptive parent of

DATED at Kampala this 7th day of March, 2013.

GIVEN under my Hand and the Seal of this Honourable Court this day of2013.

CHIEF MAGISTRATE

EXTRACTED BY:

Sui Generis & Co- Advocates

Plot 10 Clement Hill Road



EXAMPLE

BRIEF FACTS

Matovu Bosco and Monica Akiiki got married on 22nd December 2015 at the CAO's office at Fort Portal at 6.00pm without any witnesses and having not informed Monica's parents. After the marriage, Bosco who was 25 years discovered that Monica who had informed him that she was 19 years old was actually on 5th May 1999. In September 2016 after Monica gave birth to twins, Bosco went to visit the twins, but Monica's parents insisted that he marries her customarily. Bosco agreed and in March 2017, together with his parents, Bosco visited the home of Monica's parents. The family of Monica demanded for a cow and bull as bride price. Bosco paid shillings 2,000,000 being the cost of the cow. He had no money to pay for the price of the bull. However, the parents of Monica allowed her to go stay with Bosco, her husband.

Soon after, in August 2017, Bosco lost his job, resorted to spending all his days and nights at church and stopped providing for Monica and the twins. He stopped having sexual intercourse with her claiming that he wants to remain "clean" awaiting the return of the Lord. In the meantime, in August 2018, while washing

Bosco's trousers, Monica found in the pockets a box of Wild Life Condoms. When Monica asked Bosco about the condoms, he gave her a big slap and asked her to mind her own business. Monica is frustrated and wants to leave the home.

Bosco too wants the money he paid to Monica's parents refunded to him. He has identified one of the born-again girls called Bulandina and wants to ask her hand in marriage.

ISSUES;

What is the status of Bosco's marriage?

Whether Bosco has any remedy?

What documents are needed for the above remedy?

What advice should be given to Monica who still wants to remain married to Bosco?

What documents are necessary for court proceedings?

What is the remedy for stopping the marriage between Monica and Peter

What is the procedure of obtaining the remedy?

LAW APPLICABLE

The Constitution of the Republic of Uganda 1995

The Marriage Act, Cap 251

The Divorce Act, Cap 249

The Customary Marriages(Registration) Act, Cap 248

The Uganda Registration Services Bureau Act Cap 210

The Judicature Act Cap 13

The Divorce Rules SI 249-1

RESOLUTION;

1. **ADVICE TO BOSCO MATOVU ON THE STATUS OF HIS MARRIAGES AND REMEDIES IF ANY.**

Marriage was defined by Lord Peasance in the case of **HYDE VS HYDE (1866) LRPD 131** as a voluntary union for life of one man and one woman to the exclusion of the others.

Article 31(3) of the Constitution of the Republic of Uganda as amended provides that marriage shall be entered into with the consent of the man and woman intending to get married.

Uganda's legal pluralistic system recognizes multiple types of marriage, including civil, customary and religious (Christian, Islamic and Hindu) marriages. While customary and Islamic marriages are potentially polygynous, Christian, Hindu and civil marriages are monogamous and follow the Common Law requirements laid out in the 1866 English case of **HYDE V. HYDE**

THE 2015 CIVIL MARRIAGE

Civil marriages include marriage under the **Marriage Act Cap 251** which can be solemnised in a church or by a Chief Administrative officer/ Registrar of marriages.

In order to contract a valid marriage, the parties must possess the legal capacity to marry and must comply with certain formalities: a failure in either respect renders the marriage void.

The requirements of a civil marriage are laid out in Section 10 of the Marriage Act as;

Residence. One of the parties must have resided in the district where the marriage is to be celebrated for at least fifteen days.

Age.

Each of the parties must be above 21 years of age and if below, consent of the parents must be sought. This should however be reconciled with the Constitution of Uganda 1995 which provides for 18 years as the age of consent.

Parties should not be within the prohibited degrees of marriage.

None of the intended parties to the marriage should be in a subsisting marriage whether customary or under the Marriage Act.

Notice.

Under section 6, one party must give notice to the registrar or the person in charge of a church.

The notice must be posted for public knowledge for at least 21 days according to section 9.

According to section 10 the registrar issues a certificate authorising this marriage.

If marriage is not done within three months of the notice a fresh notice is needed according to section 11.

The same notice is applicable to church marriage where banns will be announced for three consecutive Sundays usually in the church where the marriage will take place.

Under **Section 34(2) (c) Marriage Act** shall be null and void if both parties knowingly and willfully acquiesce in its celebration without the registrar's certificate of notice duly issued.

There are procedural requirements the marriage is celebrated must be licensed i.e., place of worship or the office of the registrar. **Sections, 4, 5 and 22 of the Marriage Act.**

Marriage should be celebrated with open doors between 8:00am and 6:00pm in case of church marriage under **Section 20(2)** and in case of Civil Marriage, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, under Section 26 of the Act. Witnesses apart from the minister celebrating and there after filling of certificate. Section 20(2) and 26

In the current facts, the marriage that took place in 2015 is void ab initio because the major requirement of age was not met. Monica was only 16 years and therefore a minor who is not eligible for marriage. Further the marriage was celebrated secretly at 6; pm at the office of the CAO. The facts do not show that **Sections**

6, 9 and 10 were complied with. The marriage was therefore a nullity for want of registrar's certificate of notice as per **Section 34(2) (c) of the Marriage Act**.

POSSIBLE REMEDY

Given that there was misrepresentation of the fact of age by Monica, Bosco can petition for nullification of the marriage.

The 2016 customary marriage

Section 1(b) of the Customary Marriages Registration Act Cap 252 defines a customary marriage as a marriage celebrated according to the rites of an African community and one of the parties to which is a member of that community or any marriage celebrated under Part 3 of the Act. This definition was further emphasized in the case of **UGANDA V KATO & OTHERS [1976] HCB 204**.

In **UGANDA V PETER KATO AND 3 OTHERS [1976] HCB 204**, Ssekandi J as he was then, held that the test of determining what a marriage is, under customary law, is whether the union is treated as a marriage by the laws or customs of the nation, race or sect to which the parties belong. **Section 4(2) of the Customary Marriage (Registration) Act** provides that Customary Marriages are polygamous in nature.

In **JOHN TOM KINTU V MYLLIOUS GAFABUSA KINTU HIGH COURT DIVORCE APPEAL NO. 135 OF 1995** it was stated by Justice S.B. Bossa as she was then that, "...if a person married under customary law continues to marry more wives under the same type of marriage, he doesn't commit adultery thereby [the marriage is polygamous]. I think however, that the situation is different where the other person involved is not legally married to that person under customary law. There the association must be clearly adulterous."

Article 37 of the 1995 Constitution provides that every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.

The Judicature Act Cap under Section 15 provides that customs or traditions will be applicable in so far as they are being not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law. This was further emphasized in the case of **KIMANI V GIKANGA (1965) EA 735** Court held that customs that are repugnant to public policy or natural justice, equity and good conscience would not be enforced.

The custom being relied on by a party in court must be established by them to the satisfaction of court so that the Court may take judicial notice of it. In **ERNEST KINYANJUI KIMANI V MUIRU GIKANGA AND ANOTHER [1965] 1 EA 735**, it was held that where African customary law is neither notorious nor documented it must be established for the court's guidance by the party intending to rely on it and that as a matter of practice and convenience in civil cases the relevant customary law, if it is incapable of being judicially noticed, should be proved by evidence or expert opinions adduced by the parties. (Also refer to

Halsbury's Laws of England, 3rd Edition, Vol. 15 – “Judicial notice is taken of facts which are familiar to any judicial tribunal by virtue of their universal notoriety or regular occurrence in the ordinary course of nature or business. As judges must bring to the consideration of the questions, they have to decide their knowledge of the common affairs of life, it is not necessary on the trial of any action to give formal evidence of matters with which men of ordinary intelligence are acquainted whether in general or to natural phenomenon.” And also, **MIFUMI (U) LTD & ANOTHER VS ATTORNEY GENERAL & ANOTHER CONSTITUTIONAL APPEAL No. 2 of 2014** where the Court observed that, “It is not necessary to require that the custom should be formally proved in court in order for the court to know it exists...”

Section 11 of the Customary Marriages Registration Act provides for the requirements of a customary marriage as;

The female party has to be of or above 16 years of age (To be read together with the constitution).

The male party should have attained 18 years of age

They should be of sound mind

The parties should not be within the prohibited degrees of kinship as laid out in the second schedule.

In **UGANDA V KATO & OTHERS (SUPRA)**, Court observed that the test for determining whether there is a customary marriage, the union is regarded as such by the customs of the tribe to which the parties belong and that the parties must satisfy all the requirements of marriage under the customary laws of that community.

Bride price is also an essential element of customary marriage since it is a custom of different tribes and it therefore validates a marriage. In **UGANDA V EDUKU (1975) HCB 359** Court held that since bride price had not been paid in full, there was no subsisting marriage.

In **NEMEZIO AYIYA PET VS. SABINA ONZIA AYIYA HCCS NO. 8/1973** it was held that dowry is essential in marriage in Uganda that it can be paid in instalments, but that until the last instalment is paid, no valid customary marriage exists. It was emphasized that, a man and a woman cohabiting can be regarded as husband and wife but marriage is not valid until the entire dowry is paid.

In **MIFUMI (U) LTD & ANOTHER VS ATTORNEY GENERAL & ANOTHER CONSTITUTIONAL APPEAL NO. 2 OF 2014** Although the Supreme Court abolished the **traditional practice of refunding dowry under customary divorce**, the institution of bride wealth was left intact as an essential element of customary marriages

Dowry therefore is an essential ingredient of a valid customary marriage.

The customary marriage can thus be nullified on two grounds; one is failure to complete bride price and secondly Monica was still below 18 years having been born in May 1999 yet the ceremony was in March 2017.

It should be further noted that the law does not allow conversion of civil marriage to customary marriage. **Section 36 of the Marriage Act** provides that any person who is married under this Act, or whose marriage

is declared by this Act to be valid, shall be incapable, during the continuance of that marriage, of contracting a valid marriage under any customary law.

Therefore, in any case where the first civil marriage is found valid, the second customary marriage would still be invalid.

However, Bosco cannot demand for a refund of the bride price.

This was clearly discussed in the case of **MIFUMI (U) & 12 OTHERS V ATTORNEY GENERAL AND KENNETH KAKURU**, the Supreme Court held that the custom and practise of demand and refund of bride price as a condition precedent to a valid dissolution of a customary marriage is inconsistent with **Articles 2, 21(1) and 2, 31(1)(b); 31(3), 32(2), 33(1) and 33(4) of the constitution** because it undermines the dignity and status of women.

REMEDY

The available remedy for Bosco is to petition court for nullification of the above marriages.

Both marriages were void for violating procedural requirements. In the first civil marriage, Monica had no requisite age of 18 which is a violation of **Article 31 of the Constitution**, and as a result, such marriage is void under **Article 2 of the Constitution**. The same marriage is void for want of registrar's certificate of notice which should be issued before celebration of the marriage. **Section 34(2) (c)** declares such marriage as void.

The second customary marriage was invalid for failure to pay full bride price in accordance with Toro customs. Also, Monica still lacked the requisite age since she was 17 years and 10 months old. This is a violation of the Constitution.

There is a difference between a void and voidable marriage.

The distinction between void and voidable marriages is well brought out in the case **OF DE RENEVILLE V DE RENEVILLE [1948] 1 ALLER 56, 60 CA**. Lord Greene considered the essential distinction between void and voidable marriage:

“The substance [of the distinction] may be expressed thus. A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any decree annulling it. A voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction.”

Technically, a void marriage is void even if it has never been declared to be so by a court, whereas a voidable marriage is valid from the date of the marriage until the court makes an order. That said, a party who believes his or her marriage to be void would normally seek a court order to confirm this to be so. This avoids any doubts over the validity of the marriage and also permits the parties to apply for court orders relating to their financial affairs.

RE ROBERTS (DECEASED) [1978] 3 ALL ER 225

Walton J; if one can show that a ceremony is void that does not need the pronouncement of the court to establish that fact. It may be highly desirable that the court should so pronounce and, indeed, one would be very slow, as a practical matter, normally in relying on such a position without the decree of the court. But if something is void, void it is: the court is then doing no more than pronounce a blinding glimpse of the obvious at the end of the day.

Since the above marriages are void, Bosco should petition Court for a decree of nullity. It is after that decree, that Bosco can now legally marry Bulandina.



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
FAMILY DIVISION
MATRIMONIAL CAUSE NO. 1 OF 2018
MATOVU BOSCO.....PETITIONER
VERSUS
AKIIKI MONICA.....RESPONDENT

PETITION FOR NULLITY

(Under The Marriage Act Cap 251)

The petitioner is an adult male Ugandan of sound mind and the petitioner's address for purposes of this petition is Kiketo and Company Advocates P.O BOX 2112 Kampala.

The respondent is a female adult Ugandan of sound mind resident at

Nyakasura, Fortportal and the petitioner's advocates undertake to effect court process on him/her.

The petitioner and the respondent are domiciled in Uganda.

That on 22nd December 2015 the petitioner contracted a civil marriage with the respondent at the office of the CAO at Fort Portal. (attached is a marriage certificate marked Annexure A)

That the respondent lacked capacity to enter such a marriage as she was 16 years which is below the age of consent.

That no registrar's certificate of notice was issued nor prior consent of the parents sought before the marriage as envisaged by the Marriage Act

That the marriage was contracted between the petitioner and respondent without any person to witness the marriage centrally to the Marriage Act.

That the civil marriage was conducted after the hour of 4'Oclock contrary to the Marriage Act.

That the said civil marriage was therefore null and void for contravening the Constitution and the Marriage Act.

That in March 2017 the petitioner contracted a customary marriage with the respondent in accordance with Toro customs.

That the Customary Marriage conducted in March 2017 is invalid as the petitioner did not pay the full bride price requested.

That the customary marriages is invalid since the respondent had not yet attained the age of consent having been born in May 1999.

That this matter arises within the jurisdiction of this honorable court.

WHEREFORE the petitioner prays for;

That the said marriages between the petitioner and the respondent be nullified.

That the parties pay their own costs

Dated at Kampala this 27th day of October 2018

VERIFICATION

I CERTIFY that the statements above are true to the best of my knowledge and belief.

.....

Petitioner

Before me commissioner for oath

.....

Drawn and filed by;

SUI GENERIS & CO. Advocates

PO.BOX 2112 KAMPALA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
FAMILY DIVISION

SUMMARY OF EVIDENCE

The petitioner will adduce evidence to show that the alleged civil and customary marriages are not valid reason of below age or no capacity to contract, no notice was given, no witnesses and also bride price was not complete.

LIST OF WITNESSES

Matovu Bosco
Other witnesses with leave of court

LIST OF AUTHORITIES

The Constitution 1995
The Judicature Act Cap 13
The Marriage Act Cap 251
The Divorce Act Cap 249

LIST OF DOCUMENTS

The Marriage Certificate
Other documents with leave of court

Dated at Kampala this 27th day of October 2018

.....

Counsel for Petitioner
Drawn and filed by;
SUI GENERIS and Co Advocates
PO.BOX 2112 KAMPALA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
FAMILY DIVISION
MATRIMONIAL CAUSE NO. 1 OF 2018

SUMMONS TO ANSWER PETITION

To: **Akiiki Monica**

WHEREAS the petitioner has petitioned this court for a decree of nullity of marriage; YOU ARE hereby summoned to file an answer to the petition in this court within 15 days from the date of service of summons.

AND TAKE FURTHER NOTICE that in default of doing so, the petition will be heard and determined in your absence.

Dated at Kampala this 27th day of October 2018

.....

REGISTRAR

Task (C) (I)

Assume that instead of the customary marriage, Bosco and Monica underwent a Church marriage at All Saints Cathedral, Viirika after following all the necessary procedures. That despite all the problems Monica still wants to remain married to Bosco. She wants him to resume looking after the home and having sexual intercourse with him.

WHAT ADVICE WOULD YOU GIVE HER?

I would advise her to try mediation with the husband. Mediation is an alternative method of dispute resolution other than instituting a suit. It involves a third party called the mediator intervening to help the two conflicting parties reach an agreement. In marriage proceedings, mediation is encouraged before parties proceed to court in order to give parties a chance to resolve the matter amicably and preserve the sanctity of marriage as an institution. **Under Rule 5 of the Judicature(mediation) rules**, mediation is compulsory before intending litigants proceed to trial.

RESTITUTION OF CONJUGAL RIGHTS.

Where mediation has failed, I would advise Monica petition court for the restitution of conjugal rights under **Section 20(1) and (2) of the Divorce Act Cap 249**. Under this provision court has the power to decree that a husband or wife who has unreasonably withdrawn from intercourse with the spouse to be ordered to resume the same.

In **AREMEZI VS RIDEWAY [1949] ALL ER 664** it was stated by **Hilburg J.** that;

“I am quite sure that no young woman when she accepts a proposal of marriage and a contract is formed could be satisfied if she were told that all the Youngman is undertaking by promise is to go through a form of ceremony with her. What the parties intend is an exchange of mutual promises to become another’s spouse that is husband and wife and all that it should entail”

The withdrawal of conjugal rights must be unreasonable and the other party must have no defence. However, it is important to note that a court cannot order specific performance apparently because you can’t supervise people having sex or coerce them into the same.

Each partner has a right to **reasonable sexual intercourse with the other**: this does not entitle a husband (or a wife) to have intercourse by force, but unreasonable refusal (or demands unreasonable in their frequency or nature) could well be grounds for annulment or divorce.

However, the successful party is not entitled to use extra judicial means to enforce his /her rights. IN **R VS JACKSON, (1896) 1 QR 671**, where a husband obtained the decree nisi for restitution of conjugal rights and his wife refused to comply. He then abducted her and confined her in a house. Court held that notwithstanding her refusal to live in the same house with him, the husband was not entitled to keep her in confinement for the purpose of enforcing the decree for restitution by her of his conjugal rights. Court granted her an order for habeas corpus to secure her release. In the present case, Bosco stopped having sexual intercourse with Monica claiming that he wants to remain “clean” awaiting the return of the Lord.

Such withdrawal is unreasonable. Monica can therefore seek restitution of conjugal rights.

MAINTENANCE RIGHTS.

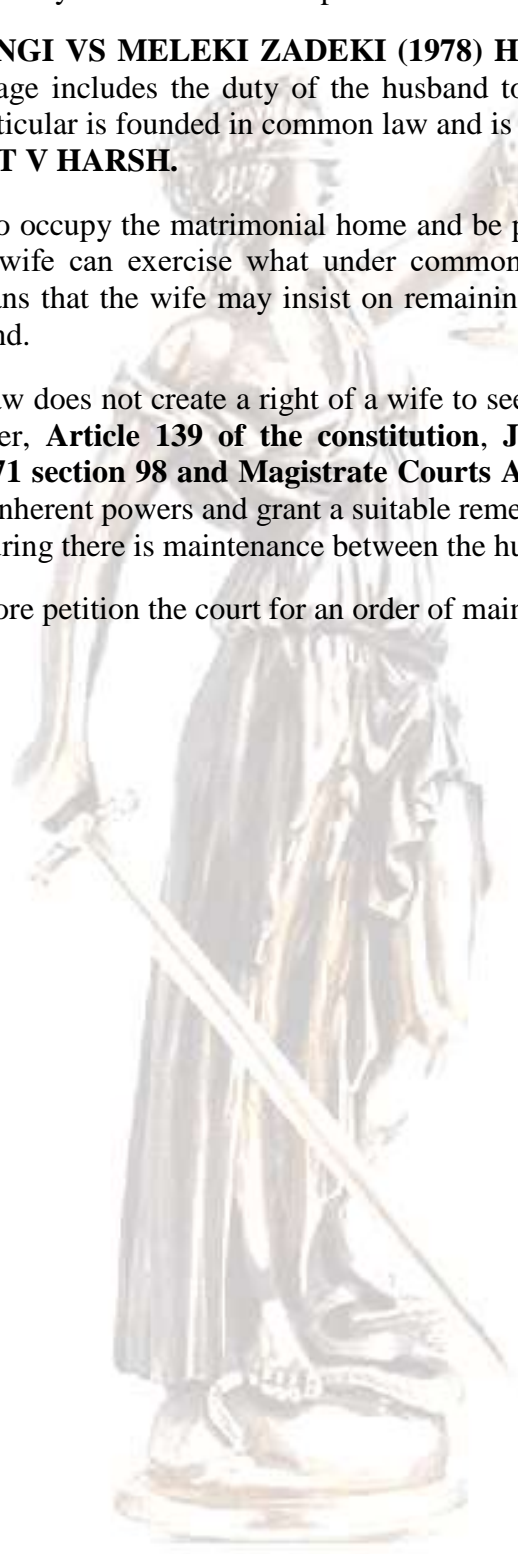
There is no statutory provision relating to the duty and a right to maintenance of spouses, however, under common law the husband has to duty to maintain his wife. However, S. 76 of the Children Act provides for maintenance order given by court to one of the parties

In **EDITH NAKIYINGI VS MELEKI ZADEKI (1978) HCB 107**, court recognized that the right to maintenance in marriage includes the duty of the husband to maintain his wife. However, the right to maintain a wife in particular is founded in common law and is limited to necessities. This was observed in the case of **CARLOTT V HARSH**.

The wife has a right to occupy the matrimonial home and be provided with necessities of life and where this isn't done, the wife can exercise what under common law is called the **DESERTED WIFE'S EQUITY**, which means that the wife may insist on remaining in the matrimonial home if she has been deserted by the husband.

In Uganda statutory law does not create a right of a wife to seek maintenance order where the marriage is still ongoing. However, **Article 139 of the constitution, Judicature Act Cap 13 section 14, Civil Procedure Act Cap 71 section 98 and Magistrate Courts Act Cap 16 section 10** provides courts with jurisdiction to use its inherent powers and grant a suitable remedy. Courts may apply doctrines of common law and equity in ensuring there is maintenance between the husband and the wife.

Monica should therefore petition the court for an order of maintenance.



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT AT FORT PORTAL
AKIIKI MONICA PETITIONER VERSUS
MATOVU BOSCO RESPONDENT

SUMMONS TO FILE A RESPONSE

WHEREAS the above-named Petitioner has instituted a suit against you upon the claim, the particulars of which are set out in the copy of the Petition attached hereto.

YOU ARE HEREBY required to file a response in the said suit within 15days from the date of service of summons on you in the manner prescribed under Order 9 rule 1 of the Civil Procedure Rules S.I 71-1. (As described overleaf)

SHOULD YOU FAIL to file a response on or before the date mentioned, the Petitioner may proceed with the said suit and judgement may be given in your absence.

GIVEN UNDER my hand and the seal of the Court this **29th** day of **October 2018** at
Kampala.

(REGISTRAR)

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT AT FORT PORTAL

MATRIMONIAL CAUSE NO.....OF 20.....

AKIIKI MONICAPETITIONER

VERSUS

MATOVU BOSCO RESPONDENT

**PETITION FOR MAITENENCE ORDER AND
RESTITUTION OF CONJUGAL RIGHTS**

(Under S.20 Divorce Act, Cap 249)

The petitioner is a female of sound mind residing at Nyakasura, Fort Portal and the petitioner's address for purposes of this petition is c/o SUI GENERIS Company Advocates, P.O. Box0000, Kampala.

The respondent is male Ugandan believed to be of sound mind and the petitioner's advocates undertake to effect court process on him.

The petitioner and the respondent are both Africans domiciled in Uganda.

That on theday of20..... went through a valid church marriage ceremony within accordance the Marriage Act.

That during the subsistence of the said marriage the respondent stopped looking after the home and having sexual intercourse with the petitioner.

That this cause of action arose at Nyakasura, Fort portal within the jurisdiction of this honorable court.

Wherefore the petitioner prays for orders: (a) For the resumption of looking after the home; (b) For restitution of conjugal rights.

DATED at Fort Portal thisday

of.....20.....

PETITIONER

BEFORE ME:

COMMISSIONER FOR OATHS

VERIFICATION

I, Akiiki Monica certify that the statements above are true to the best of my knowledge and belief.

DATED at Fort Portal this day of
.....20.....

PETITIONER



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT AT FORT PORTAL
MATRIMONIAL CAUSE NO.....OF 20.....
AKIIKI MONICA..... PETITIONER
VERSUS
MATOVU BOSCO RESPONDENT

SUMMARY OF EVEIDENCE

The petitioner shall adduce evidence to show that the petitioner is legally married to the respondent and that as a result of the said marriage they have two children. That on various occasions the respondent has committed desertion and treated the petitioner with cruelty thus putting her under mental distress.

LIST OF WITNESSES:

- Parents of the petitioner
- Priest who officiated the marriage
- Local Council 1 Chairman

LIST OF DOCUMENTS:

- Constitution of the Republic of Uganda 1995
- The Marriage Act, Cap 251
- Divorce Act, 249
- Marriage Certificate

DATED this..... day of.....20.....

PETITIONER

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL

AKIIKI MONICAAPPLICANT

VERSUS

MATOVU BOSCO.....RESPONDENT

MAINTENANCE SUMMONS

WHEREAS AN APPLICATION has been made by the above-named applicant residing in **Nyakasura, Fort Portal** for the issue of a summons seeking a maintenance order against against you on grounds **THAT YOU**, the above-named respondent residing in **Nyakasura, Fort Portal**, being the spouse of the said applicant, **HAVE FAILED TO PROVIDE MAINTENANCE** as is proper in the circumstances of the said applicant and the defendant children of the family, namely;

1• BABIRYE MATOVU born in **September 2016**

2• NAKATO MATOVU born in **September 2016** under the age of **18 years**.

THIS IS TO COMMAND YOU the respondent to appear at the sitting of **TheHigh Court** circuit in **Fort Portal, Kabarole District** to be held on the **.....day of2018** at..... **a.m./ p.m.** on the hearing of the said application for a maintenance order.

Dated this **..... day of..... 2018**

Signed: _____

(District Court Clerk)

To: **MATOVU BOSCO**

Of: **Nyakasura, Fort Portal**

(Respondent)

a) Supposing that Bosco pays the full bride price, however his demands for sexual intercourse become to frequent and Monica cannot take it any longer. She is always uncomfortable to go back home because she

knows that as soon as she gets home, Bosco immediately demands for sexual intercourse. As a result of this frustration, Monica confides in Peter Seko, her workmate and good friend. Peter, who secretly admired Monica, advised her that she should leave Bosco and instead marry him. Indeed, she ran away from Bosco and started living with Peter. They started wedding plans and the first church banns have been read. Bosco has learnt of this development and needs advice. Moreso, he has learnt that Monica and Peter are first cousins.

(i) ADVISE BOSCO ON ANY REMEDY THAT HE HAS.

Bosco's remedy is to lodge a caveat against the intended marriage.

Under **Section 13 of the Act**, if a person has an objection to the marriage, he or she may enter a caveat against the issue of the Registrar's certificate by writing at any time before the issue, the word "Forbidden" opposite the entry of the Notice in the Marriage Notice Book. The caveat should indicate particulars of the person objecting to the marriage and the grounds.

When a caveat has been lodged a registrar forwards a matter to court for reviewing. Under **Section 14 of the Marriage Act Cap 251**, it is High Court to make a ruling, which should be final. Under **Section 15 of the Marriage Act Cap 251**, if there are no valid grounds for caveat, a Courts Orders cancellation of a caveat and also award compensation for damages and costs under **section 16 of the Marriage Act Cap 251**.

THE CAVEATOR MUST HAVE REASONS FOR STOPPING THE MARRIAGE.

In the Matter of the marriage of ALFRED NDERI & CHARITY KAMWERU; A man gave notice of his intention to marry a lady and a caveat was then placed by the Respondent claiming that the man was already married to the Respondent and therefore had no capacity to contract the intended marriage. It was held that the common knowledge that Nderi had in fact been married to both women under Kikuyu Customary Law while one of the marriages had been dissolved the other one had not. It was held that the registrar should therefore not issue the certificate of marriage because Nderi did not have capacity to marry under statutory law.

In the present case, Bosco having paid the full bride price, means there is a valid subsisting customary marriage between him and Monica.

The law prohibits parties from contracting a civil or church marriage where one of the parties is customarily married to another person. **Section 10(1) (d)** prohibits the registrar from issuing a certificate until he or she has been satisfied by affidavit that neither of the parties to the intended marriage is married by customary law to any person other than the person with whom such marriage is proposed to be contracted.

Section 34(1) of the Marriage Act invalidates a marriage where either of the parties to it at the time of the celebration of the marriage is married by customary law to any person other than the person with whom the marriage is had.

Since Bosco is validly customarily married to Monica, she can't contract a subsequent marriage with Peter. This is a ground for lodging a caveat.

The facts show that Monica and Peter are first cousins. The law prohibits marriage between persons who are closely related. **Section 10(1) (c)** prohibits the registrar from issuing a certificate where there is an

impediment of kindred or affinity. **Section 34(1)** declares a marriage void on grounds of kindred or affinity. Further **Section 12(1)(b) of the Divorce Act** provides for nullification of marriage where the parties are within the prohibited degrees of consanguinity, whether natural or legal, or affinity.

Under the Second Schedule of the Customary Marriage Registration Act, first cousins are within the prohibited degrees of consanguinity.

Sottomayer, otherwise **DE BARROS V DE BARROS NO. 2 (1879) 5 PD 94**

The petitioner and the respondent were domiciled in Portugal and first cousins to each other. They contracted a marriage in England but returned to Portugal, their domicile. By law of Portugal a marriage between first cousins was illegal as being incestuous, but maybe celebrated under papal dispensation,

Held; the parties being by the law of the country of their domicile under a personal disability to contract marriage, their marriage was null and void. Though such marriage was valid in England.

Therefore, since the marriage between first cousins is prohibited by law, Bosco can also lodge a caveat.

The intended marriage is a church marriage which falls under the **Marriage Cat Cap 251**. A caveat should be lodged under **Section 13 of the Act**.

Sometimes the role of the registrar is played by a church minister in case of a church marriage. The caveat should be lodged in the marriage register book where the bans of marriage are read.

ii) Outline the procedure to fulfil the remedy in (i) above.

Write to the registrar of marriages forbidding the marriage. /church minister

(Lodging a caveat)

The word “Forbidden” is written opposite to the entry of the notice in the Marriage Notice Book. /marriage register book where the church bans are read.

Append to the word, name and place of abode, and the grounds of forbidding issue of certificate.

The registrar refers the matter to the High Court

The caveator and the Parties to the intended marriage are summoned

The case is heard and determined in a summary way.

The decision of the High Court shall be final.

THE REPUBLIC OF UGANDA

**IN THE MATTER OF THE MARRIAGE ACT, CAP 251 AND
IN THE MATTER OF A CAVEAT FORBIDDING SOLEMNISATION OF A
MARRIAGE**

CAVEAT FORBIDDING MARRIAGE

TO: THE REGISTRAR OF MARRIAGES
AT FORT PORTAL

TAKE NOTICE THAT I, **Bosco** being the husband to **Monica** who intends to get married at All Saints Cathedral, Viirika on do hereby forbid the marriage (solemnisation) on grounds that:

That Monica is already married to me customarily.

That Monica and Peter are within the prohibited degrees of consanguinity as first cousins.

My address for service for purposes of this caveat is **Suigeneris and Co. Advocates Po. Box0000, Kampala**

DATED at Kampala this 28th day of October 2018.

SIGNED by the said _____

CAVEATOR

BEFORE ME

COMMISSIONER FOR OATHS



STATUTORY DECLARATION

(Pursuant to Section 13 of the Marriage Act Cap 251)

I **Bosco** do hereby solemnly declare and state on oath that the above is true and correct information of the best of my knowledge.

And I make this solemn declaration consciously believing the same to be true in accordance with the Statutory Declaration Act Cap 22.

Dated at Kampala this 28th day of October, 2018

Signature of declarant

Declared on this 28th day of October, 2018 at Kampala

.....
DEPONENT

BEFORE ME;

.....
COMMISSIONER FOR OATHS.

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2019

AKORIMO GRACEPETITIONER

VERSUS

LUGOBA HENRYRESPONDENT

PETITION FOR DIVORCE.

This is the humble petition of AKORIMO GRACE whose address for purposes of this petition shall be MBAAGA AND CO. ADVOCATES, P.O BOX, KAMPALA and it shows

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality, Wakiso District and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe Municipality, Wakiso district.
3. THAT your humble petitioner professes the Anglican religion.
4. THAT your petitioner was in the month of May 2015, was lawfully married to the respondent in a customary marriage under the Karamojong customs at the home of the parents of the petitioner in Moroto district,
5. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at All saint's church at Nakasero in the district of Kampala, and that
 - a) The marriage was solemnized under the provisions of the Marriage Act cap251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUGOBA HENRY at kiwanga village, Entebbe Municipality and there is one issue of the marriage to wit Lugoba Junior born on the 1st September 2016.
6. THAT your petitioners husband, LUGOBA HENRY, in or about the months of AUGUST 2017, SEPTEMBER 2017, FEBRUARY 2018, MARCH 2018 AND OCTOBER 2019 at their matrimonial home in Entebbe Municipality, Wakiso district violently assaulted your petitioner by striking her in the face, abdomen area, back and on the head with his enhanced fists, using a but on some occasions and his shoes at times.

7. THAT your petitioners husband, LUGOBA HENRY, in or about the months of AUGUST 2017 TO OCTOBER 2019 at their matrimonial home in Entebbe municipality, Wakiso district insulted your petitioner by blaming her for all his problems, for being Karamojong and calling her good for nothing. This has caused your petitioner mental and emotional anguish.
8. THAT all avenues, forums and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results. (attached as Annexure 'A' is a copy of the minutes from one of the mediation meetings called by our relatives)
9. THAT due to the continued cruelty of the respondent to the petitioner, the marriage between the two of them has irretrievably broken down.
10. THAT the matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
11. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceeding nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) The marriage of your petitioner with the respondent be dissolved and a decree nisi be granted
- b) That the petitioner may have the custody of the issue of the marriage
- c) That the respondent be ordered to pay alimony of UGX. 1,000,000 per month to the petitioner and pay UGX. 1,000,000 per month to the petitioner for maintenance of the issue of the marriage.
- d) That the respondent pays the costs of and incidental to the petition
- e) That your petitioner may have such further and other relief as the court may deem fit.

DATED at KAMPALA, this 26th day of October 2019.

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Drawn and filed by;

before me

MBAAGA AND CO. ADVOCATES,

P.O BOX0000, KAMPALA

COMMISSIONER FOR OATHS

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE
AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2019

AKORIMO GRACEPETITIONER

VERSUS

LUGOBA HENRYRESPONDENT

SUMMARY OF EVIDENCE

The petitioner shall adduce evidence to the effect that the respondent, LUGOBA HENRY, has been cruel to her thereby causing her emotional and psychological torture.

LIST OF DOCUMENTS

The petitioner will adduce the following documents in support of the petition.

1. The marriage certificate
2. Minutes from the previous mediation meetings
3. Any other with the leave of court.

LIST OF WITNESSES.

The petitioner shall testify and call the following witnesses.

1. Akerimo Grace
2. Any other with leave of court

LIST OF AUTHORITIES

1. The divorce act
2. Any other authority with leave of court.

Dated at Kampala on this 27th day of October 2019.

PETITIONER.

Drawn and filed by

MBAAGA AND CO ADVOCATES

P.O BOX0000, KAMPALA.



THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBBE

AT ENTEBBE.

DIVORCE CAUSE NO.001 OF 2019.

AKORIMO GRACEPETITIONER

VERSUS

LUBOBA HENRYRESPONDENT

SUMMONS TO FILE AN ANSWER TO THE PETITION.

TO: LUGOBA HENRY

WHEREAS, the above named petitioner has instituted a suit against you upon the claim, the particulars of which are set out in the copy of the petition attached here to.

YOU ARE HEREBY required to file a response in the said sent within 15 days from the date of service of summons on you in the manner prescribed under O.9 r 1 of the civil procedure rules S.1 71-1 (as amended)

SHOULD YOU FAIL to file an answer on or before the date mentioned, the petitioner may proceed with the said suit and judgement given in your absence.

GIVEN UNDER my hand and seal of the court on this 25th day of October 2019 at Entebbe.

MAGISTRATE.

Caveat (S.13 of MA, S.27 OF CMRA)

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE MARRIAGE ACT

CAP. 251

AND

IN THE MATTER OF A CAVEAT FORBIDDING THE

SOLEMNISATION OF A MARRIAGE

TO: THE REGISTRAR OF
MARRIAGES AT KAMPALA

CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE

TAKE NOTICE that I, LUGOBA HENRY, being the lawful husband of AKORIMO GRACE who intends to contract another marriage at Christ the king church, hereby forbid the same for the following reasons.

1. That grace is already married to me having solemnized a marriage on 29th December 2015 at all saints church Nakasero.

My address for purposes of service under this caveat is Mbaaga and co advocates, P.O BOX0000 KLA.

Dated at Kampala this 25th day of October 2019.

SIGNED by the sand

LUGOBA HENRY
CAVEATOR.

Before me

COMMISSIONER FOR OATHS.

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ENTEBEE

AT ENTEBEE

MATRIMONIAL CAUSE NO. 002 OF 2019.

AKORIMO GRACEPETITIONER

VERSUS

LUGOBA HENRYRESPONDENT

PETITION FOR RESTITUTION OF CONJUGAL RIGHTS AND PROVISION OF MAINTENANCE

(Under S.20 (1) and (2) of the D.A and O.22 rule 29 of civil procedure rules)

This is the humble petition of **AKORIMO GRACE** whose address for purposes of this petition shall be **MBAAGA AND CO. ADVOCATES, P.O BOX0000, KAMPALA** and these are as follows:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates under take to effect service on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and is a resident of Entebbe municipality, Wakiso district
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015; lawfully married to the respondent at Christ the king church in the district of Kampala and that:
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251 in force at the time;
 - b) After the marriage, your petitioner lived and cohabited with the respondent, LUGOBA HENRY at kiwanga village, Entebbe municipality and there are two issues of the marriage to wit LUGOBA JUNIOR AGED 20 YEARS AND AKIROMO JUNIOR AGED 3 YEARS.
5. THAT, the respondent, LUGOBA HENRY has not from the month of AUGUST 2017, to date not provided maintaince to the petitioner nor to the children.
6. THAT the respondent, LUBOBA HENRY has since the 14th day of AUGUST 2015 refused and still refuses to render her conjugal rights albeit living in the same house and sleeping in the same bed.
7. THAT the petitioner has taken all necessary steps to have the respondent, LUGOBA HENRY restore her conjugal rights but with no success in sight.

8. THAT the matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.

Your petitioner therefore humbly prays for a decree that;

- a) The respondent be ordered to provide maintenance for the wife and the children at a rate of UGX. 1,000,000 per month.
- b) The respondent be ordered to render the petitioner her conjugal rights
- c) The respondent pays the costs of and incidental to this petition.

PETITIONER

I, certify that the statements above are true to my knowledge, information and belief.

PETITIONER

Drawn and filed by;

MBAAGA AND CO. ADVOCATES

P.O BOX0000, KAMPALA

before me

.....

COMMISSIONER FOR OATHS.

Attach

- 1. Summary of evidence
- 2. Summons to file a reply
- 3. Mediation summary.

Separation agreement.

THE REPUBLIC OF UGANDA
 IN THE MATTER OF THE DIVORCE ACT, CAP 249
 AND
 IN THE MATTER OF THE CONTRACTS ACT, 2010
 SEPARATION AGREEMENT.

THIS AGREEMENT IS MADE THIS 27th day of October 2019.

BETWEEN

AKORIMO GRACE aged 24 years whose address for purposes of this agreement shall be MBAAGA COMPANY ADVOCATES, PILKINGTON ROAD, KAMPALA. (Hereinafter referred to as the wife)

AND

LUGOBA HENRY aged 35 years, resident of Lubowa, Entebbe, Wakiso district (Hereinafter referred to as the husband)

WHEREAS the husband and wife lawfully contracted a marriage on the 15th day of October 2015 at All Saints Cathedral Nakasero in Kampala.

AND WHEREAS they have since lived and cohabited together at their matrimonial home in Entebbe Municipality and have two issues from the marriage to wit, Lugoba Junior aged 3 years and Lugoba Grace aged one year (Hereinafter referred to as the children)

AND WHEREAS the relationship between the two has broken down and thus they are desirous of separating and agree to live separately as agreed in this agreement.

THIS AGREEMENT IS THEREFORE WITNESSETH AS FOLLOWS:

1. NON MOLESTATION.

- 1.1 The parties mutually agree that there shall be no molestation of one by the other during the continuance of this agreement.
- 1.2 In the event that any of the parties violates the provision of clause 1.1 above, the party in breach shall pay damages of UGX **5,000,000** to the other innocent party.

2. MAINTENANCE OF WIFE AND CHILDREN.

- 2.1 The husband shall provide for the maintenance of children and the wife at a rate UGX. 2,000,000 per month
- 2.2 The maintenance in clause 2.1 above shall be paid on every 28th day of the month and shall be deposited on the above account provided by the wife from time to time.
- 2.3 Failure to comply with clause 2.2 above, the sum in clause 2.1 shall attract an interest of 10% for each day after the 28th day to the day when the full sum due that month shall be paid.

3. LIVE A PART.

The parties agree that they shall continue to live separately in consideration for having each other's consortium.

4. DUM CASTA CLAUSE.

Name of the parties to this agreement shall be at liberty to have sex with another person during the subsistence of this agreement.

5. MATRIMONIAL PROPERTY

- each party shall be entitled to take property constituting wearing apparel and personal effects
- the wife shall be entitled to retain the matrimonial home during the subsistence of this agreement
- all other properties constituting matrimonial property at the time of execution of this agreement shall continue to be held jointly and for the benefit of both parties
- the party deriving any income from any of the properties mentioned in clause 5
- shall have to account to the other party for all revenues earned from the properties and shall relinquish half of the income earned to the other party as their share in the income earned from the property.
- All properties acquired by the parties during the subsistence of this agreement shall not be construed as constituting matrimonial property during the subsistence of this agreement or thereafter.

6. DURATION.

- This agreement shall unless otherwise expressly agreed upon by the parties in writing run for a period of two years from the date of execution.
- Notwithstanding clause 6.1, the parties may by mutual consent terminate this agreement at any time during its subsistence.

7. CUSTODY OF THE CHILDREN.

- The parties agree that the wife shall have custody of the children while the husband shall have visitation rights at all times.
- In exercise of his visitation rights in clause 7.1 above, the husband shall ensure that he gives at least a days' notice to the wife and shall ensure the visits are in a reasonable time
- For avoidance of doubt, reasonable time shall be construed to be between 9:00am and 7:00pm.

8. AMENDMENT.

No provision in this agreement shall be varied or deemed to be varied except where there is an express agreement to that effect in writing signed by the parties.

9. DISPUTE RESOLUTION.

- All disputes arising under this agreement shall be referred to a mediator within 10 working days from the date when the dispute arose.
- The mediator referred to in clause 9.1, shall be a mediator appointed by Centre for Arbitration Dispute Resolution upon application by either party,
- The mediation referred to clause 9.1, shall not exceed 30 days from the first day when the mediation is commenced.
- Where the parties fail to reach a settlement in respect of the dispute, they shall refer the matter to court of competent jurisdiction for resolution of the dispute.

10. LAW APPLICABLE.

This agreement shall be governed by the laws of the Republic of Uganda.

IN WITNESS WHEREOF, the parties have appended their signatures hereto on the date and year first mentioned above.

SIGNED BY:

AKORIMO GRACE
(WIFE)

SIGNED BY:

LUGOBA HENRY
(HUSBAND)

In the presence of

KIZITO DERRICK
ADVOCATE

in the presence of

LUMALE JOEL
ADVOCATE

Drawn by

MBAAGA AND CO ADVOCATES

P.O BOX0000, KAMPALA

UGANDA.

Judicial separation.

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF ENTEBBE
AT ENTEBBE

MATRIMONIAL CAUSE NO 003 OF 2019

AKIROMO GRACEPETITIONER

VERSUS

LUGOBA HENRYRESPONDENT

PETITION FOR SEPARATION

(Under section 14 of the divorce act cap 249 and rule 4 of the divorce rules)

This is the humble petition of AKORIMO GRACE whose address for purposes of this petition shall be MBAAGA AND CO. ADVOCATES, P.O BOX0000, KAMPALA and it show:

1. THAT the petitioner is a female adult Ugandan of sound mind and a resident of Entebbe municipality Wakiso district and her advocates undertake to effect service of the petition on the respondent.
2. THAT the respondent is a male adult Ugandan presumed to be of sound mind and a resident of Entebbe municipality, Wakiso district.
3. THAT your petitioner professes the Anglican religion
4. THAT your petitioner was on the 12th day of December 2015 lawfully married to the respondent at all saint's cathedral at Nakasero in the district of Kampala and that
 - a) The marriage was solemnized under the provisions of the Marriage act cap 251
 - b) After the marriage, your petitioner hired and cohabited with the respondent, LUGOBA HENRY at kiwanga village, Entebbe municipality and there is one issue of the marriage to will LUGOBA JUNIOR born on the 1st September 2016.

5. THAT your petitioners husband, LUGOBA HENRY, in or about the month of AUGUST 2017, SEPTEMBER 2019, at their matrimonial home in Entebbe municipality, Wakiso district, violently assaulted your petitioner by striking her in the face, abdomen areas, back and her head with calendared fits and his belt.
6. THAT all avenues and steps taken by the petitioner to ensure the respondent stops being cruel to the petitioner have yielded no results (Attach evidence if any)
7. THAT due to the respondent's cruelty to the petitioner, the marriage between the two has broken down.
8. THAT this matter arose in Entebbe municipality, Wakiso district which is within this court's jurisdiction.
9. THAT this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceedings nor is your petitioner guilty of condemnation.

Your petitioner therefore humbly prays for a decree that

- a) Your petitioner be judicially separated from LUGOBA HENRY, the respondent
- b) The petitioner be granted custody of the issue of the marriage
- c) The respondent be ordered to pay a monthly maintainance for the child at a rate of UGX 1,000,000 per month.
- d) The respondent be ordered to pay alimony to the petitioner at a rate of UGX1,000,000 per month
- e) That the respondent pays the costs of and any other costs incidental to this petition.
- f) Any further remedies as the court may deem fit.

PETITIONER

I, AKIROMO GRACE, certify that the statements above are true to the best of my knowledge, information and belief.

PETITIONER

Drawn and filed by:

before me

MBAAGA AND CO ADVOCATES,

P. O. BOX0000, KAMPALA,

COMMISSIONER FOR OATHS.UGANDA.

MARRIAGE

Article 31 of the 1995, constitution of Uganda provides for the right to marry and it provides that “men and women of the age of 18 years and above have the right to marry and to found a family....”

Two essential ingredients are deducted from the provision

1. That marriage in Uganda can only be between a man and woman.
2. That only person who have attained the age of 18 years can get married.

In Uganda, the law recognizes essentially four types of marriage:

- a) Church/civil marriages
- b) Islamic marriages
- c) Customary marriages
- d) Hindu marriages

CUSTOMARY MARRIAGES

Under **Section 4 (2)**, customary marriage maybe polygamous.

A customary marriage is a celebrated according to the rites and customs of an African community to which one of the parties is a member of that community or any marriage celebrated under part 3 of the customary marriage (**Registrations Act, Cap 248. Section 1(b) of the Customary Marriage (registrations) Act (CMRA)**).

What customs are to govern the Marriage

In the case **NASSANGA V NANYONGA (1977) HCB 352**, the parties were both banyakole who had moved to Buganda and changed their names. The court held that

1. Parties are free to choose the law to govern their relationship but this choice is made at the time the relationship is entered into and not after a dispute has arisen. The choice of law is a matter for the court to decide.
2. Where the parties belong to the same tribe the proper law is the law of the tribe to which they belong in matters of moveable property and interpersonal issues. In a case of immovable property, the law of the tribe where the property is situated applies. As the instant case related to marriage and dowry, the proper law was the law of the tribe to which the parties belong.
3. Where the parties belong to different tribes, the most equitable rule for the choice of law is to discover the law which both parties had in mind as governing their relationship at the time of the transaction in issue.
 - In this case ankole customary law applied and not Buganda customary law since even the alleged dowry paid was paid in cows, an item which is not listed among the list of the items of dowry paid by Buganda.

In **KINTU V KINTU, DIVORCE APPEAL NO.135 OF 1997**, the court held that where the parties are from different tribes, the customs of the girl determine whether there was a marriage.

In **UGANDA V P. KATO ANDORS (19760 HCB 24**, Court held that in order to establish the existence of a customary marriage its sufficient to prove that according to the customs and laws of a given-tribe, a marriage exists.

- The marriage should have been conducted according to the customs of that tribe and satisfied the requirements of that custom .in **UGANDA V JOHN EDOKU (1975) HCB 359**, the court held that if bride price is required it must be paid in full.

Requirements.

These can be deduced from Section 11 of Customary Marriage Registration Act.

1. The marriage must not be within the prohibited degrees as per the second schedule and customs governing that marriage. Section 11(d)

BRUNO KIWUWA V JULIET NAMAZZI AND IVAN SSERUNKUMA HCCS 52 OF 2006

2. Name of the parties should have previously contracted a monogamous marriage which is still subsisting. **Section 11(e)**
3. Parties should have attained majority age. Whereas the act says 16 years for a girl and 18 years for a boy, the provision must be traced in line with the constitution per Article 274 of the constitution.
4. None of the parties should be of unsound mind. **Section 11(c)**
5. Must satisfy all the customs of the given customs which it is contracted.

REGISTRATION OF CUSTOMARY MARRIAGES

Section 6 of the Customary Marriage Registration Act requires that customary marriage be registered. However, non registration of the marriage does not invalidate it. In this case of **KINTU V KINTU DIV APP NO.135/97**, the court held that non registration of a customary does not invalidate it. **Section 8 of the Customary Marriage Registration Act** allows for registration of a customary marriage at any time upon payment of a fee prescribed.

CAVEATS TO CELEBRATION OF A CUSTOMARY MARRIAGE

Under **Section 27 of Customary Marriage Registration Act**, any person whose consent of a marriage is required or who may know of any just cause why the customary marriage should not take place, may enter a caveat against the issue of the registrar's certificate by writing at any time before issuance of the certificate the word "forbidden" opposite to the entry of the notice in the customary marriage notice book, add his/her names and the grounds to wit

Consent. Under **Section 32**, where the parties are below 21 years, they must have the consent of the father or of his dead or of unsound mind, then the mother.

MUSLIM MARRIAGES

These are governed by the marriage and divorce of **Mohammedan Act cap 252, Holy Quran** and the teachings of Prophet Mohammed.

Under **Section 2 of the Mohammedan Act**, the solemnization and divorce of Muslim marriages is to be according to the rites and observances of Islam in so far as they conform to the constitution.

Nikah (marriage)

Is a solemn and sacred social contract between bride and groom. It is a strong covenant as expressed in the Quran 4; 21.

AYIKO MAWA SOLOMON V LEKURU ANNET AYIKO DIVORCE

Both bride and groom have the liberty to define various terms and conditions of their liking and make them a part of this contract.

During the nikah ceremony, the man and woman declare their verbal commitment to each other as husband and wife.

RESTRICTIONS ON MARRIAGE PARTNERS

- A Muslim woman can only marry a Muslim man and there is no Nikkah if she marries a non-Muslim
- A Muslim man may marry a Christian or Jew faith woman so long as she does not practice shirk and does not believe in anything that is forbidden in Islam.
- A Muslim man cannot marry a non-believing woman who follows any other faith such as atheist, Hinduism, Sikhism etc.

REQUIREMENTS (ESSENTIAL)

- Both parties must be above 18 years. Art 31
- Mutual consent/agreement (ijab-o-qubul)
- Legal guardian (wali) or his representative representing the bride.
- Two adult and sane Muslim witnesses (Ash-Shuhud), two males or one male and two females
- Mahr (marriage –gift) to be paid by the groom to the bride either immediately (Muajjal, or deferred (muakhkhar) or a combination of both. Quran 4:4It may take the form of money, property or possession
- Prohibited degrees.

In AYOB V AYOB (1965) EA 72, court held that under Islamic law, marriage is a civil contract not a sacrament and Islamic law could recognize as valid marriage contracted in accordance with the civil law, the essential requirements, and the consent of the parties being satisfied.

Formalities

1. Must be written and signed by the bride and groom and witnessed by the two adult and some witnesses.
2. Should be officiated by the QADI (State appointed Muslim judge) or Ma 'zoon (a responsible person officiating the marriage ceremony) usually the imam. However, any trust worthy practicing Muslim can conduct the Nikkah ceremony.

Registration

Section 5 (1) of Mohammedan requires that the registration of marriages celebrated and divorces be made within one month from the date of the marriage or divorce.

However, non registration does not render the marriage invalid as per **Section 16 of the Act**.

IN MAYI BINT SALIM AND 10 ORS V HAJJI SULAIMAN MAYANJA, C.A CIVIL APPEAL NO.37 OF 2008, it was held that the simplest ceremony suffices to bring it into being an Islamic marriage and that absence of a marriage certificate was inconsequential as regard the validity of such a marriage.

CHURCH/CIVIL MARRIAGES

These are governed by the provisions of the marriage act. In the case of **HYDE V HYDE (1866) LR 1 PD 130**, marriage was defined as the voluntary union for life if one man and one woman to the exclusion of all others.

REQUIREMENTS OF VALID MARRIAGE

1. Capacity to marry

The parties must possess the legal capacity and also satisfy certain formalities.

a) Age.

Under Art.31 of the constitution, the parties must be at least 18 years of age.

b) They must also be of sound mind.

2. Should be heterosexual.

As per the decision in **HYDE V HYDE**, the union of marriage is between a man and a woman. In **CORBETT V CORBETT (1970)2 ALL ER 33**, one of the parties was biologically male though did not disclose that he had taken surgery to alter his gender. Court held that marriage is essentially a relationship between a man and a woman. The respondent having been a biological male from birth rendered the so marriage invalid.

3. Should not be within the prohibited degrees of relationships.

The relationships are either by consanguinity or affinity. Consanguinity are blood relationships while affinity are relationships by way of marriage.

Under **Section 10(C) the Marriage Act**, the registrar should be satisfied that there is not only impeachment of kindred or infirmity or any other lawful hindrance to the marriage.

BRUNO KIWEWA V IVAN SSERUNKUMA AND ANOR. H.C.C.S NO 2 OF 200

4. There should be no subsisting marriage

Under **Section 10(d) of Marriage Act**, the registrar should allow the parties to marry if he is satisfied that neither of the parties to marry if he is satisfied that neither of the parties to the intended marriage is married by customary law to any person other than the person with whom such marriage is proposed to be contracted.

FORMALITIS

a) NOTICE.

Parties must give notice of their intention to get married and this is provided for under S.6 of the M.A. the notice is given at the office of the registrar and it must be published for at least 3 weeks and a maximum period of three months or until the marriage certificate is issued.

Caveat.

Where a person is aggrieved by the notice and has reason to stop the marriage, they may lodge a caveat under **Section 13 of Marriage Act**. They may enter on the notice book the words “forbidden” and give reason as to why they object to the marriage.

Section 14 of Marriage Act upon lodgment of caveat, the matter is referred to high court and caveator required to show cause why caveat should not be vacated.

- The procedure is by formal letter supported with a valid statutory declaration.

b) CELEBRATION OF MARRIAGE.

Section 20 (1), marriage must be celebrated in a licensed place and by a licensed person.

Section 20(2), it must be celebrated with open doors between the hours of 8:00am and 6:00pm in the presence of two or more witnesses besides the officiating minister.

Section 22, place where marriage is celebrated must have been duly licensed by the minister.

Section 26, marriage may be celebrated at the registrar’s office.

c) REGISTRATION.

Parties are required to sign marriage certificates under S.25 in duplicate and their signatures must be witnessed by two witnesses and the officiating officer must sign as well.

d) CONSENT.

Both parties must consent. Lack of consent of either renders the marriage voidable.

Section 17 of Marriage Act on consent where the parties are below 21 from parents.

VOID AND VOIDABLE MARRIAGES

VOID

A void marriage is void ab initio. A decree of nullity can be sought by any person with a legitimate interest and can be sought by any person with a legitimate interest and can be pronounced at any time, even after the parties have died.

IN DE RENEVILLE V DE RENEVILLE (1948) 1 ALL ER 56, the court defined a void marriage as one that will be regarded by every court in any case in which the existence of marriage is in issue as never having taken place and can be treated so by both parties to it without the necessity of any decree annulling it.

In RE ROBERTS (1978) 3 ALL ER 225, the court held that if a marriage is declared void it is declared void on social and public policy grounds unlike in voidable marriages where the persons concerned with the grounds which make the marriage voidable are only the parties to the marriage and no one else.

Section 34 lays down the instances when a marriage shall be void and these include:

- 1) **Section 34 (1)** if it's within the prohibited degrees of kindred or affinity or if either of the parties has contracted customary marriage with any other person other than the person with whom the marriage is now had.
- 2) **Section 34(2)** where parties knowingly and willfully acquiesce in its celebration:
 - a. In an unlicensed place without minister's license
 - b. Under false name or names
 - c. Without the registrar's certificate of notice or ministers license duly issued.
 - d. Conducted by an unlicensed person.

VOIDABLE MARRIAGES

In DE RENEVILLE, a voidable marriage was defined as a marriage that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction.

In RE ROBERTS, the court held that where a marriage is voidable, the matter is left entirely in the hands of the parties and the parties may not wish to take advantage of their undoubted right to have the marriage declared void.

Grounds for voidable marriages

1. NON CONSUMMATION.

Section 12 (a) of the Divorce Act allows an innocent party to petition for nullity on ground of permanent impotence.

IN DE RENEVILLE, the court held that non-consummation of a marriage rendered a marriage voidable whether it was based on incapacity to consummate or owing to willful refusal.

In D VA (1845) 163 ER 1039, the court held that consummation of the marriage requires ordinary and complete" rather than "partial and imperfect" sexual intercourse, including erection and penetration but not necessarily leading to orgasm.

In SINGH V SINGH (1971) 2 ALL ER 828, the court held that where there is willful refusal, the refusal must be settled and definite and arrived at "without just excuse", the husband is expected to use appropriate facts, persuasion and encouragement if his wife is shy, and her resistance to insensitive demand will not necessarily be regarded as willful refusal.

In **HORTON V HORTON (1947) 2 ALL ER 871**, Lord Jowitt, stated that "willful refusal" means a settled and definite decision arrived at without just excuse, taking into account the whole history of the marriage.

2. FAILURE TO CONSENT

In RE ROBERT, the court held that absence of any consent renders a marriage voidable and not void. Consent to a marriage may be voidable and not void. Consent to a marriage may be varied by either insanity, duress or mistake as to the identity of the other or the nature of the ceremony.

a) INSANITY.

In DURHAM V DURHAM (1885) 10 PD 80, the petitioner sought a decree of nullity and claimed his wife had not had the mental capacity needed for marriage. The court held that the contract of marriage is a very simple and which does not require a high degree of intelligence to comprehend. But a person who understands the language of the ceremony may still be affected by delusions or other insanity so as to have no real appreciation of its significance. Court found that the respondent had had sufficient capacity at the time of the marriage, though her condition had deteriorated later.

b) DURESS.

In **SINGH V SINGH (1971) 2 ALL ER 828**, for duress to suffice, it must be shown, it must be shown that the petitioner's will was overborne or that her consent was obtained through force or fear. There must be a threat to the petitioner's life, limb or liberty.

In BUCKLAND V BUCKLAND (1967) 2 ALL ER 300, petitioner while working in Malta, developed a 15-year-old girl. He was arrested and charged with corrupting a minor. He affirmed his innocence, but his solicitor and his employer both advised him that he was unlikely to be believed and his only hope of escaping a substantial prison sentence was to marry the girl. He went on to contract the marriage. On return to England he sought to have the marriage annulled. The court annulling the marriage held that he had only consented because of his reasonable fear of imprisonment and that was not true consent.

c) MISTAKE

A mistake as to the identity of the other party is generally sufficient to make a marriage voidable, but a mistake as to his attributes or as to the effect of marriage is not.

In the case of **C V C (1942) NZLR 356**, the petitioner met a man, respondent who claimed to be Michael Miller, a well-known boxer. She married him after a short courtship and subsequently found he was not Miller at all and sought an annulment. The petition was dismissed. The court held that the petitioner was mistaken as to the respondent's attributes rather than his identity. She intended to marry the man, respondent, standing beside her and was mistaken only as to his name and profession.

In RE C AND D (1979) 35 FLR 340, the respondent was born an hermaphrodite. Underwent surgery as a young adult to remove the external signs of femininity. Married the petitioner and the marriage was never annulled. Wife (petitioner) filed formality. Granting a declaration of nullity, the judge said W had intended to marry a male and was therefore mistaken as to the identity of her partner and that would be sufficient grounds.

APPROBATION OF VOIDABLE MARRIAGES

This occurs in situations where one of the parties is fully aware of facts making the marriage voidable and conducts himself although the marriage is valid, he/she may be estopped from revoking the marriage and will be deemed to have waived his or her rights.

The defect will be cured once the innocent party approbates the marriage.

In W and W (1952) 1 ALL ER, the parties were married in 1941 but attempts by the husband to consummate the marriage were unsuccessful. In 1945, on the suggestion of the husband, the parties adopted a child and later in 1946, the husband left the wife and sought to annul the marriage for non-consummation. The court held that the husband had so approbated the marriage by his initiation of the adoption proceedings.

In HARTHAN V HARTHAN (1948) 2 ALL ER, the husband sought a declaration of nullity on a claim of his own impotence and claimed that in their 20 years' marriage he had been unable to engage in any sexual intercourse and court declined to grant him the decree.

LEGAL EFFECTS OF MARRIAGE

1. MARRIED STATUS.

Once married under the MA, you're incapable of contracting another marriage during the subsistence of that marriage. **In HYDE V HYDE**, marriage is monogamous and during its subsistence one cannot purport to enter another relationship.

2. LEGAL FICTION OF ONE PERSON.

At common law, when married, the personalities of husband and wife were fused into one hence there could be no civil action between the spouses for they were one and similarly spouses could not be jointly charged.

However, Art 31 of the constitution provides for equality in marriage between husband and wife thus the wife cannot lose her personality to the husband. Further in **MIDLAND BANK TRUST CO.LTD V GREEN**, Lord Denning held that now days both in law and in fact, husband and wife are two persons not one. The severance being complete in all aspects except in so far as its stated by law or a judicial decision.

3. RIGHT OF THE WIFE TO USE THE HUSBANDS NAME.

A marriage gives the wife the right to use the husband's name if she so wishes but this is not obligatory. **IN FONDAL V GOLDSMITH**, court held that while marriage confers a right to the wife to use her husband's name, she cannot be forced to do so but if she desires she can use it without swearing a deed poll.

- Even after termination of the marriage, a wife may keep her husband's name and the husband has no right to restrain her from using it except if she is using it for a fraudulent purpose.

COWLEY V COWLEY (1900) P 305, upon dissolution of a marriage wife kept using the former husband's name. He applied for an injunction restricting her from using the name. Court held that a man has no such property in his name as to title him to prevent a woman not his wife claiming to be such unless she does so maliciously.

4. PRESUMPTION OF LEGITIMACY OF CHILDREN

Any child born during the subsistence of a marriage shall be presumed to have been fathered by the husband however this presumption can be rebutted if one shows overwhelming evidence to the contrary in:

- a. Where husband was temporarily or permanently impotent at the time of conception.

- b. Absence of the husband for a reasonably long time. **In PRESTON JONES V PRESTON JONES (1956)1 ALL ER 124**, the husband had not been around for over 360 days after a particular coitus, court held that the child was not his legitimate child.

➤ In Uganda there is no distinction between “legitimate” and illegitimate” children, they are all considered children. **KAJUBI V KABALI (1944) 11 EACA 34**.

5. Right to consortium or conjugal rights.

In LYNCH V KNIGHT, consortium was defined as living together as husband and wife with all the incidents that flow from that relationship. The right to consortium is the right to the company, society and affection of a spouse in any matrimonial relationship.

In PLACE V SCARLE (1932)2 ALL ER 497, court held that both husband and wife have a right to consortium and a right to each other and each of them has a right against any person who abuses that right without noble cause.

Where one of the parties withdraws conjugal rights from the other unreasonably, the innocent party may petition court under S.20 of D.A for restitution of conjugal rights.

Where the order is for restitution is granted and the other party against whom its issued does not comply, their property may be attached or be condemned to civil prison per O.22 R19 of the civil procedure rules.

The non-compliance with the order as held in the case of **RV JACKSON (1891) 1 Q.B 671**, is a ground for separation or divorce because extra judicial means cannot be used to enforce the order.

Forcing the non-conforming spouse into coitus amounts to marital rape. **In R V R (Rape marital exemption) (1991)4 ALL ER 481**, the defendant went to her parents’ house and forcefully had sex with her. His conviction for rape was upheld by the HOLs who stated that the status women and particularly married women has changed beyond all recognition and in modern times any reasonable person must regard the common law position as to general consent to sex upon marriage as quite unacceptable. The supposed marital exception in rape forms no part of the law of England today.

In UGANDA V YIGA HAMID, HCT CRMINAL SESSION CASE 0055 OF 2002, justice kibuuka musoke convicted the accused of rape finding no evidence that the couple had been married or that the woman had consented to sexual intercourse. The court further held that even if the couple had been married, women were constitutionally entitled to equal rights in marriage and the right to human dignity thus, the women would not have been obligated to submit to sexual intercourse against her will.

6. THE RIGHT TO MAINTENANCE

Under common law, the husband has a duty to maintain his wife. The right to maintenance is often tied to the continued enjoyment of conjugal rights.

The right includes the right to a house and to be provided with recesses of like.

In the case of **KINTU V KINTU, DIVORCE APP. NO135 OF 97**, court held that the wife has a right to occupy the matrimonial home and be provided with necessaries of life and where this isn’t done, the wife

can exercise what under common law is called the **DESCETRED WIFES EQUITY**, which means that the wife may insist on remaining in the matrimonial house if she is deserted by the husband.

HOW A WIFE CAN ENFORCE MAINTAINCE?

a) ENFORCING HER RIGHT OF AGENCY OF NECESSITY

Arises in situation where the husband fails to provide for his wife necessities. The wife is allowed to pledge or take goods on credit for a trader and trader will be able to sue the husband for the credit for the wife is treated as an agent for the husband.

BIBERFELD V BERENS, in considering whether a wife, who has been compelled by her husband's conduct to leave him, is her husband's agent of necessity, regard must be had to her means. In the present case, the wife had assets which she could have been reasonably expected to use to pay for necessities and accordingly, she was not her husband's agent of necessity.

b) THROUGH A BILATERAL MAINTENANCE AGREEMENT

Spouses living in separation may include a clause in their separation agreement of maintenance and this agreement must be enforceable.

In WILLIAMS V WILLIAMS, a wife left her husband and the husband promised to make her weekly payment for her maintenance. He failed in this and the wife claimed arrears. The husband claimed that she had deserted and she could maintain herself. Lord denning held that a promise to perform an existing duty is sufficient consideration to support a promise, so long as there is nothing in transaction which is contrary to the public interest.

c) MAINTENANCE ORDER FROM COURT

There is no provision in Uganda creating a right of a wife to seek a maintaince order where the marriage is still on going. Therefore, the petition is brought under the following provisions. Article 139 of the constitution, S.14 of the judicature act, Section98 of the Civil Procedure Act, Section 10 of the Magistrate Court Act (if in magistrate courts). These provisions grant the courts with the jurisdiction to hear family matters and in doing so may apply doctrines of common law and equity in ensuring there is maintaince between the husband and the wife.

Rebuttal of common law presumption that a husband is liable to maintain his wife

In STRINGER V STRINGER (1952) 1 ALL ER 373, the husband and wife separated by mutual consent in November 1946 and from that date the husband had not paid the wife any maintenance nor had she demanded any maintenance until 17th July 1951, when she issued a summons for willful neglect to maintain. Court held that proof of consensual separation of spouses without any agreement by the parties regarding the maintaince of the wife is sufficient to rebut the common law presumption that a husband is liable to maintain his wife.

7. THE RIGHT TO MATRIMONIAL CONFIDENCE

This bars spouses from disclosing matters which come to their knowledge as a result of a marriage relationship. The parties to a marriage have an obligation of confidentiality towards one another and either

can be restrained by injunction from revealing to 3rd party anything learned from the other in the course of their married life.

In **ARGYLL V ARGYLL (1965)1 ALL ER 611**, the duties of Argyll divorced the wife on grounds of the wife's adultery. The wife did not contest the divorce on the understanding that nothing more would be said about the adultery. The duke subsequently sold stories to newspaper giving intimate details of that and other aspects of the wife's private life. The wife sought an injunction prohibiting the publication. The court granting the injunction held that, not only was the disclosure contrary to the undertakings that had been given earlier, but it was a breach of the confidence presumed to exist between husband and wife.

8. MATRIMONIAL PROPERTY (ARTICLE 26 AND 31 OF CONSTITUTION)

Justice Bbosa in **KINTU V KINTU** and cited with approval in **HOPE BALIMBISOMWE V JULIUS RWABIBINURI**. Matrimonial property was defined as property to which each spouse should be entitled to and this is property which the parties chose to call home and which they jointly contributed to.

There is no statutory law in Uganda governing matrimonial property and therefore most of the reference is made to case law.

CONTRIBUTIONS BY SPOUSES

In **RWABINUMI V BAHIMBISOMWE**, the Supreme Court held that a spouse's contribution to acquisition of property maybe direct or indirect monetary contribution and non-monetary contributions which enables the other spouse to either acquire or develop the property.

In **KIVUITU V KIVUITU C/A 26/85**, it was held that a wife does contribute to the family in a thousand other ways including child bearing, looking after the family. It can't therefore be said that only monetary contributions should be taken into account.

Court further noted that the wife indirectly contributes to towards payments for household expenses, preparation of food, purchase of children's clothing, organizing children for school and generally enhance the welfare of the family and this amounts to a substantial indirect contribution to the family income and assets which entitle her to equal share in the couple's joint property.

In **RWABINUMI V BAHIMBISOMWE**, the Supreme Court further held that property acquired prior to the marriage by either spouse, property inherited during marriage or property individually owned by either spouse where the other spouse has made no direct or indirect contribution remains individually owned property. Therefore, property held prior to marriage and property individually acquired during marriage does not become joint property.

Where a spouse makes a direct/indirect contributions owned by another before the marriage, the spouse is entitled to share in the property to the extent of their contribution as was in **MAYAMBALA V MAYAMBALA DIVORCE CAUSE NO.3 OF 1998**

BANK ACCOUNTS

Wives and husbands may have their separate accounts. It's also possible that they may have pint accounts or a joint pool from which they deposit or withdraw money though not necessarily in equal propositions. As a result, they acquire a joint interest their in.

In JONES V MAYNARD (1951) 1 ALL ER 802, where the husband authorized his wife to draw on his account which was after used as a joint account. Into the account dividends from both the husband and the wife's investment were deposited thereon. The two had not agreed on what their rights are in this joint venture but they regarded the account as their joint property.

The court held that the wife's action for an equal share in the balances on the account and the investments carried out using monies drawn from the account would succeed.

On the evidence the intention of the parties was to constitute a pool of their resources in the form of a joint account, it was not consistent with that intention to divide the monies in the account and the investments made with monies withdrawn therefore by reference to the amounts respectively contributed to the account by each of them and therefore the husband must be regarded as trustee for the wife of one half of the investment and of the balance of the account.

SAVINGS FROM HOUSEHOLD EXPENSES

IN BLACKWELL V BLACKWELL (1943) 2 ALL ER 579, on separation, the wife was found to have 103 pounds as savings in a cooperatives society and it was established that these savings were balances off the weekly house keeping allowance made to the wife by the husband while the parties were still being together. It was contended that this sum was her own property. Court held that it was clear that the source of the money was the husband's weekly allowance and in the absence of sufficient evidence to the contrary the money was still the husband's property.

However, Lord Denning dissented in the case of **HODDINOT V HODDINOT (1949) 2 K.B 406**, where he stated that the position adopted by his colleagues as was in **BLACKWELL V BLACKWELL** might well work an injustice for it took no account of the fact that any savings from the house keeping money were as much due to the wife's skill and economy as a house wife as to her husband's earning capacity.

In light of Article 26, art. 31 of the constitution and decisions such as **KIVUIT V KIVUIT AND JULIUS V HOPE**, the balance from housekeeping allowance must be shared equally.

WEDDING GIFTS

Whether or not a gift belongs to one spouse alone or both of them is a question of the donor's intention. It is generally presumed that wedding presents in absence of any evidence to the contrary from the friends of either spouse (3rd party) belongs to that spouse alone.

In SAMSON V SAMSON (1960) 1 ALL ER 653, it was stated that there is no principle of law that wedding presents are joint wedding presents to both spouses. If there is evidence of intention on the part of the donor, that may determine whether the gift belongs to one spouse or both, but if there is no such evidence, the inference may be drawn that gifts from relatives and friends of a spouse were gifts to that spouse property which was given to one spouse may also become the property of both by subsequent conduct.

IN HOPE BAHIMBISOMWE V JULIUS RWABIBINUMI, DIVORCE CAUSE NO 4/2004, the court ordered the couple to share the marriage gifts equally given how they had subsequently conducted themselves in regard to the gifts.

Where a donor gifts for a joint use or ownership of the spouse, the gifts will be treated as jointly owned by the spouses.

In **KELNER V KELNER (1939) 3 ALL ER 957**, where a 100 pound deposited by the wife's father at the time of the marriage in a joint bank account in both spouses names, was ordered to be divided equally between them. Court also noted that the spouse's subsequent conduct may turn a gift to one of them into joint property.

DIVORCE

An action for divorce is founded on a breach of an obligation arising out of a valid marriage contract. Where the marriage is void, divorce is not applicable.

In civil, church or Hindu marriages, the law applicable is the Divorce act cap 249

For Islamic marriages, the marriage and divorce of the mohammedians act applies.

For customary marriage, the various customs under which the marriage was contracted apply to the divorce in so far as they conform to the constitution. **KINTU V KINTU**. Following the decision in **MIFUMI**, where the refund of bride price was declared unconstitutional it's not.

Article 31(1) of the Constitution is applicable to all the divorce in all the various marriage.

JURISDICTION IN CHURCH, CIVIL AND HINDU MARRIAGE

Under **Section 3 of the Divorce Act**, courts in Uganda have the jurisdiction to hear any divorce matter as long as one has parties is domiciled in Uganda.

Types include: domicile by origin, dependent domicile, domicile by choice.

In **HOUGH V HOUGH, DIVORCE CAUSE NO.001/2006**, the court held that the court in Uganda will have jurisdiction to hear the matter for as long as the petitioner establishes Uganda as his or her domicile of choice/origin. The court declared the issue of dependence domicile in relation to wives as being unconstitutional.

In order to satisfy the court that the parties have acquired domicile of choice, they must prove that they have abandoned their domicile of origin and they have settled intention to permanently stay in Uganda.

The blacks aw dictionary (7th ed p.256), defines domicile as a place at which a person has been physically present and that the person regards as a home, a person's true, fixed, principle and permanent home, to which that person intends to return and remain even though currently residing elsewhere.

IN THORNHILL V THORNHILL (1965) EA 268, character and duration won't be material where there is personal presence.

IN ROBINAH KIYINGI V AGGREY KIYINGI C.A NO 41/2004, court held that the burden of proof is on the person alleging he has acquired a domicile of choice.

The aspect of domicile must be strictly stated in the petition/pleadings. **IN SATIVINDER SINGH V SANDNAR KAWR, H.C DIVORCE CAUSE NO.2 OF 2002**), judge Kagaba among other things dismissed a petition which was defective for non-disclosure of the domicile of the petitioner. The judge stated that divorce must be ascertained in order to determine whether the court has the jurisdiction to entertain the petition and grant the reliefs prayed for. Mere stating that the parties were Indian origin was not enough disclosure of domicile.

JURISDICTION IN ISLAMIC MARRIAGES

The marriage and divorce of Mohammedians act, under Section 18 provides for jurisdiction under the act, any competent court can grant relief albeit doing so under Mohammedi's law.

Article 129(1) (d) of the constitution provides for Qadhn courts although these have not yet been operationalized by an act of parliament, the court in the case of **SUMAYA NABAWANUKA V MED MAKUMBI (DIVORCE CAUSE NO.39 OF 2011)**, premising its decision on Article 274 of the constitution held that sharia courts operated by the UMSC were courts of competent jurisdiction to hear matters in matrimonial proceedings under the marriage and divorce of Mohammedi's act.

Court further held that the high court has jurisdiction to handle Mohammedan divorce and the law applicable must be Mohammedan law and not the law as provided in the Divorc Act.

Look at the marriage and divorce of Mohammedan (jurisdiction) regulations (S.1NO 252-3)

JURISDICTION IN CUSTOMARY MARRIAGE

The customary marriage (registration) act is silent about the applicability of the divorce act. The law recognizes customary marriages and customary divorce however, it merely outlines that the marriage and divorce would be in accordance to one's culture (Section 1 (2))

IN KINTU V KINTU, DIVORCE APPEAL NO1997, justice.135 OF Bbosa, held that the formal courts have the jurisdiction to dissolve customary marriages however they must do so applying the customs of the culture under which the marriage was contracted in as far as those custom to the constitution.

PROCEDURE IN DIVORCE PROCEEDINGS UNDER THE DIVORCE ACT

1. Proceedings for divorce are brought by petition to the court as provided under Section 4 of the act. **IN ANNE MUSISI V HERBERT MUSISI AND ANOR (DIVORCE CAUSE NO.14 OF 2007)**, it was held that divorce proceedings are commenced with a petition for dissolution of marriage by divorce, setting out the grounds on which the prayer for orders as to divorce relies.
2. Section 30 provides that the proceedings under the D.A are regulated by the civil procedure act.

3. Section 31 provides that every petition concisely states the nature the facts on which the claim is based and shall be verified as if it were a plaint and may be referred to as evidence during hearing. (This case it must be commissioned).
4. Court may grant interlocutory applications that may arise during the proceedings for example in **BASHEJA V BASHEJA AND ANOTHER, DIVORCE CAUSE NO.12 OF 2005**, where the court granted an interlocutory application to stay proceedings, when the petitioners counsel prayed for the order since the parties were in advanced stages of reconciliation.
5. Proof of service of petition and summons is crucial as is the case in normal civil proceedings.
6. Divorce proceedings may be held in camera. In **KIRUNGI V MUGABE, DIVORCE CAUSE NO.48 OF 2013**, the court granted prayers as to the sitting of court in chambers and noted that matters of divorce warranted meticulous privacy. Section 35 of the act also provides for proceedings in camera.

GROUND FOR DIVORCE UNDER THE DIVORCE ACT

The divorce act under S.4 provides for the grounds for divorce. These include: adultery, desertion. In the case of **UGANDA WOMENS LAWYERS ASSOCIATION V ATTORNEY GENERAL, CONSTITUTIONAL PETITION NO.2 OF 2003**, court held that any of the grounds stipulated in S.4 was sufficient to entitle the petitioner to a divorce.

In the case of **KAZIBWE V KAZIBWE, D.C NO.3 OF 2003**, court held that the position of law is that both adultery and cruelty are distinctive grounds each on its own rights upon which a decree for dissolution of marriage may be issued. The petitioner (wife) could therefore obtain a decree for divorce after proving to the satisfaction of the court either the ground of adultery or cruelty or both. In **REBECCA NAGIDDE V CHARLES STEVEN MWASA, CACA NO.160 OF 2006**, the C.A set aside the decree nisi granted by the H.C on grounds that no matrimonial offence had been proved. The court reasoned that before the court grants a decree nisi, it must be satisfied that the petitioner has proved at least one matrimonial offence.

1. ADULTERY.

In the case of **HABYARIMANA V HABYARIMANA (1980) HCB 139**, adultery was defined as consensual sexual intercourse during the subsistence of the marriage between one spouse and a person of the opposite sex not being the other spouse.

BURDEN OF PROOF AND STANDARD OF PROOF

In **MARY RUHARA V CHRISTPOHER RUHARA (1977) HCB 86**, court held that the basic rule as established by case law is that in cases of adultery the burden of proof lies on the petitioner and its heavier burden than that lies on a party to an ordinary civil action though it is not high as in criminal case.

ELEMENTS OF ADULTERY

1. That the person was married

2. They had sex with another person not being their spouse. The sexual intercourse must be complete for those to be adultery. **IN DENNIS V DENNIS (1955)2 ALL ER 51**, the court held that there is no distinction to be drawn between the words sexual intercourse in the definition of adultery and carnal knowledge in criminal law. It must be shown that there was penetration of female organ by the male organ however slight.

EVIDENCE IN ADULTERY CASES

It is not necessary to prove a direct fact of adultery. Adultery can be proved by circumstantial evidence as long as that evidence is cogent to the extent that it raises no other inference other than the fact that the respondent committed.

PRESTON JONES V PRESTON JONES (1951)1 ALL ER 124, where the respondent had given birth to a child 360 days after the last time she had had sexual intercourse with her husband the petitioner who for all those days had been away.

In FRANK NIGEL OTHEMBI V ADONG GRACE CHODA DC NO.2 OF 1998, the petitioner found love letters in the respondent's bag.

CONDONATION OF ADULTERY

Under **Section 9 of the Divorce Act**, adultery is deemed to have been condoned where the offended party resumes conjugal cohabitation or was continued after discovery of the adultery.

In Y. MUGONYA V TROPHY NAKABI MUGONYA (1975) HCB 297, it was stated that proof of condonation requires evidence of forgiveness and reinstatement of the relationship although further commission of matrimonial offences receives the condoned offence.

2. CRUELTY

Under Section 4 (2) of the Divorce Act, a spouse may petition for divorce on grounds of cruelty. In the case of **HABYARIMANA V HABYARIMANA**, the court stated that no conduct can amount to cruelty in law unless it has the effect of producing actual or apprehended to the petitioners physical or mental health.

KASASA V KASASA (1976) HCB 348, the court held that in order to constitute cruelty, the petitioner must prove that the respondents conduct constitutes danger to their life, limbs or health, bodily or mental or a reasonable apprehension of it.

The conduct of the respondent to constitute legal cruelty must be beyond the reasonable wear and tear of marriage life. **In RUHARA V RUHARA**, it was held that scalding a person with burning oil would be the most cruel and brutal act and a clear injury to life and limb.

In the case of **HABYARIMANA V HABYARIMANA (1980) HCB 139**, the court held that before coming to a conclusion as to whether the respondents conduct amounts to legal cruelty, the court must consider the impact of the personality and conduct of one spouse or mind of the other and all incidents and quarrels between the spouses must be weighed from that point of view and regard must be heard on the circumstance of each case and the mental and physical conditions of the parties ,their characters and social status. It has further been suggested that in deciding whether a particular conduct amounts to cruelty as a

matrimonial case, the whole relation, the entire conduct, the personality, the character and the social status of the parties must be taken into account.

The court in **HABYARIMANA**, further noted that the burden of proof lies on the petitioner and the standard of proof is slightly higher than the preponderance of probability required in ordinary civil cases.

In **KIRUNGI DOREEN V MUGABE RONALD, DIVORCE CAUSE NO. 48 OF 2013**, the respondent had abandoned the matrimonial home and moved to live with his mother. Before that he had also stopped sleeping in the matrimonial bed and opted for the couch. The court held that the respondent was guilty for cruelty. It reasoned that looking at the evidence in totality, the entire matrimonial relations between the parties including their conduct amounted to cruelty. This was manifest in his denial of sexual intimacy to the petitioner, physical and verbal abuse and heavy drinking.

3. DESERTION. (IT'S A FORM OF SELF-HELP DIVORCE)

(Section 4 of the divorce act)

In the case of **PATEL V PATEL (1965) E.A 560**, court held that the constituents of desertion include:

- 1) That the husband or wife left the matrimonial home for the statutory period two years
- 2) Did so without the consent of the other partner
- 3) Did so with the intention of permanently ending cohabitation.

IN ERUME V KYOMUGISHA, DIVORCE CAUSE NO.9 OF 2014, the wife disappeared without trace and the husband was granted a divorce on grounds of desertion.

The black's law dictionary defines desertion as an actual abandonment or breaking off matrimonial cohabitation, by either of the parties, and a renouncing or refusal of duties and obligation of the relation with an intent to abandon or forsake entirely and not to return or resume marital relations.

ELEMENTS

1. Intention to desert.

This is the notice to desert. There is no desertion unless the guilty spouse has the intention of remaining permanently separated from the other.

If a spouse is away for business, is deployed in the army, ill, or in prison, the desertion is voluntary and will not be construed unless the intentions can be expressly proved.

In **KAYE V KAYE, THE TIMES 1953**, the separation was not voluntary and under computation for all practical purposes, it was never possible for the wife to leave Poland and come to England, nor was the husband ever able to join her there.

Where the deserting spouse is alleged to be insane, it is a question of fact to be determined by the courts whether he or she is capable of forming the necessary animus.

IN PERRY V PERRY (1963) ALL ER 766, the wife left her husband because she suffered from an (unfounded) insane delusion that he was trying to murder her. It was held that her conduct had to be judged as though her belief was true and in these circumstances it was clear that there could be no desertion because she believed that she had good cause for leaving her husband.

In **KIRUNGI DOREEN V MUBAGE RONALD (SUPRA)**, court held that he had unreasonably deserted the petitioner by virtual of his having abandoned the matrimonial bed though his refusal to have sexual intercourse with the petitioner.

CONSTRUCTIVE DESERTION

Where a spouse behaves in such a willful unreasonable and unjustifiable way that the other is driven out of his or her behavior, then there is desertion.

Constructive desertion is therefore above republic conduct which has to be ascertained in light of the presumption that a man intends the natural and probable consequences of his acts per court in **EDWARDS V EDWARDS (1948) P.268 C. A**

IN LANG V LANG (1955) A.C 402, Lord Potter held that it is the intention of the deserting party which establishes desertion and that the intention permanently to end a relationship can be readily informed. Where a husbands conduct towards his wife was such that a reasonable man would know, and that the husband must have known, that in all probability it would result in the departure of the wife from the matrimonial home. That in the absence of rebutting evidence, there was sufficient proof of an intention on his part to disrupt the home and the fact that he nevertheless desired or requested her to stay did not rebut the information to be inferred from his acts that he intended to drive her out and he was guilty of constructive desertion.

However, irritating idiosyncrasies” which get on a wife’s nerves are part of the lottery in which every spouse engages on marrying.

In **BUCHLER V BUCHLER (1947) P.25 AND 45**, Asquith, LJ emphasized that the conduct must be more than the ordinary wear and tear of married life. The court stated constructively, the deserter may be the party who remains behind, if that party has been guilty of conduct which justifies the other party in leaving. Secondly to afford such justification, the conduct of the party staying need not have amounted to a matrimonial offence such as cruelty or adultery. But thirdly, it must exceed in gravity such behavior, vexatious and trying though it may be a every spouse bargains to endure when accepting the other for better or worse. The ordinary wear and tear of conjugal life does not in itself suffice.

DIVORCE IN ISLAM

Islam immensely disapproves of divorce and encourages reconciliation of the event of disagreement but allows for divorce when it becomes inevitable.

In **AYOOB V AYOOB (1968) EA 72**, court stated that marriage in Islam is not a temporary union and is meant for the entire span of life. Dissolution is however permitted if it fails to serve its objectives and has irretrievably broken down. It is purely contractual and not sacrament as it is in Christianity.

GROUND

The general ground of divorce in the Quran is the hopeless failure of one or both parties to discharge their marital duties and to consent with each other in kindness, peace and compassion.

FORMS

Marriage under Islamic law may be dissolved in four ways:

1. By the husband through talaq (outside court)
2. By mutual agreement of the spouses (khul)
3. By a judicial order of separation in a suit that may be raised by either of spouses. (fask)
4. Lian which is divorce by oath.

TALAQ

Pre-requisites

- Husband should be sane
- Husband should not be a minor
- Husband should be exercising own discretion

In **AYOOB V AYOOB**, court held that a Mohammedan marriage could be dissolved by talaq

Number of pronouncements

An adult of sound mind, married person has the right to pronounce “divorce” (talaq) to his wife during the marital life three times.

The Quran 2; 229 says, a divorce is permissible twice, after that the parties should either hold together on equitable terms or separate with kindness.

For two times the husband has the right to revoke the pronouncement and can continue usual marital relationship

When he gives the 3rd talaq, then the spouses do not remain married.

WHEN TO GIVE THE TALAQ?

The wife should not be in her menses when the talaq is pronounced. Quran 65:2

EFFECT/RE-MARRYING

If a husband divorces his wife (irrevocably) he cannot after, re marry her until after she has married another husband and divorced her. After that period, the parties may re-unite. Quran 2:230.

PROCEDURE

1. The words used to convey the divorce must expressly convey the intention that the marriage tie is being dissolved.
2. The Talaq must be pronounced when the wife is in state of purity and the husband must abstain from having sexual inter course with his wife after pronouncing talaq for the period of the three months.
3. The divorce may be given orally or in writing but must take place in the presence of two just men to keep testimony. Quran 65:2

STATUTORY PROVISIONS

Section 2 of the marriage and divorce of the Mohammedan act requires that the method of divorce to be carried out has to be in conformity with the rites and observances of the Mohammedan.

Section 5 (1) (a) of the act provides for the registration of divorce by the husband within one month from the date of divorce.

Cases. In THE KING V THE SUPERINTENDENT REGISTRAR OF MARRIAGES, HAMMERSMITH (EX PARTE MIR-AWRIWARUDA) (1917) KB 634, one of the issues raised was whether the declaration of divorce (talaq) made by the husband has the effect in England of dissolving a marriage contracted according to marry gain in England. The court held that a marriage solemnized in UK between a Mohamed domiciled in India and a Christian woman in UK cannot be dissolved by the husband handing to the wife a writing of divorcement although that would be an appropriate mode of effecting the dissolution of a Mohamedan marriage according to Mohammedan law.

In RE MOHAMED HUSSIN AND HAZIMAH (1990)7 JH 189, the husband pronounced three talaqs at the same time. The appeal committee held that the three talaq pronounced at the same time effected only a single divorce. The appellants thus could re marry.

FASK

Fask is a decree by the Khadi (judge) after the careful consideration of an application by the wife. Its basis is in Quran 2:229

Grounds

1. Defect in one of the spouses: according to Malik School, shafii and hanbali schools, each couple is entitled to get divorce due disease and physical defect e.g. leprosy, madness, leucocythaemia and impotency. According to Shafii School what forms the basis is the infectitiouness of the disease that are passed from husband to the wife.
2. Failure to provide maintaince.
3. Cruelty: if the fears that the husband will injure her person to such an extent that she is unable to live with him as husband and wife. Quran 4:128. In the Tanzanian case of **ZAINABU V MOHAMMED (1973) EA 280**, the wife brought the suit for divorce on grounds of interlia cruelty. Court held that evidence of cruelty would lead to the dissolution of marriage under fask.

4. Desertion by the husband: the reason for giving the right to the wife is to save her from injury and hardship.

KHULA

It is an irrevocable divorce and is divorce by the woman. **IN SALUM V ASUMIN**, court held that a khula divorce is obtainable at the initiative of the wife and that although consideration for the khula divorce had not been paid in full, there was a valid divorce and the amount paid should be recovered from the wife or her father. Seaton J in particular said “with regard to divorce (khula) to be clear from the authorities of Mohammedan law” khula divorce is obtainable at the initiation of the wife. It is accomplished at once by means of appropriate words spoken or written by the two parties or their respective agents, the wife offering and the husband accepting compensation out of her property for the release of his marital rights.

In HALIMA ATHUMANI V MAULIDI HAMISI (1991) TLR 179, appellant applied for divorce against her husband on grounds of cruelty on the part of her husband. She alleged that her husband insisted to have sex against the order of nature which she vehemently resisted. The court indicated that under the law, there are two ways in which female spouses may seek dissolution of the marriage. 1st is fask divorce, 2nd a Moslem spouse can proceed to demand khulu before a sheikh.

- The provisions on registration apply.

LIAN

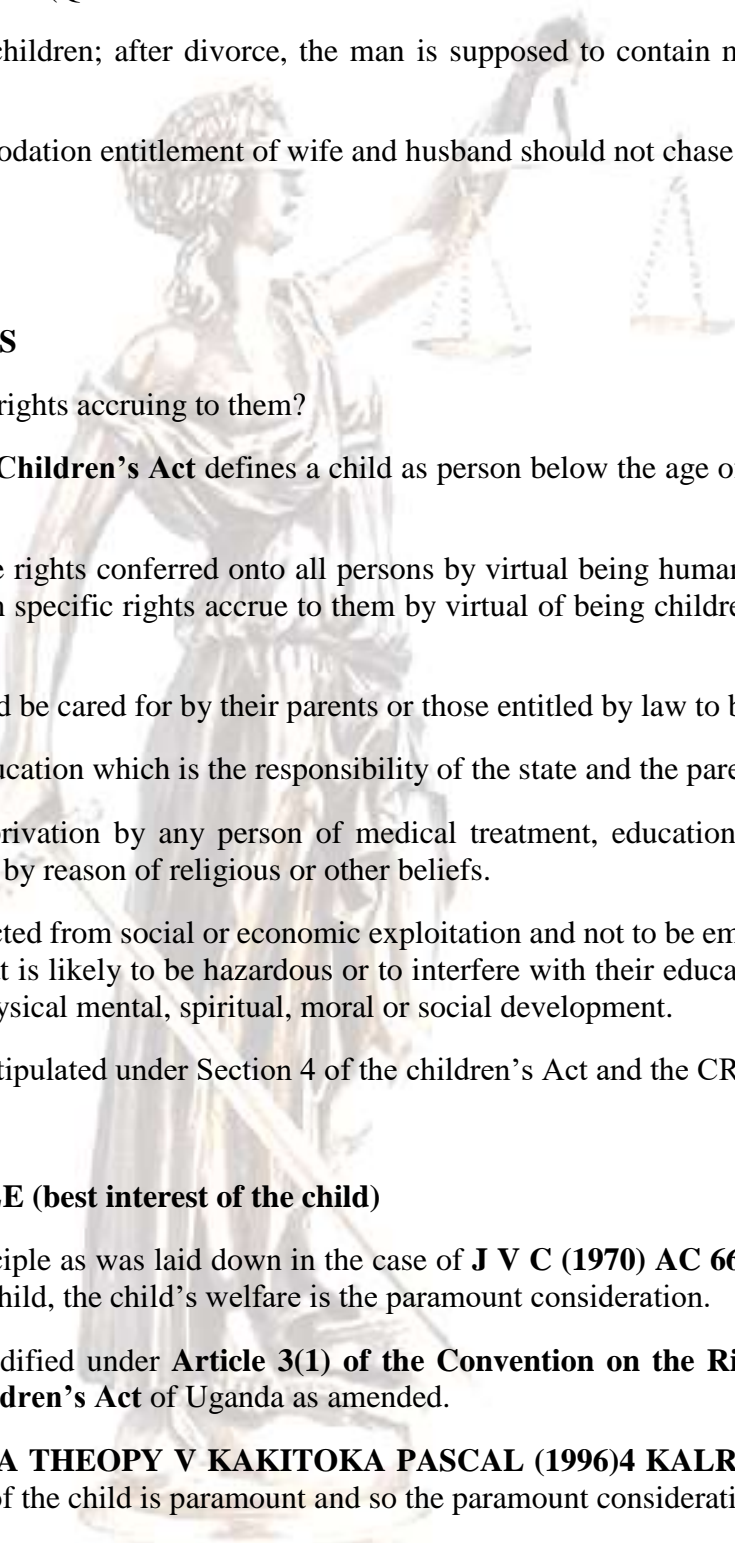
If a husband puts forward slanderous accusation against his wife or a wife against her husband, the holy Quran lays down the procedure under 24:6-7 and 24:8-9. If a husband accuses his wife of adultery he has to bring four witnesses to prove his case. Quran 4:15 but if he fails to do so he has to swear four times by God that he speaks the truth and 5th that the curse of God be on him if he be lying Quran 24:6-7. Against this if the wife also swears four times by God that her husband was telling a lie and fifthly if she invokes the wrath of God on her if her husband was speaking the truth. There is a deadlock then.

In this case, the Khadi holds the marriages dissolved as the couple isn't fit to live any longer as husband and wife.

REMEDIES OF THE PARTIES UPON DIVORCE

The M&DMs Act does not prescribe the remedies available to a party and **Section 18** specifically excludes the applicability of the divorce act. The section further grants power to any competent court given power to grant relief as provided under Islamic law to the party aggrieved. Thirdly, the High Court may exercise its inherent powers and grant appropriate remedies in accordance with Muslim law.

In RE HAMZA MOHAMED AND NASHAT MOHAMED (Minors) H.C FAMILY MISC APPLIC NO.89 OF 2012. The court considered the relief mentioned under S.18 of M&DMs Act. The application was brought by the wife under S.18. Mukiibi J stated that Section 18 means that any party to an Islamic marriage may come to the court seeking relief by way of divorce and any other consequential orders but the court must apply Islamic law. The H.C upheld the decision of the sharia court (at UMSC0 decision granting divorce to the parties and custody of the children to the wife and other relief.

- 
- a) Mahr: if not paid should be paid (Quran 4:4)
 - b) Maintenance of wife (Quran 65:50)
 - c) Maintenance of children; after divorce, the man is supposed to contain maintaining the children (Quran 2:223)
 - d) Right of accommodation entitlement of wife and husband should not chase her away. Quran 65:2

CHILDREN MATTERS

Who is a child and what rights accruing to them?

Section 2 of the Children's Act defines a child as person below the age of 18 years. Also **Article 257 (1) (c)**

Children have the rights conferred onto all persons by virtual being human beings however under Art.34 of the constitution specific rights accrue to them by virtual of being children and these include the following rights:

1. Right to know and be cared for by their parents or those entitled by law to bring them up.
2. Right to basic education which is the responsibility of the state and the parents of the child.
3. Right to non-deprivation by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.
4. Right to be protected from social or economic exploitation and not to be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical mental, spiritual, moral or social development.
5. Other rights are stipulated under Section 4 of the children's Act and the CRC.

WELFARE PRINCIPLE (best interest of the child)

The welfare principle as was laid down in the case of **J V C (1970) AC 668** is to the effect that in any matter relating to a child, the child's welfare is the paramount consideration.

This has been codified under **Article 3(1) of the Convention on the Rights of the Child and Section 3 (1) of the Children's Act** of Uganda as amended.

In KAMUGISHA THEOPY V KAKITOKA PASCAL (1996)4 KALR 116, court emphasized the fact that the interest of the child is paramount and so the paramount consideration in children cases.

In J V C, where the matter was between the biological parents and the foster parents, the court stated that the rights and wishes of the parents whether unimpeachable or otherwise must be assessed and weighed on their bearing on the welfare of the child which is paramount in conjunction with all the other

factors relevant to the issue. In this case it was in the child's best interest to stay in the custody of the foster parents in as much as the natural parents had a strong claim to have their wishes considered as normally the proper persons to have the upbringing of the child they have brought into the world.

In RE B (1988) AC 199, the House of Lords sanctioned an operation to sterilize a 17 year old girl upon proof that due to limited intellectual capacity she was incapable of knowing the relationship between sexual intercourses and child birth. The operation was held to be her best interest.

In determining what is in the best interest of the child, the court according to **Section 3 (3) of the Children's Act** as amended must have regard to:

- a) The ascertainable wishes and feelings of the child concerned with due regard to his or her age and understanding. Gallick's competence principle it's to the effect that where a child has sufficient understanding to make an informal decision about their life, they should be allowed to do so. The principle was established in the case of **GILLICKS V WEST NORFOLK AND WISBECH AREA HEALTH**, the child must understand the advice being given and what is involved.
- b) The child's physical, emotional and educational needs. Under physical needs, courts major concern is the child's security and not concerns of material prospects. The quality of the home is measured against time, energy devoted to care and upbringing. **In STEPHENSON V STEPHENSON**, the court stated that disadvantages of a material sort must be given little weight. Under emotional needs, the presumption leans in favor of the emotional needs to stay with both parents. Whereas the court in **TEOPISTA KAYONG V RICHARD SEKIZIYIVU (1979) HCB 261**, the court recognized that there is a strong notion that young children need to stay with their mothers however there is no rule of law to that effect and thus the best interest of the child be the paramount consideration. Young children were defined as children of tender years below the age of seven years.
- c) The likely effects of any change in the child's circumstances
- d) The child's sex, age, background and any other circumstances relevant in the matter. Courts say in guardianship applications will be more inclined to grant the guardianship/custody in applications for custody to applicant of the same sex as a child.
- e) Any harm that the child has suffered or is at the risk of suffering.
- f) Where relevant, the capacity of the child's parents, guardian or any other person involved in the care of the child and in meeting the needs of the child. Financial stability does not entitle the applicant to any order to automatic grant. What court must consider is the best interest of the child. A financial stable parent might have to surrender the child to the other in custody application if it's the view of the court that the child lives with the other parent. **IN AYIYA V AYIYA**, the court emphasized that it is not necessary that one who is rich will be in better position to look after the children but the psychological attitude towards the children and the loving and warm atmosphere in a home means more in the upbringing of a child.

Application of the principle where there are two children.

Where there are two children, the welfare of the child in issue is what is paramount.

IN BIRMINGHAM CITY COUNCIL V H, which related to a 15-year-old child and her baby who both had been made the subjects of interim care orders. The 15-year-old mother was aggressive and made attempts to harm self which caused the baby to be moved to foster parents. She sought contact with the baby and evidence was led that it was not in the baby's best interest that the contact with the 15-year-old mother continues but was in the mother's best interest that it continues. The issue before court was whose welfare was paramount. The baby or the mother? The court held that the baby's upbringing and thus it's its welfare which must be the courts paramount consideration. The fact that the parent is also a child does not mean that both parents and child's welfare is paramount and that each has to be balanced against the other.

PARENTAGE

WHO IS A PARENT?

In RE W, the court held that this takes into account recent developments in human assisted reproduction which made the earlier test of parentage which was blood ties or genetic link. The person who gave birth to the child was considered the mother and the person by whom she conceived the father. With procedures such as artificial insemination, insert fertilization, egg and embryo donation and surrogacy, the person who gives birth to child or by whom the person conceived may not necessarily be the parent.

In JOGNSON V CALVERT, in pursuance of a surrogacy agreement, one the commissioning mother's egg was fertilized in vitro with her husband's sperm and transferred to the surrogate who successfully carried it to term. During the pregnancy the surrogate and the commissioning couple fell out and each sought a declaration of parentage of the child. In holding that the commissioning parents were the child's legal parents, the court stated that it was.

Section 1 (cc) of the Children's Act as amended defines a parent to mean the biological mother or father or adoptive mother or father of a child.

PROOF OF PARENTAGE

At common law

A child born to a couple during a subsisting marriage was presumed to be a child of the couple. The man was presumed to be the father and the woman the mother. The presumption could be rebutted with evidence to the contrary.

In PRESTONE V PRESTONE (1956)1 ALL ER 124, the court recognized the presumption but held that the man had successfully rebutted the presumption having established that within the one year when the child was born he had not had sexual intercourse with the wife.

In MPRIWE V OLIVER NINSIMBIMANE HCCS NO.5 OF 1990, Tsekooko j held that the evidence of similarity in physical features between a child and alleged parent is admissible to prove paternity, although the evidence is not conclusive.

Under the Children's Act

Under **Section 71 of the Children's Act**, there is prima facie evidence of parentage where

1. The name of the father or the mother of a child is entered in the register of births in relation to a child.
2. An instrument executed as a deed or signed jointly or severally by each of the persons in the presence of a witness acknowledging parentage as either the mother or father.
3. An order of a court for maintenance against a person under any written law has been issued in respect of that child
4. An order made by a competent court outside Uganda in any affiliation or similar proceedings declaring or having the effect of declaring a person the mother or father of a child.
5. A reference, express or implied in a will written or oral where the person names the child as a daughter or son.
6. A statement, written or oral by a deceased person confided to a person in a position of authority indicating that the deceased is or was the father or the mother of a particular child.

Under **Section 71 (4)**, a declaration of parentage by a court is conclusive proof of parentage.

AN APPLICATION FOR A DECLARATION OF PARENTAGE

FORUM

According to practice direction no.1 of 2011, magistrate grade one courts exercise jurisdiction over family and children's court

Under **Section 67, of the Children's Act as amended**, the application for a declaration of parentage is made to the family and children's court having jurisdiction in the place where the applicant resides.

WHO MAY MAKE THE APPLICATION?

According to **Section 67 of the children's Act**, the application may be made by:

- a) The mother of a child
- b) The father of a child
- c) The guardian of a child
- d) The child himself or herself through a next of friend

- e) The man alleged to be the father
- f) The woman alleged to be the mother of the child.

WHEN CAN THE APPLICATION BE MADE?

Under **Section 68 (1) of the Children's Act**, the application may be made:

- a) During pregnancy
- b) Any time before the child attains 18 years of age.
- c) Within 3 years after the death of the alleged father or mother.

Under **Section 68 (2)**, the application may with leave of court be made at any time after the 3 years from the date of the death of the alleged father or mother.

Procedure for Application for Declaration of Parentage

1. Under **Section 67 of the Children's Act**, the application is by complaint on oath to a family and children court. **Rule 20 of the children (family and children court rules, S.I no.59-2**, the application for a declaration of parentage shall be by a complaint on oath as specified in form 2 in the schedule to the rules.
2. Under **Section 69 (5) of the Children's Act**, any person sought to be tested must be made a party to the proceedings.
3. The court to which the application is made must issue summons to the person alleged to be the father or mother of the child to appear before the court on a day named. **Section 69 (1) of Children's Act**. Rule 21 of the rules
4. On the appearance of the person summoned or on proof that the summons was duly served on him or her at his or her place of abode seven days or more before the hearing the court will hear the evidence of the applicant and also hear that of the alleged father or mother if any. **Section 69(2) of Children's Act**
5. If satisfied by the evidence of the applicant, the court may adjudge the person to be the mother or father of the child.

Blood tests and scientific proof of parentage

Under **Section 69(4) of the Children's Act**, a court may on application or on its own motion during the proceedings for a declaration of parentage make an order any person to give a blood sample for the purpose of blood tests.

Section 69 (5) requires that the person sought to be tested must be made a party to the proceedings.

Effect of Declaration of Parentage

Section 72(1) of the Children's Act provides that a declaration of parentage by a court shall have the effect of establishing a blood relationship of father and child or of mother and child and the child shall be in the same legal position towards the parent as a child actually born in lawful wedlock.

The declaration however does not of itself confer rights of custody of the child upon the declared parent. S.72 (2) of the children's Act

Necessary documents

1. Complaint on oath (form 2 in the schedule to the rules)
2. Summons (form 3 in the schedule to the rules)

Appeals

Under Section 74, a party that is not contented with the declaration of parentage may appeal to the chief magistrate's court in respect of the same.

COMPLAINT ON OATH.

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT
MUKONO.

IN THE MATTER OF THE CHILDREN ACT AS AMENDED

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION
OF PARENTAGE

FAMILY CAUSE NO 01 OF 2019

COMPLAINT ON OATH

I, JOHN BYARUHANGA of FIRM DI AND CO. ADVOCATES, P.O BOX0000, KAMPALA, being the father apply for a declaration of parentage against MIRIA NAIKOBA being the grandmother of KEVIN KAWINO ATEENYI on the following grounds:

1. That I am the father to Kevin kawino Ateenyi.
2. That the respondent, Miria Naikoba, the mother to my deceased wife has custody of Kevin kawino and won't allow me have his custody as the father.

3. That the respondent disputes that I am the father of the named minor and alleges my deceased wife told her so.
4. That it is in the best interest of the child that this declaration of parentage is made.

SWORN AT KAMPALA this 30th day of November, 2019 by the said JOHN BYARUHANGA.

COMPLAINANT

Before me

COMMISSIONER FOR OATHS.

Summons.

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT

MUKONO

IN THE MATTER OF THE CHILDREN ACT AS AMMENDED CAP

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION

OF PARENTAGE

FAMILY CAUSE NO.01 OF 2019

SUMMONS IN CHAMBERS

TO: MIRIA NAIKOBA

WHEREAS JOHN BYARUHANGA has instituted proceedings for a declaration of parentage, you are summoned to appear in the chambers of the magistrate grade one at the family and children court at Mukono, in person or by an advocate duly instructed on the 8th day of December 2019 at 9:00 o'clock in the forenoon to answer to the claim.

TAKE NOTICE that, in default of your appearance on the day above mentioned, the application shall be heard and determined and such order as is deemed necessary will be rendered in your absence.

GIVEN under my hand and seal of this court on the 1st day of December 2019

MAGISTRATE.



CUSTODY

Section 1 (f) of the Children’s Act as amended defines a custodian as a person in whose care a child is physically placed. Thus custody means physical caring of a child. It means who lives with and has the right to make decisions concerning that child pertaining to all areas of parental responsibility.

In the case of **ALI ISSA V FAITH YUSUF**, the court observed that the word custody if used in connection with children concerns control and preservation and care of a child’s personal, physical, mental and moral integrity and are responsible for the child in regard to their basic needs and rights.

Section 5(1) of the Children’s Act as amended impose a duty on any parent, guardian or any person having custody of a child and the duty confers onto the child the right to: education and guidance, immunization, adequate diet, clothing, shelter and medical attention. Also **Article 34**

Further under **Section 5 (2)** the person having custody of a child shall protect the child from discrimination, violence, abuse and neglect.

Married couples living together have equal rights whereas parents who have divorced or separated or under any circumstances are not living with the child may apply to court to decide on who must have the custody of the child.

APPLICATION FOR CUSTODY

Forum

The family and children’s court in the local jurisdiction where the child resides. (Rule 5 of the fee rules. **Section 14 of Children’s Act**.)

Who can apply for custody order?

- Mother of the child
- Father of the child
- Guardian
- Probation and social welfare officer.

Procedure

1. Under Rule 19(3) of the rules, the application is as specified in form 1 in the schedule to the rules.

2. Rule 19(1) requires that the application is supported by an affidavit and any reports or documents to be relied upon.
3. Under rule 21 summons which must be as specified in form 3 to the schedule of the rules must be issued to the respondent.
4. On the day stipulated upon the respondent appearing or proof of service being filed, the court will proceed to hear the application and rule accordingly
 - **Section 73(3)** mandates court to primarily consider the welfare of the child when arriving at the decision for an order of custody

Necessary documents

1. Application (form 1)
2. Affidavit in support
3. Summons

Application

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDRENS COURT ACT

MUKONO

IN THE MATTER OF KEVIN KAWINO ATEENYI

AND

IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER

FAMILY CAUSE NO.1 OF 2019

APPLICATION FOR A CUSTODY ORDER

I, JOHN BYARUHANGA OF FIRM DI AND CO ADVOCATES, P.O BOX0000, and KAMPALA being the father apply for a custody order against MIRIA NAIKOBA being the grandmother of KEVIN KAWINO ATEENYI on the following grounds

1. That I am the father of the child and I have been taking care of all his needs for his life time.
2. That it is his best interest that he grows living together with his other two siblings who are in my custody

3. The respondent, Miria Naikoba in whose custody the child is now is a heavy drinker, and when drunk uses profane and lewd language which is likely to negatively affect the child.
4. That it is in the best interest of the child that this application is granted.

Dated this 30th day of November, 2019

APPLICANT

Affidavit in support

IN THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER

FAMILY CAUSE NO 01 OF 2019

AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR A CUSTODY ORDER

I, JOHN BYARUHANGA OF FIRM DI AND CO ADVOCATES, P.O BOX0000, KAMPALA do here by make wan oath and solemnly state as follows;

1. THAT I am a male adult Ugandan of sound mind aged 38 years and the applicant in this matter and I swear this affidavit in that capacity
2. THAT I am the biological father of the minor Kevin Kawino Ateenyi aged 5 years old. (Attached is the birth certificate of the said minor.)
3. THAT I lost my wife to post-natal complication three days after giving birth to the said minor. (Attached is a death certificate of Elizabeth Namukose my deceased wife.)
4. THAT my deceased wife's grandmother, Yayeri Babirye offered to look after the baby and I obliged given it was very tender.

5. THAT my mother in law, Miria Naikoba picked the minor from Yayeri Babirye and took over its custody.
6. THAT throughout the five years, I have materially and financially provided for Kevin. (attached are the receipts for all expenses ranging from baby diapers, clothes ,toys, milk, medical expenses and Kevin's tuition, scholastic materials among others)
7. THAT I have and continue to visit Kevin every weekend in the company of her siblings
8. THAT Maria Naikoba who is in custody of Kevin is a heavy drinker who on many occasions returns to her home in a drunken state and uses profane and lewd language which will in the long negatively impact on the grow of Kevin.
9. THAT it is in the best interest of Kevin that this honorable court issues the order so that she can grow up with her siblings and in a loving and caring home.
10. THAT I swear this affidavit in support of my application for a custody order for Kevin.
11. THAT what is stated herein above is true and correct to the best of my knowledge and belief.

SWORN AT KAMPALA by the said JOHN BYARUHANGA on this 30th day of November 2019.

DEPONENT.

Before me

COMMISSIONER FOR OATHS

Drawn and filed by

FIRM DI AND CO ADVOCATES.

Summons.

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

FAMILY CAUSE NO.01 OF 2019

IN THE MATTER OF KEVIN KAWINO ATEENYI (A CHILD)

AND

IN THE MATTER FOR AN APPLICATION FOR A CUSTODY ORDER

SUMMONS IN CHAMBERS.

TO: MARIA NAIKOBA

WHEREAS JOHN BYARUHANGA has instituted proceeding for a custody order for Kevin Kawino Ateenyi you are summoned to appear in the chambers of the magistrate Grade one court at Mukono in person or by an advocate duly instructed on the 10th day of December, 2019 at 9:00 o'clock in the forenoon to answer to the claim.

TAKE NOTICE that in default of your appearance on the day above mentioned, in the application shall be heard and determined and such order as is deemed necessary will be rendered in your absence.

GIVEN under my hand and the seal of this court on the 1st day of December 2019

MAGISTRATE

INTERIM CUSTODY ORDER`

An interim custody order as stated under **Section 73A (3) of the Children's Act** be issued where the court is satisfied that:

- a) The child is suffering or likely to suffer harm if the order for the interim custody is not issued.
- b) The order is the best interests of the child.

The application for an interim order act stated under **Section 73A (1)** may be brought by:

- A probation and social welfare officer
- Mother of a child

- Father of the child
- Guardian of the child

Procedure

The application is by notice of motion under **Order 52 of Civil Procedure Rules** and as required under **Section 73A (2) of the Children's Act** must be supported by an affidavit in support.

Necessary documents

- Notice of motion
- Affidavit in support
- Summons

Forum

The family and children court with jurisdiction in the area where the child resides. (Rule 5 of Rules).

FCC COURT RULES.

Under **Rule 4 (1) (b)** of rules general principles on procedure that apply to **Civil Procedure Rules** apply. Under **Order 52**, where a procedure isn't stipulated, you proceed by notice of motion.

MAINTENANCE

Section 76 (8) provides that maintenance includes feeding, clothing, education and the general welfare of the child. Under **Article 34 and Section 4 of the Children's Act**, every child has a right to be maintained by his or her parents.

Under **Section 5 (1) of the Children's Act**, it's the duty of every parent, guardian or any person having custody of a child to maintain that child and in particular to things like education and guidance, immunization, adequate diet clothing, shelter and medical attention.

In the case of **RWABUHEMBA TIM MUSINGUZI V HARRIET KAMAKUMA CIVIL APPLICATION NO. 142 OF 2009**, the court observed that parents have a fundamental right to care and bring up their children and such right is a constitutional right it should not be considered in isolation.

APPLICATION FOR A MAINTAINCE ORDER

Forum

Section 76 (5), states that the application for maintenance order is to the family and children court having jurisdiction in the place where the applicant resides.

WHO CAN MAKE THE APPLICATION?

Section 76(1) states that any person who has custody of a child and who is:

- a) The mother of the child
 - b) The father of the child
 - c) The guardian of the child may apply for a maintenance order against the father or mother of the child. Under **Section 78(3)** it can be made and enforced against the estate of a deceased whose been declared the mother or father of a child under a parental declaration.
- Under **Section 76 (2)**, a child in respect of whom a declaration of parentage has been made may also make an application through a next of friend.

When can the application be made.

Subject to **Section 76 (3)** the application may be made:

- a) During a subsisting marriage
- b) During proceedings for divorce, separation or nullity of marriage.
- c) During separation
- d) During proceedings for declaration of parentage
- e) After a declaration of parentage has been made.

Under **Section 76 (4)** the application may be made:

- a) At any time during pregnancy
- b) Before the child attains 18 years of age.

Procedure

Section 76 (5) states that the application is made by complaint on oath to a family court

Section 76 (6) summons must be issued to the father or mother of the child to appear before the court on a day named in the summons

Section 76(7) on appearance of the person or on proof that the summons were served on the person or more days before the hearing, court will hear the evidence of the applicant and where the respondent is in court, also hear their evidence and if satisfied make the maintenance order for payment to the applicant:

- a) A monthly sum as determined by the court having regard to the circumstances of the case and the financial means of respondent.
- b) Funeral expenses of the child if it died before the making of the order
- c) Costs incurred to obtain the order.

Recovery of maintenance money

If after a month the sums ordered have not been paid and the respondent neglects all efforts to have him/her pay, a magistrate may by warrant under **Section 77 of Children's Act** direct:

- a) That an attachment of earnings be made.
- b) That the sum due, together with any costs incurred, be recovered by distress and sale or redistribution of the property of the father or mother unless he or she gives security by way of recognizance or otherwise to the satisfaction of court for his or her appearance before the court on a day appointed for the return of the warrant of distress, but not more than 7 days from the taking of the security.

VARIATION OF MAINTENANCE ORDER

Under **Section 78(1)** a maintenance order may on the application of the applicant at the time of grant or by the person against whom the order was made, court may vary by increasing the sums or decreasing the amount previously order having due regard to the circumstances.

NECESSARY DOCUMENTS

1. Complaint on oath
2. Summons.

Omnibus application for declaration of parentage and a maintenance order.

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT MUKONO

FAMILY CAUSE NO.002 OF 2019

IN THE MATTER OF KEVIN KAWINO ATEENYI, (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF

PARENTAGE AND

IN THE MATTER OF AN APPLICATION FOR A MAINTANANCE ORDER

IN THE MATTER OF THE CHILDRENS ACT AS AMMENDED

COMPLAINT ON OATH

I, MERIDA KWAGALA OF FIRM DI AND CO. ADVOCATES, being the mother of Kevin Kawino Ateenyi apply for a declaration of parentage and an order of maintenance against JOHN BYARUHANGA being the father of Kevin Kawino Ateenyi on the following grounds:

1. THAT I had a love relationship with John Byaruhanga.
2. THAT the relationship resulted into the birth of a baby girl, Kevin Kawino Ateenyi.
3. THAT from the time I conceived until 2017, the respondent John Byaruhanga used to provide financial support for Kevin's needs
4. THAT after he discovered Kevin was epileptic he stopped providing financial support stating that he had no epileptic history in his family.
5. THAT the respondent has since denied fathering Kevin and rendering any financial support for her needs.
6. THAT it's in the best interest of Kevin that declaration for parentage is made against john Byaruhanga and a maintenance order issued against him.

WHEREOF THE applicant prays for orders that:

- a) Declaration of parentage
- b) Maintenance of the child to be paid to the applicant
- c) Custody of the child to the applicant

SWORN at Kampala by MERIDA KWAGALA on the 30th day of November 2019,

APPLICANT

COMMISSIONER FOR OATHS.

INTERIM ORDERS AND ORDERS THAT CAN BE ISSUED FOR CARE, PROTECTION AND WELFARE OF THE CHILD

1. Supervision orders/interim supervision orders.

Under **Section 19 (a) of the Children's Act**, a probation and social welfare officer or an authorized person may apply to an FCC for a supervision order placing a child under the supervision of a probation and social welfare officer while leaving the child in the custody of his or her parents or relatives.

APPLICATION

Under **Section 22** the applicant must satisfy themselves that

- a) The local government councils from village to sub county level where the child resides have dealt with the matter without success
- b) There is need for continuous supervision enforced by a court order before making the application.

The application is as provided in form 2 and in the schedule to the rules with a valid affidavit.

DURATION OF SUPERVISION ORDER

Under **Section 24 (1) of the Children’s Act**, a supervision order shall be for one year though may be extended for further year on the application of the probation and social welfare officer.

DUTIES OF A SUPERVISOR WHILE A SUPERVISION ORDER IS IN FORCE

These are stated under **Section 23 of the Children’s Act** and they are:

- a) To be friendly to, advise and assist the supervised child
- b) To advise the parents
- c) To make plans for the child’s future in consultation with the child and his or her parents or guardian.
- d) To apply to the court to discharge or vary the order if necessary.
- e) To take such reasonable steps as may be necessary.

CARE ORDER AND INTERIM CARE ORDER.

Under **Section 19 (b)** a probation and social welfare officer or an authorized person may apply to an FCC for a care order or interim care order placing a child in the care of the warden of an approved home or with an approved foster parent in accordance with the foster care placement rules in the 2nd schedule to the act. (S.27 (1))

APPLICATION

Under **Section 27 (2)** the applicant must prove that:

- a) All possible alternative methods of assisting the child have been tried without success and the significant harm from which the child is suffering or is likely to suffer requires him or her to be removed from where he or she is living.
- b) The danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

DURATION

Section 29 (1) states that a care order shall be for a maximum of three years or until the child reaches 18 years whichever is shorter.

Grounds for making a supervision or care order.

These are stipulated under **Section 21 of the Children's Act** and they are:

- a) The child concerned is suffering or is likely to suffer significant harm
- b) That the harm or probability of harm, is attributable to
 - I. The care given to the child or likely to be given to the child if the order were not made, not being what it would be
 - II. The child's being beyond parental control.

ADOPTION

Nigel Lowe and Gillian Douglas in Bromley's family law 11th edition, they define adoption at page 682 as the processes by which a child's legal parentage is entirely and irrevocably transferred from set of adults usually the birth parents and vested on other adults, namely the adoptive parents.

It involves the complete severance of the legal relationship between parents and child and the establishment of a new one between the child and the adoptive parents.

Adoption vests full parental responsibility exclusively in the adopters.

LAW APPLICABLE TO ADOPTION

- The constitution of the republic of Uganda (1995) as amended
- Children's Act Cap 59 as amended.
- The children (Adoption of children) rules.

RE: EDISON MUGAGA, ADOPTION CAUSE 15/2019, justice Mutonyi defined adoption as the creation of a parent-child relationship by a judicial order between two parties who are unrationed creating a lifelong relationship of parentage between the child and the adoptive parent.

DISTINCTION BETWEEN GUARDIANSHIP AND ADOPTION

1. **Section 51**, Adoption severs the legal ties between the child and his/her birth parents unlike guardianship where the ties of the child with his/her biological parents are not severed. **Section 43** states that guardianship order only vests the guardian with parental responsibility over the child.
2. Further under **Section 51, of the Children's Act**, the adoption order unless revoked under **Section 46A** is permanent and the child even upon attaining 18 years remains a member of the adoptive family and can under **Section 52(1)**, inherit the property of the adoptive parents upon their demise. While under **Section 43 H (2)**, a guardianship order only remains in force until the child attains 18 years.

APPLICATION FOR ADOPTION ORDER BY UGANDAN CITIZENS FOR CHILD WHO IS A CITIZEN.

Forum

Under **Section 44 (1) (a)**, the chief magistrate court within the jurisdiction of which the applicant or child resides has the jurisdiction to hear the application.

Where the application is filed in the high court, the court may order that it's moved back to the chief magistrate court with jurisdiction except if the application on perusal by the court discloses special circumstances warranting the high court to hear the application. This was the case **RE:CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA H.C ADOPTION CAUSE NO.03 OF 2019**, in which both applicants and the children were Ugandan citizens but the application was filed in the H.C. in determining whether or not to move the file back to C.M, the court held that under **Section 44 of Children's Act**, an application where both the applicants and children are Ugandan citizens should be made to the CM. however, where the order sought has the effect to remove the child from their residence in ug to the USA as was in this case, the high court can hear the application due to the cross border implications of the order sought.

- Under Rule 18 of the rules, the H.C can order a file to be transferred back to the CM where it's wrongly before the H.C.

WHO MAY APPLY?

Section 45 (1) of Children Act states that an adoption order may be granted to sole applicant or jointly to spouses

Where the application is by one spouse, **Section 45 (1) (b)** requires that the other spouses consent is sought and obtained however the same maybe dispensed with by the court under Section 45(2) if the spouse whose consent is required cannot be found or is incapable of giving consent or the spouses are separated and living apart and the separation is likely to be permanent

Section 45(3) of Children Act bars the issuance of an adoption order in favor of a sole male applicant in respect of a female child and the other way round except if the court is satisfied that there are special circumstances that justify the making of the order.

Requirements for adoption for a Ugandan citizen for a Ugandan child

1. Both applicants and the child must be Ugandan citizens. **Section 44(1)(a)**
2. Age. **Section 45(1) (a)** states that the applicant or at least one of the joint applicants must have attained the age of twenty-five years (25) and is at least twenty-one (21) years older than the child.
3. Foster care

Section 45(4) of the Children Act makes it a mandatory requirement that the applicant has fostered the child for a period of not less than 12 months under the supervision of a probation and social welfare officer.

IN RE; CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA H.C ADOPTION CAUSE NO.03 OF 2019, the court noted that proof of foster care was subject to the issuance of a foster care order which should be presented in court. It was not sufficient that the report of the social welfare officer alleges that the applicants(s) fostered the children for a given period of time as was in the case. Further the requirement could be satisfied by the evidence of the child where they are of age. In this case the children stated that they had been in the care of their parents all through and not the applicants. The children were aged 14 and 17 years.

4. REPORT OF THE PROBATION AND SOCIAL WELFARE OFFICER.

This is a requirement under **Section 45(5) of the Children's Act** and report submitted must state the ability of the applicants to cater for the needs of the child presently and in future and whether or not the child has bonded with the applicants during the foster care period i.e the suitability of the applicant to adopt the child. **IN RE: CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA**, the probation and social welfare officer's report was found wanting as it alleged that the applicants were suitable adoptive parents yet they had never fostered the children. **In RE ARTHURSHYAKA BUTARE ADOPTION CAUSE NO.61 OF 2013**, the court ordered that formal report of the probation and social welfare officer be submitted before it grants the order.

5. CONSENT

Section 47 (1) OF Children Act requires that the consent of the parents of the child if known must be obtained. **In RE: CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA**, both parents consented to the application and were present during the hearing. Equally in **RE: ARTHUR SHYAKA BUTARE ADOPTION CAUSE NO.61 OF 2018**, the parents of the child consented to the adoption and gave evidence in court stating that it was in best interest of the child who had intellectual disabilities to be adopted by the grandmother who was a US citizen and go live with her in the USA as that would help to have his condition better managed and enable him grow into an independent adult albeit the intellectual disability. Consent is in the form stipulated in form C in the schedule to the rules. The children (adoption of children) rules S.1 59-1)

Under **Section 47(6) of Children Act**, where the child is at least 14 years of age, his or her consent to the adoption must be obtained unless it's impossible for him or her to express his or her wishes.

In RE: CINDY KICONCO MATISKO AND KIRABO CRYSTAL KAMUKAMA, both the children were above 14 years of age and thus the court granted them an opportunity to express their wishes as to the application to which they consented to. Consent is given in the form stipulated in form D in the schedule to rules.

Under **Section 47 (7)**, the consent of any person who is not the parent of the child but has any rights or obligations in respect of the child by either an order of court, or agreement or under customary law must be obtained.

IN OCHAYA CHRISTOPHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA (a wild) H.C.M.A 0028/2017, the consent of the child's grandfather was required and only after it had been obtained was it granted.

Equally in **RE: BIRABWA MUTAKA ADOPTION CAUSE O.4/2018**, the maternal grandfather was called to court to give consent to the adoption.

DISPENSING WITH CONSENT

The consent of the parents required under **Section 47 (1) of Children Act** may be dispensed with under **Section 47 (2)** if the court is satisfied that the parent(s) are incapable of giving such consent or his whereabouts are unknown as was the case with the father of Lamaro Lillian in **OCHAYA CHRISTOPJHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA (A CHILD) H.C.M.A 0028/2017**.

RE: BIRABWA MUTAKA ADOPTION CAUSE 014/2018, Justice Eva Luswata, dispensed with the consent of the mother noting that despite the mother and her previous situation of being in a foster care home she had never bothered to look out for her and had actually dumped her at her estranged lovers place knowing he wasn't the father of the child. It could not be in the best interest of the child to be re united with such a person.

6. THE BEST INTEREST OF THE CHILD.

Procedure

1. Under **rule 3(1) of the children (adoption of children) rules S.1 59-1**, the application for adoption is by petition to the chief magistrate's court in FORM A in the schedule to the rules supported by an affidavit (Rule 7)
 2. **Rule 3(3)** states that the petition is presented exparte by the person or their advocate to the CM sitting in chambers and the CM shall give directions as to service, appointment of a guardian ad litem and nay further consent as may be required.
 3. Under Rule 5, the petition must be served on the
 - a) Parent or parents of the child if any
 - b) The guardians of the child or if nerve
 - c) The person or persons having the actual custody of the child or if none
 - d) The person or persons liable to contribute to the support of the child
 - e) The child if of the age of 14 years or above.
- **Rule 6(1)** provides that service of the petition shall unless otherwise directed by the C.M be served by an officer of the court by delivering or tendering a copy of it signed by the registrar or the CM and sealed with the seal of the court to the person to be served.

Rule 6(2) requires that the service of every petition is verified by affidavit unless the CM directs otherwise.

INTERCOUNTRY ADOPTION

Section 46 (1) of the Children Act provides that a person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child subject to satisfying the requirements listed under the provision. Under **Section 46 (6)** intercountry adoption should be the last option for any child.

Requirements for intercountry adoption

The requirements discussed under adoption by citizens apply in addition to: **Section 46 (3)**

1. Applicant must have stayed in Uganda for at least one year. (**Section 46 (1) (a)**).
2. Has fostered the child for at least one year under the supervision of a probation and social welfare officer.
 - The notes under adoption by citizens apply. However, under **Section 46 (4)** the court may in exceptional circumstances waive any of the requirements including that's one.

In RE: MUSINGUZI DAVIS ALIAS ELIJAH DAVID HARPER (A CHILD) ADOPTION CAUSE NO.0001 OF 2018, the applicants had only fostered the child for nine months. The court waived the requirement for 12 months because the applicants were to travel back to the USA in a short time and needed to start processing the child's travel documents so as to travel with it.

In the matter of adoption of APOLOT BETTY ADOPTION CAUSE NO 33 OF 2018, the applicant had not fostered the child for 12 months as she was away in the USA working but visited occasionally while the child was under the physical care of her appointed 3rd party. She provided for all the needs of the child. The court noted that it was in the best interest of the child that the requirement be waived given the bond exhibited between the applicant and the child while in court.

IN THE MATTER OF ADOPTION OF MIREMBE ANGEL BY RUDY RAY LEE AND JESSICA LEE JOE LEE, ADOPTION CAUSE NO.32 OF 2018, court noted that constructive fostering may be permissible in certain instances. Constructive fostering is where an adoptive parent appoints a capable 3rd party to do physical fostering while the needs of the child are met by the prospective adoptive parent. In this case, the adoptive parents had minor children and also were in permanent employment and it was not proper to expect them to put all these duties for 12 months thus there was a genuine cause for the constructive fostering and in that period the applicants had visited the child for four times staying four two weeks each time so as to bond with the child.

3. DOES NOT HAVE A CRIMINAL RECORD (**Section 46(1)(C)**)

In OCHAYA CHRISTOPHER AND SARAH OCHAYA in respect of LAMARO LILLIAN OCHAYA (A CHILD) H.C.M.A 0028 OF 2017, police report from the applicants respective country reports (Uganda and Australia) were accepted as proof that they did not have a criminal record. Interpol reported have also been accepted as was in

4. Recommendation on the suitability of the applicants to adopt a child from their country of origin by a probation and welfare officer or other competent authorities. **Section 46 (1) (C) (d)**.

In RE: ARTHUR SHYAKA BUTARE ADOPTIVE CAUSE NO.61 OF 2018, the inter country home study report showing suitability of the applicant to adopt the child had not been submitted. Court order it be produced before it went on to grant the adoption order.

5. Satisfies court that his or her country of origin will respect and recognize the adoption Order.
Section 46(1)(c)
6. Consent under **Section 47 of Children Act**

FORUM FOR THE APPLICATION

Section 44 (1) (b) and Rule 3 (2) of the rules stipulate that the forum is the high court of Uganda.

PROCEDURE

- (as is in the adoption by citizens)
- Petition is as in the form in form B of the notes. (Rule 3(2)).

EFFECT OF AN ADOPTION ORDER

Section 51 of Children Act states that an adoption order severs all ties between the child and the biological parents and the same is vested on the adoptive parents. The order is permanent and even after attaining the age of 18 the child remains a member of the adoptive family.

However, under **Section 46A (1)**, the court can on the application of the adopted child, a parent of the adopted child or guardian, the adoptive parent, any person who is consented to the adoption and the minister in case of an inter country adoption and the minister in case of an inter country adoptive, in exceptional circumstances rescind an adoption order.

Section 46A (2), states that the order can only be rescinded if it's in the best interest of the child or if the order was obtained through fraud.

Section 46A (3), states that where the adoption order is rescinded, the order shall cease to apply and all responsibilities, rights and other matters which had been terminated by the adoption order in respect of the child will be restored.

EXTRACTION OF AN ADOPTION ORDER AND REGISTRATION OF THE ORDER

Under **Section 54 of the Children Act**, the registrar of births and death is mandated to maintain an adopted children register. Thus an adoption order must be extracted in the form prescribed under form H in the schedule to the rules for purposes of registration pursuant to Rule 17.

Upon registration of the order, counsel must obtain certified copies of the same and give a copy to his or her client.

PETITION FOR ADOPTION OF A CHILD BY CITIZENS

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF BUIKWE

ADOPTION CAUSE NO.01 OF 2018

IN THE MATTER OF THE CHILDRENS ACT AS AMMENDED

AND

IN THE MATTER OF LUKA MUKASA (A CHILD) OF

BUSEMEYI VILLAGE, LIVERU IN BUIKWE DISTRICT

PETITION FOR ADOPTION OF A CHILD

The petition of Kenneth Okot of FIRM DI AND CO ADVOCATES, P.O BOX0000, KAMPALA and Suzan Okot his spouse of the same address states as follows:

1. The petitioners are desirous of adopting the child LUKA MUKASA under the provisions of the children's act.
2. The petitioners are resident at Busemeyi village, Lweru sub county Buikwe District of Uganda and are citizens of Uganda
3. The petitioner is legally married (annexed is marriage certificate)
4. The petitioner Kenneth Okot is by occupation a career missionary and the co-petitioner Susan Okot is by occupation a career missionary
5. The petitioner Kenneth Okot is 45 years of age (1st Jan 1994) and the co –petitioner Susan Okot is 40 years of age (6th June 1979). Annexed are their birth certificates)
6. The petitioners have resident with them the following persons namely, Samuel Okot (son) aged 3 years.
7. The petitioners Kenneth Okot and Susan Okot are not related to the child
8. The child, Luka Mukasa is of male sex, unmarried, a child of Mukasa Musa, whose whereabouts are unknown and of Sarah Nankya who is deceased, a citizen of Uganda, aged 8 years, having been born at Busemeyi village, Luweru Buikwe district now in the actual custody Kenneth Okot and Suzan Okot of Busemyi village, luweru sub county, Buikwe district under the guardianship of Kenneth Okot and Suzan Okot of Busemeyi village, Luweru sub county in Buikwe district
9. The petitioners Kenneth Okot and Suzan Okot annex the following consents required under the Children's Act.
 - a) Name of person, relationship, age of consent

b) ‘

c) ‘

10. The child, Luka Mukasa has not been the subject of an adoption order or of an application or petition for an adoption order.

11. The petitioners have not nor has either of them received or agreed to receive and no person has made or given or agreed to make or give to the petitioners or either of them any payment or reward in consideration of the adoption of the child, LUKA MUKASA.

12. The child, LUKA MUKASA has been fostered by the petitioners since the 21st June 2017, under the supervision of ZAINA NAMATA, approbation and social welfare officer, whose report is attached to this petition.

13. It is proposed that the costs of this petition shall be paid by the petitioners.

The petitioners pray:

- a) That an order for adoption of the child LUKA MUKASA by the petitioners be made under the children act with all necessary directions
- b) That the costs of this petition be provided for as above mentioned or otherwise as the court may direct
- c) That such further or other order be made as the nature of the case may require.

Signed by

KENNETH OKOT
PETITIONER

SUZAN OKOT
CO-PETITIONER

Witnessed by

1. DERRICK KIZITO

ADVOCATE
SOCIAL WELFARE OFFICER BUIKWE DISTRICT.

2. ZAINA NAMATA

DISTRICT PROBATION AND

- Application should be verified by an affidavit in support
- Attach all documents to be relied on
- Summary of evidence.

PETITION FOR INTERCOUNTRY ADOPTION

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

ADOPTION CAUSE NO.01 OF 2019

IN THE MATTER OF THE CHILDREN ACT CAP 59 AS AMENDED AND

IN THE MATTER OF LUKA MUKASA (A CHILD) OF

BUSEMEYI VILLAGE, LWERU SUB COUNTY, BUIKWE DISTRICT

PETITION FOR ADOPTION OF A CHILD

The petition of Kenneth Okot of FIRM DI AND CO ADVOCATES P.O BOX0000, KAMPALA, In Uganda and 40 ORR ST. ATTENBORO MB 02663, UNITED STATES OF AMERICA and Susan Okot his spouse, of the same address states as follows.

1. The petitioners are desirous of adopting the child LUUKA MUKASA under the provisions of the children act.
2. (a) The petitioner Kenneth Okot of Busemeyei village, Luweru sub county Buikwe District, Uganda is a citizen of Uganda and stays at the mentioned address.
(b) The co-petitioner, Suzan Okot of Busemeyei village, Luweru sub county, Buikwe district, Uganda is a citizen of the United States of America who first arrived in Uganda on 10th October 2010 and has stayed at the above mentioned address.
3. The petitioner Kenneth Okot was married to the co-petitioner, Suzan Okot on the 6th June 2015 (marriage certificate is attached to this petition as annexure A)
4. The petitioner Kenneth Okot is by occupation a career missionary and the co-petitioner Suzan Okot is by occupation a career missionary
5. The petitioner Kenneth Okot is 45 years of age (1st Jan 1974) and the co-petitioner Suzan Okot is 40 years of age (6th June 1979). (annexed are their birth certificates)
6. The petitioner, Kenneth Okot and the co-petitioner Suzan Okot are not, nor is either of them related to the child
7. (a) The petitioner Kenneth Okot annexes marked “Annexure C” from Uganda police showing that he does not have a criminal record and affirms he does not have a criminal record in Uganda or any other country.
b) The co-petitioner Suzan Okot annexes a certificate marked “D” that she does not have a criminal record from the Texas police department of the United States of America and affirms that she does not have a criminal record in Uganda or any other country.

8. The petitioner Kenneth Okot and Suzan Okot attach a recommendation concerning their suitability to adopt a child from (name recommended) of the probation and welfare office of Texas in USA, the country of origin of the petitioner.

9. The petitioners have resident with them the following person, namely, Samuel Okot their son aged 4 years.

10. The child, Luuka Mukasa is of the male sex

- A child of Mukasa Musa, whose whereabouts are unknown
- And of Sarah Nankya aged 8 years having been a citizen of Uganda, aged 8 years having been born at Busemeyi village on the 14th February 2011, resident at Busemeyi village, Luweru sub county Buikwe district now in actual custody of Kenneth Okot and Suzan Okot of Busemeyi village, Luweru sub county Buikwe district under the guardianship of Kenneth Okot and Suzan Okot of Busemeyi village, Lweru sub county in Buikwe district.

11. The petitioners Kenneth Okot and Susan Okot annex the following consents marked “C” as required under the children act

a) Name of person	relationship of	date of consent
Consenting	child	

12. The child LUUKA MUKASA has not been the subject of an adoption order as of an application or petition for an adoption order

13. The petitioners have not nor has either of them received or agreed to receive and no person has made or given or agreed to make or give to the petitioners or either of them any payment or reward in consideration of the adoption of the child LUKA Mukasa.

14. The child, LUUKA MUKASA has been fostered by the petitioners since the 21st June 2017 under the supervision of Zaina Namata, a probation and social welfare officer, whose report is attached and marked “E”

15. The petitioners affirm that an adoption order made by this honorable court will be respected and recognized by the United States of America the country of origin of the co-petitioner Suzan Okot and produces a sworn statement annexed marked “F” to that effect.

16. It is proposed that the costs of this petition shall be paid by the petitioners, Kenneth Okot and Suzan Okot.

The petitioners pay

- a) That an order for the adoption of the child, LUKA MUKASA by the petitioners be made under the children act with all necessary directions
- b) That the cost of this petition be provided for as above –mentioned or otherwise as the court may directly and

c) That such further or other order who made as the nature of the case may require.

DATED this 5th day of December 2019

Signed by

KENNETH OKOT

PETITIONER

SUSAN OKOT

CO-PETITIONER

In witness of

DERRICK KIZITO

ZAINA NAMATA

FIRM DI AND CO ADVOCATES

DISTRICT PROBATION AND

SOCIAL

WELFARE OFFOCER BUIKWE DISTRICT.ADVOCATE

- Verify with affidavit
- Summary of evidence
- Summons.

Adoption order

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

ADOPTION CAUSE NO.01 OF 2019

IN THE MATTER OF THE CHILDREN ACT CAP 59

AS AMENDED AND

IN THE MATTER OF LUKA MUKASA (A CHILD) OF

BUSEMEYI VILLAGE, LWERU SUB COUNTY, BUIKWE DISTRICT

ADOPTION ORDER

On reading the petition of KENNETH OKOT AND SUZAN OKOT, and the affidavit of KENNETH OKOT AND SUZAN OKOT and the exhibits annexed to them which included, a marriage certificate for the petitioners, birth certificates of the petitioner, the child's birth certificate, certificate of good conduct from their respective country police departments, probation and social welfare reports and on hearing (name person heard) and the evidence of:

- a) Names and address.
- b) ""
- c) ‘

And the court being satisfied that the declarations contained in the petition are true and being also satisfied with the undertaking of Kenneth Okot and Suzan Okot as to the care and protection and other provisions to be made for the child, LUKA MUKASA and being further satisfied that for the benefit of the child he could be adopted by Kenneth Okot and Suzan Okot and that all the requirements of the children act have been complied with:

It is ordered that Kenneth Okot and Suzan Okot be authorized to adopt the child.

And it is ordered that the parties to their proceedings other than Kenneth Okot and Suzan Okot recover their costs against Kenneth Okot and Suzan Okot, the costs to be taxed by the registrar and it is ordered that Kenneth Okot and Suzan Okot pay the amount of the costs when taxed to the registrar this court within 14 days after the date of the certificate of taxation

And it is ordered that the parties to these proceedings other than Kenneth Okot and Suzan Okot recover their costs against Kenneth Okot and Suzan Okot, the costs to be taxed by the registrar this court within 14 days after the date of the certificate of taxation.

And it is directed that the registrar of births and death shall make an entry recording this adoption in the adopted children register in the form set out in form H.

Dated this 5th day of December 2019 at Mukono.

JUDGE OF THE HIGH COURT.

GUARDIANSHIP

GUARDIANSHIP PETITION

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

FAMILY CAUSE NO.02 OF 2019

IN THE MATTER OF THE CHILDREN ACT CAP 59 AS

AMENDED AND

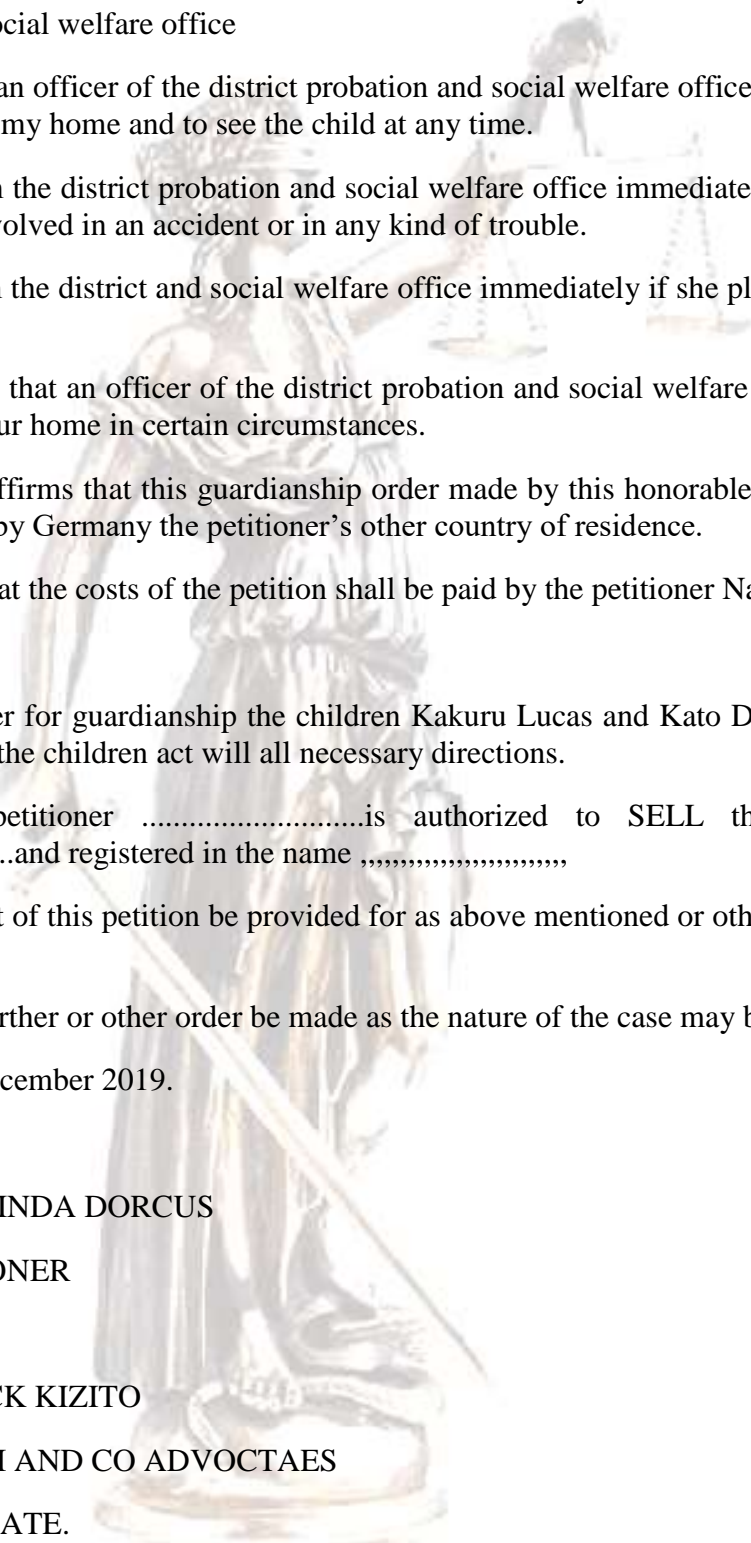
IN THE MATTER OF KAKURU LUCAS AND KATO DEO

(CHILDREN) OF KAUGA VILLAGE, MUKONO DISTRICT

PETITION FOR GUARDIANSHIP

The petition of NATURINDA DORCUS OF FIRM DI AND CO ADVOCATES, P.O BOX0000, and KAMPALA AND NEISER STREET 20 JEVER GERMANY states as follows:

1. The petitioner is desirous of obtaining legal guardianship of the children, Kakuru Kucas and Kato Deo under the provisions of the children act
2. The petitioner Natukunda Dorcus of kauga village, Mukono district is a citizen of Uganda and stays in Uganda at kauga village, Mukono district
3. The petitioner is unmarried
4. The petitioner Naturinda Dorcus is by occupation a coffee exporter
5. The petitioner is 45 years of age (6th June 1974). Attached and marked annexure “A” is my birth certificate
6. The petitioner Naturinda dorcus is related to the children kakuru Lucas and Kato Deo being their paternal aunt.
7. The petitioner Naturinda Dorcus annexes a certificate marked “B” that she does not have a criminal record and affirms that she does not have a criminal record in Uganda or any other country.
8. The petitioner Naturinda Dorcus attached a recommendation concerning her suitability to be a huardian to the children from Zaina Namata, the probation and social welfare officer of Mukono
9. The petitioner has no other person resident with her except the children.
10. The children Kakuru Lucas and Kato Deo are:
 - a) Of the male sex
 - b) Unmarried
 - c) Children of Jackson Twesigye whose whereabouts are unknown and of Jovita Ankunda of Naguru, Nakawa division, Kampala.
 - d) They are citizens of Uganda
 - e) One year of age having been born at Mukono the 2nd December 2018
 - f) Resident at kauga, mukono district
 - g) Now in the actual custody of the petitioner, Naturinda Dorcus and under her guardianship
11. The children have not been the subject of a guardianship order or of an application or petition for a guardianship order.
12. The petitioner has not received or agreed to receive and no person has made or given any payment or reward in consideration of the child.
13. The petitioner undertakes that:
 - a) She shall care for kakuru Lucas and Kato Deo as though they were my own children

- 
- b) She will bring them up in accordance with the Anglican religion
 - c) She will look after their health and allow them to be medically examined as required by the district probation and social welfare office
 - d) She shall allow an officer of the district probation and social welfare office or representative of the ministry to visit my home and to see the child at any time.
 - e) She shall inform the district probation and social welfare office immediately if the child is ill or is missing or is involved in an accident or in any kind of trouble.
 - f) She shall inform the district and social welfare office immediately if she plans to change residence and address.
 - g) She understands that an officer of the district probation and social welfare has the right to remove the child from our home in certain circumstances.
14. The petitioner affirms that this guardianship order made by this honorable court will be respected and recognized by Germany the petitioner's other country of residence.
15. It is proposed that the costs of the petition shall be paid by the petitioner Naturinda Dorcus.

The petitioner prays

- a) That an order for guardianship the children Kakuru Lucas and Kato Deo, by the petitioner be made under the children act will all necessary directions.
- b) That the petitioneris authorized to SELL the land described asand registered in the name
- c) That the cost of this petition be provided for as above mentioned or otherwise as the court may direct and
- d) That such further or other order be made as the nature of the case may be

Dated this 5th day of December 2019.

Signed by

NATURINDA DORCUS
PETITIONER

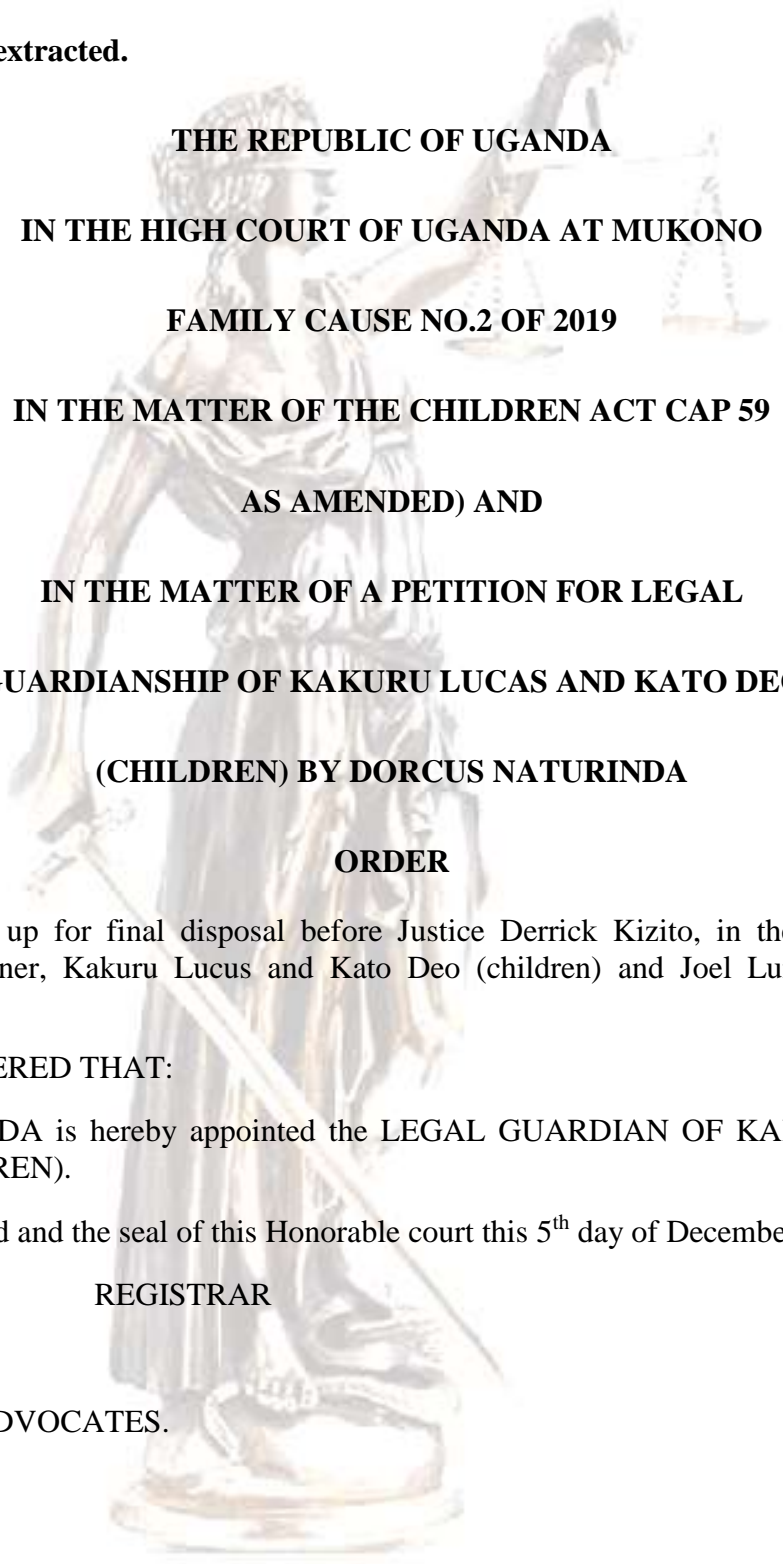
IN THE WITNESS OF:

DERRICK KIZITO
FIRM DI AND CO ADVOCTAES
ADVOCATE.

➤ Verify with an affidavit in support

- Summary of evidence
- Summons

Guardianship order extracted.



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.2 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59
AS AMENDED) AND
IN THE MATTER OF A PETITION FOR LEGAL
GUARDIANSHIP OF KAKURU LUCAS AND KATO DEO
(CHILDREN) BY DORCUS NATURINDA
ORDER

This petition coming up for final disposal before Justice Derrick Kizito, in the presence of Dorcus Naturinda, the petitioner, Kakuru Lucus and Kato Deo (children) and Joel Lumala, counsel for the petitioner.

IT IS HEREBY ORDERED THAT:

DORCUS NATURINDA is hereby appointed the LEGAL GUARDIAN OF KAKURU LUCAS AND KATO DEO (CHILDREN).

GIVEN under my hand and the seal of this Honorable court this 5th day of December 2019

REGISTRAR

Extracted by

FIRM DI AND CO ADVOCATES.

Guardianship order extracted where the guardian seeks to transfer property registered in minors names.



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.3 OF 2019
IN THE MATTER OF THE CHILDREN ACT CAP 59
(AS AMENDED AND
IN THE MATTER OF A PETITION FOR LEGAL
GUARDIANSHIP OF TOFA RUKUNDO (A CHILD)
BY BETH BEKUNDA

ORDER

This mother coming up for final disposal before justice derrick Kizito on this 5th day of December 2019 in the presence of both Bukunda, the petitioner, TOFA RUKUNDO (A CHILD) AND Lumala Joel, counsel for the petitioner.

IT IS HEREBY ORDERED THAT:

1. Beth Bekunda is hereby appointed LEGAL GUARDIAN of Tofa Rukundo (Aged 7)
2. Beth Bekunda is authorized to sell land described asand registered in the name of Tofa Rukundo (a child)
3. Beth Bekunda shall apply the proceeds of the sale of the said land for the welfare of Tofa Rukundo (a child)
4. This order shall be registered with URSB and the ministry of Gender, Labour and social devt.

GIVEN UNDER my hand and seal of this honorable court this 5th day of December 2019.

REGISTRAR

Extracted by:

FIRM DI AND CO ADVOCATES.

GUARDIANSHIP NOTES

In the matter of ONEN CLIFF MILLS AND LAKER JOY ONEN, MISC APP NO.22 OF 2018, Stephen mubiru j defined guardianship as a legal relationship between a competent adult (guardian) and a person who because of incapacity such as minority, is incapable of taking care of his or her own affairs (the ward).

He further defined a guardian as a person who is given the legal power to make decisions for another person because he or she is considered not competent to decide for himself/herself.

Section 1 (W) of the Children Act as amended defines a guardian as a person having parental responsibility for a child.

FUNCTIONS OF A GUARDIAN

In the matter of ONEN CLIFF courted that the functions of a guardian are:

1. Make decisions on behalf of a ward relating to legal. Financial, shelter, education, food and health care decisions though he or she may be required to seek court approval for various decisions especially those regarding the investment and disposal of the property of the ward.
2. Guardian acts as legal parent of the ward for the entirety of the guardianship. Although the guardian has the same responsibilities to care for the child as a parent would a guardianship does not sever the legal relationship that exists between a child and his or her biological parents. Instead, it co-exists with that legal relationship.

DUTIES OF GUARDIAN

1. Utmost good faith (men case)
2. Avoid conflict of interest
3. Duty to act in the best interest of the child. (onen case)

TYPES OF GUARDIANSHIP

1. LEGAL GUARDIANSHIP

- **Section 43A AND 43B** of the Children Act.

2. CUSTOMARY GUARDIANSHIP.

- **Section 43C** of the Children act

- **Section 43C (1)** states that family members may appoint a guardian of a child in accordance with their customs, culture or tradition where both parents of the child are deceased or cannot be found, the surviving parent is incapacitated or the child has no guardian or any other person having parental responsibility for him or her.

The person as per **Section 43C (2)** acts as a trustee in respect of the property of the child.

3. TESTAMENTARY GUARDIAN.

This is a guardian appointed in the last will of the deceased. Such a person is recognized under common law as a testamentary guardian.

4. GUARDIAN BY AGREEMENT.

A parent of a child may pursuant to **Section 43D (1) of Children Act** by agreement/deed appoint any person to be a guardian. The appointment is only effective under **Section 43D (2)** if the agreement/deed is dated and signed by the parent in the presence of two witnesses one of whom must be a probation and social welfare officer and other must be a local councilor at LC 1 level.

HOW TO APPLY FOR LEGAL GUARDIANSHIP?

Forum

Pursuant to **Section 43B (b) of Children Act**, an application for legal; guardianship is made to the high court.

WHO CAN APPLY FOR LEGAL GUARDIANSHIP?

- 1) Applicant must be a citizen of Uganda. Section 43A (2)
- 2) Must be above the age of 18 years.

CONSIDERATIONS FOR GRANT OF LEGAL GUARDIANSHIP

There are pursuant to **Section 43F (1)** and they are:

- a) There is no known relative or Next of kin of the child.
- b) The relatives or next of kin are unwilling or unable to take parental responsibility of the child
- c) All alternative care options available to the child have been exhausted
- d) The child is suffering or likely to suffer significant harm under present custody.
- e) Wishes of the child having regard to their age.
- f) Consent of the child to the guardianship where the child is 12 years and above
- g) Applicant has continuously lived in Uganda for at least 3 months. **Section 43F (2)(a)**
- h) Applicant has no criminal record **Section 43F(2)(B)**

- i) A recommendation concerning his or her ability as a guardian from a probation and social welfare officer or other competent authority in Uganda or applicant's county of residence (**Section 43F (2) (c)**).

PROCEDURE

The petition is pursuant to **Section 43B(C) of Children Act** by petition in Form 1 set out in the 3rd schedule and subject to **Section 43B(d)** be accompanied by a report of the probation and social welfare officer

An affidavit verifying the petition must be deposed

Where you want to sell the property of a minor

- Petition for legal guardianship
- Extract an order
- Write a formal letter to the registrar of title at ministerial zonal office where land is located requesting it to be registered in guardian's names
- You can transact in the property in guardian's names
- You can transact in the property for the best interest of the child once registered.

Cases

RE: SHAMILA NAAVA KAYAGA.

SUCCESSION

WORKSHOP 1

Brief facts

In 1997, Timothy lawfully wedded a one Nankiga Resty and were blessed with four children, namely Timothy junior aged 22, Travis aged 20, Tracy aged 17 and Trevor aged 12.

In 2010, Resty left the matrimonial home and care back in November 2019 to look after Timothy as he was bedridden. During her absence, Timothy fell in love with Charity Nanteza who gave birth to Wassawa and Nakato aged 5. Charity and Timothy stay at Nangabo, Wakiso district. Before Timothy married Resty, he had two children who are Ambrose aged 24 and Anna Maria aged 23 from Rita Nansereko who is deceased. Timothy is considering making a will and desires to leave part of the estate to the church. He has been looking after his niece Peterson Katayimbwa and wants his NSSF savings applied to educate his children who are below 18 till they complete school. He has a number of properties movable and immovable.

Law applicable

- 1) Succession Act Cap 162

- 2) The civil Procedure Act Cap 71
- 3) The Civil Procedure rules S.71-1 (as amended)
- 4) The judicature (administration of estates) rules S.1 13-7

What constitutes timothy's estate and his possible beneficiaries?

An estate means the total property, both movable and immovable owned by someone and therefore available for distribution.

Section 36(1) of the Succession Act, states that every person of sound mind not being a minor may by will dispose of his or her property.

In **REV.JAMES KYAMUKAMA AND ANOR V CATHERINE ZARIBWEDE AND ANOTHER HCT-OO-CV-CS-1144-1997**, Justice Lameck Mukasa held that S.36 (1) means that the testator should dispose of property or an interest in property belonging to him at the time of his/her death. Any disposal of property, which the testator has never had, any interest or any property in which he had an interest or any property in which he had an interest at the date of his will but has since disposed of in his lifetime must fail. Any attempt to dispose of property not belonging to him will pass no bequest to the person bequeathed, as no one can give away what does not belong to him. However, such disposition does not invalidate the will it only invalidates the bequest.

Section 139 of the succession Act on adoption. Any property not belonging to the testator or has been converted into property of a different kind the legacy is deemed.

Succession act does not define property but under **Section 2 (m)** it defines immovable property to include: land, incorporeal tenements and things attached to the earth or permanently fastened to things attached to the earth. Movable property is defined in **Section 2 (p)** to mean property of every description except immovable property.

IN JAMES KATENDE AND 2 ORS V DAN BYABAKAMA HCCJ VOL.2 PG 127, court stated that the testator should only distribute or dispose of property or any interest belonging to the testator at the time of his death.

Therefore, the following properties constitute timothy's estate:

Immovable property

- 1) one house on Mailo land situate at kibuga plot 374 block 25 Bulange
- 2) land at Kyabumba Busiro block 94 plot 28 which he inherited from his late father
- 3) 2 acres of land situate at Nangabo, Kyadondo block 121 plot 8
- 4) Land situate at Kibuga block 26 plot 683
- 5) 61 acres of land at Bulemezi block 886 plot 120
- 6) 70 acres of land at Buddu block 229 plot 331
- 7) 13 acres of land at Bugerere block 130 plot 22 Wabutundu village

- 8) 2 acres of land at Kyagwe plot 139 block 116
- 9) 10 acres of land at Buyaga, Bujogolo village of which one is used by charity to rear her 100 heads of cattle.

Movable property

- 1) Motor vehicle UBE 232F
- 2) 2 motor cycles
- 3) Taxi that flies the Kampala Masaka route
- 4) Money on bank account 012344466500 in DFCU Bank (Jinja branch)
- 5) 50% shares in the company.

Following properties can't bequeathed

- 1) Life assurance policy with Sanlam insurance company
- 2) Joint business of a supermarket
- 3) Land at Bulindo in which he is registered as administrator of the estate of his late brother peter kitayimbwa. **In JONAH SENTEZA V REGISTRAR OF TITLES NO.919 OF 1997**, court held that the transfer into the administrator's name does not mean that the land devolves upon the personal estate of administrator or such that they can do whatever they wish without recourse to the interests of other beneficiaries. His duty is to hold the land in trust for the beneficiaries.

Possible beneficiaries of Timothy Kilayimbwa

Section 37 of succession Act imposes a duty onto the testator to dispose his/her property, making reasonable provision for the maintenance of his or her dependent relatives.

Dependent relatives among others include: children, spouses, elderly parents, other members of the extended family that the testator was taking care of and who were substantially dependent on the deceased or wholly dependent:

- 1) CHILDREN.

Section 2 (b) of the succession act defines children to include legitimate, illegitimate and adopted children.

In KAJUBI V KABALI (1944) EACA 14, court held that all children have a right to share in their father's estate whether born within wedlock or not.

- 2) SPOUSES.

Section 2 (k) defines a husband to mean a person who at the time of the person's death was validly married to the deceased according to laws of Uganda or married to the deceased in another country by a marriage recognized as valid by any foreign law under which the marriage was celebrated.

Section 2 (w) defines wife in the same terms.

In this case the possible beneficiaries are:

- a) Timothy Junior aged 22
- b) Travis aged 20
- c) Tracy aged 17
- d) Trevor aged 12
- e) Wasswa aged 5
- f) Nakato aged 5
- g) Ambrose aged 24
- h) Anna Maria aged 23
- i) Peterson Kitayimbwa
- j) Resty Nankinga
- k) Charity Nanteza
- l) Church.

Additional information required to draft a will.

Section 49 of the succession Act, provides that a testator may at his or her discretion adopt to use the form of the will set out in the 4th schedule to the act. The form is thus a necessary guide in seeking for additional information as it can be used as a checklist.

The additional information needed includes the following:

- I. Names of executors.

Section 2 (h) of the Succession Act defines an executor to mean a person appointed in the last will of a deceased person to execute the terms of the will. Under Section 182 of the act, only a person named as executor may apply for probate, therefore timothy must name his executor(s).

- II. Names of guardians.

Timothy has a number of children below 18 years and thus a need to appoint guardians for these children. Previously appointment of guardians was under **Section 43 of the Succession Act** however the same was declared unconstitutional in the case of law and advocacy for women in Uganda v attorney general.

- III. Provision for maintenance of dependants.

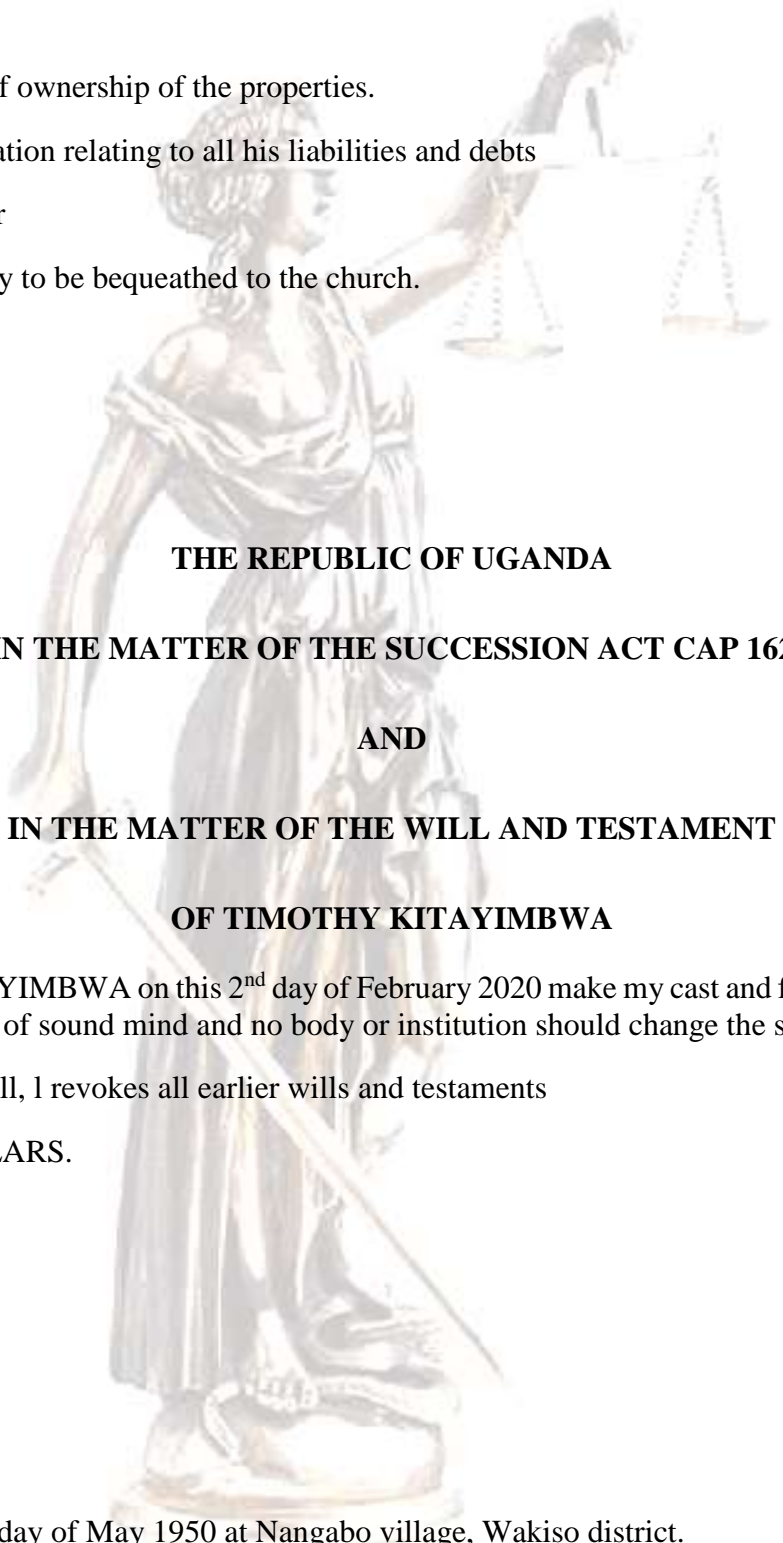
Section 37 of the Succession Act mandates a testator to make reasonable provision for his dependents or else the court may under **Section 38** vary the will to make for such provision.

- IV. Specifications of bequeathments.

Given the vast nature of the estate, Timothy must stipulate which legatee will receive what and any conditions for receipt of the same if any

- V. His age
- VI. Proof of ownership of the properties.
- VII. Information relating to all his liabilities and debts
- VIII. His heir
- IX. Property to be bequeathed to the church.

Will



THE REPUBLIC OF UGANDA
IN THE MATTER OF THE SUCCESSION ACT CAP 162
AND
IN THE MATTER OF THE WILL AND TESTAMENT
OF TIMOTHY KITAYIMBWA

1. I, TIMOTHY KITAYIMBWA on this 2nd day of February 2020 make my cast and final will and testament voluntarily while I am of sound mind and no body or institution should change the same.

2. By virtual of this will, I revokes all earlier wills and testaments

3. BIRTH PARTICULARS.

Fathers name.

Mothers name.

Tribe:

Totem:

Religion: catholic.

I was born on the 25th day of May 1950 at Nangabo village, Wakiso district.

4. MARITAL STATUS

- a) I am married to Nankinga Resty although we separated in 2010 and since then I have been living with Charity Nnateza
- b) I got married to Nankinga Resty at Christ the king church in kamplala in 1997

5. CHILDREN.

Name	AGE	mother
I. Timothy junior	22	Nankinga resty
II. Travis	20	
III. Tracy	17	
IV. Trevor	12	Nankinga Resty
V. Wasswa	5	charity Nanteza
VI. Nakato	5	
VII. Ambrose	24	Ritah Nanserreko
VIII. Anna maria	23	

6. DEPENDANTS.

Name.	Relationship	address
I. Peterson kitayimbwa	nephew	Nangabo, Wakiso
II. Charity Nanteza		
III. Nankinga resty	wife	Kololo,kampala.

7. GUARDIANS

I appoint the following people to be guardians of my children.

Name	Address
I. Charity Nanteza	Nangabo ,Wakiso
II. Nankinga Resty	kololo,kampala

8. HEIR

I appoint Ambrose my first son as my heir.

9. EXECUTORS

I appoint the following people, jointly as executors of my will.

Name	Address
------	---------

- I. Nankinga resty kololo, kampala
- II. Charity Nanteza Nangabo, Wakiso
- III. Ambrose Muyenga, Kampala

10. PROPERTIES.

I own the following properties.

- a) One house on Mailo land situate at kibuga plot 374 block 25 Bulange
- b) 2 acres of land at Nangabo, Kyadondo block 121 plot 8
- c) Land situate at Kibuga block 26 plot 683
- d) 61 acres of land at Bulemezi block 886 plot 120.
- e) 2 acres of land at Nangabo, Kyadondo block 121 plot 8
- f) Land situate at Kibuga block 26 plot 683
- g) 61 acres of land at Bulemezi block 886 plot 120
- h) 70 acres of land at Buddu Block 229 plot 331
- i) 13 acres of land at Bugerere block 130 plot 22 wabutudu village.
- j) 2 acres of land at kyagwe plot 139 block 116
- k) 10 acres of land at Buyaga, Bujogolo village of which one acre is used by charity to rear her 100 heads of cattle
- l) Motor vehicle UBE 232 F
- m) 2 motor cycles
- n) Taxi that plies the kampla-masaka route
- o) 50% shares in the company
- p) Money on bank account 012344466500 in DFCU bank (Jinja branch)

11. DISTRIBUTION OF PROPERTIES.

- a) I have distributed my properties as follows:

Name of the person	relationship	description of property
I. Timothy junior	son	house on Mailo land situate at kibuga plot 374 lock 25 Bulange
II. Wassawa plot 331	son	70 acres of land at Buddu block 229

- | | | | |
|-------|---------------------|-----------|--|
| III. | Nakato | daughter | 61 acres of land at Bulemezi block 886 plot 120. |
| IV. | Trevor | son | land situate at Kibuga block 26 plot 683 |
| V. | Ambrose | son | 1 motorcycle and 12 acres of land of Buyaga, Bujongolo village |
| VI. | Travis | son | 10 acres of land at Kasana |
| VII. | Tracy | daughter | 10 acres of land at kasana |
| VIII. | Anna Maria | daughter | motor vehicle UBE 2827, one motor cycle and a taxi plies Kampala Masaka route. |
| IX. | Charity Nanteza | | 2 acres of land at Nangabo, kyadondo block 121 plot 8 |
| X. | Kitayimbwa Peterson | nephew | 13 acres of land at Bugere block 130 plot 22 wabutundu village |
| XI. | Nankiga Resty | wife | land at Kyabumba busiro block 94 plot 28 which I inherited from my father |
| XII. | Church | religious | 2 acres of land at Kyagwe plot 139 block 116 |

- b) The property which I have bequeathed to my minor children shall be given to them upon attaining the age of 21 years and shall for time be held by the executors in trust for them.
- c) My savings with NSSF shall be used to educate my children who are still in school until completion

12. BURIAL AND LAST FUNERAL RITES.

I wish to be buried at Nangabo, Wakiso district.

Signed by TIMOTHY KITAYIMBWA on the date first mentioned above

TIMOTHY KITAYIMBWA

IN THE WITNESS OF:

1. DERRICK KIZITO

ADVOCATE

3. ELIZABETH MWESIGWA

2. LUMALA JOEL

REVEREND.

ADVOCATE

- Should be accompanied by a summary of evidence since the petition.

Safe custody of wills

This is governed by **Section 337 of the Succession Act** and the succession (safe custody of wills) rules S I 162-1.

Section 337 (1) stipulates that the will may be kept with the chief registrar or deputy registrar of the high court.

It is prudent practice that more than one copy of the will is made and the other copies are kept with the testator's advocate, bank or trusted friend.

This practice is aimed at ruling out suspicions in the will presented after the testator's death is a forgery.

Grant of probate

Under **Section 182 of the Succession Act**, probate can only be granted to an executor appointed by the will.

Section 2 (5) defines probate to mean the grant by a court of competent jurisdiction authorizing the executor named in the testator's last will to administer the testator's estate.

Section 235 states that the jurisdiction to grant probate and letters of administration is exercised by the high court and a magistrate courts in accordance with the administration of estates (small estates) (special provisions) Act.

The Petition for Grant of Probate

The application for grant of probate is by petition as provided under S.244 of the succession act. It must be written in the English language with the will annexed and stating:

- a) The time of the testator's death
- b) That the writing annexed is the testator's last will and testament and that it was duly executed.
- c) The amount of assets which are likely to come to the petitioners' hands
- d) That the petitioner is the executor named in the will.

- **Section 238** provides that the civil procedure rules are applicable to their proceedings and so the petition must be accompanied by a summary of evidence.

Where will is not in English?

Under **Section 245**, the translation of the will must be annexed to the petition. The translation must be annexed to the petition. The translation must be verified.

"I DERRICK KIZITO do declare that I read and perfectly understand the language and character of the original and that the above is a true and accurate translation of it."

DECLARANT

Before me

COMMISSIONER FOR OATHS.

VERIFICATION OF THE PETITION

Pursuant to **Section 247**, the petitioner must verify the petition.

VERIFICATION OF PETITION BY ONE WITNESS TO THE WILL

Under Section 248, one witness at least must verify the petition when procurable.

PROCEDURE FOR OBTAINING PROBATE

1. Obtain a death certificate to prove death of the testator. This may be obtained from the hospital if the testator died there. Then if it was in any place, then L.C should issue a letter certifying the death of the person.
2. Obtain a copy of the will which must be in English or have it translated if it is not in English and the translation verified
3. valuation/estimation of the value of the testator's estate to determine the court with the appropriate jurisdiction to grant probate
4. Draft the petition with the necessary annexures
5. Lodge at the court registry for assessment of court fees.
6. Pay the court fees and then file the petition with court and obtain a court file number.
7. Issue a notice of intention to apply for probate by advertising in the gazette, any newspaper of wide circulation in Uganda as per Rule 2 of the judicature (administration for estates) rules S.I 13-7

The form of the notice is as provided in the first schedule to the rules.

UNDER Rule 3 of the judicature (administration of estates) rules S.I 13-7, probate cannot be granted before the lapse of 14 days from the date when the notice was issued on upon lapse, the petitioner must adduce evidence of the notice.

8. If there is no caveat lodged on the application then the probate is granted if everything pertaining to the petition is in order. The form of caveat to be lodged is provided under Section 253
9. On grant executor must distribute the estate as per the will.
10. File a complete report with the court on the distribution. Section 278 (1)

FORM OF CAVEAT

As per Section 254, the caveat is in the following form

“Let nothing be done in the matter of the estate of, late of, deceased who died on theday of 20 atwithout notice to of.....

NOTICE TO BE PUBLISHED.

Rule 2 and 5 of the judicature (administration of estates) rules S.1 13-7. (First schedule)

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

ADMINISTRATION CAUSE NO.....OF 2020.

IN THE MATTER OF THE ESTATE OF THE LATE

TIMOTHY KITAYIMBWA

TO ALL whom it may concern.

TAKE NOTICE than an application has been lodged in this court by NANKINGA RESTY OF KOLOLO, KAMPALA, Uganda, for probate of the will to the estate of the above named deceased.

The court will proceed to grant the probate of the will, if no caveat is lodged with the registrar within fourteen days from the date of publication of this notice, unless cause is shown to the contrary.

Dated at Kampala this 3rd day of February, 2020

DEPUTY REGISTRAR/MAGISTRATE

PETITION

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

ADMINISTRATION CAUSE NOOF 2020.

IN THE MATTER OF THE ESTATE OF LATE TIMOTHY KITAYIMBWA

AND

IN THE MATTER OF AN APPLICATION FOR PROBATE

OF THE ESTATE OF THE LATE TIMOTHY KITAYIMBWA

BY NANKIGA RESTY, CHARITY NANTEZA AND AMBROSE

PETITION FOR PROBATE

The humble petition of Nankiga Resty Charity Nanteza and Ambrose of FIRM DI AND CO ADVOCATES, P.O BOX0000, KAMPALA, states as follows:

- I. That the first and second petitioners are female adult Ugandans of sound mind
- II. That the 3rd petitioner is a male adult Ugandan of sound mind
- III. That your petitioners hereby apply to this honorable court for grant of probate of a will of the late Timothy Kitayimbwa who died on the 14th January 2020. (attached hereto is a death certificate marked annexure "A")
- IV. That the last will and testament of the deceased duly executed on the 30th June 2019. (Attached hereto is a copy of the will marked annexure "B").
- V. That the deceased is junioried by only eight children and these are: Ambrose aged 24, Anna Maria aged 23, Timothy junior aged 22, Travis aged 20, Tracy aged 17, Trever aged 12, Wassawa aged 5, and Nakato aged 5.
- VI. That the deceased left properties valued at approximately five billion Uganda shillings and these are: one house on Mailo land situate at Kibuga block 25 plot 374 Bulange land at Kyabumba Busiro Block 121 plot 8, land situate at Kibuga block 26 plot 683, 61 acres of land at Bulemezi block 886 plot 120, 70 acres of land a Buddu Block 229 plot 331, 13 acres of land at Bugerere block 130 plot 22 Wabutundu village, 2 acres of land at Kyagwe plot 139 block 116, 10 acres of land a Buyaga , Bujogolo, motor vehicle UBE 232 F, 2 motor cycles, taxi that plies the Kampala-Masaka route money on bank account 012344466500 in DFCU bank (Jinja Branch) ,50% shares in a company.

- VII. That the deceased, Timothy Kitayimbwa at the time of his death had a fixed place of abode at Nangabo, Wakiso district within the jurisdiction of this honorable court.
- VIII. That the petitioners are the executors named in the last will and testament of the late Timothy Kitayimbwa
- IX. That the value of the deceased, property that is likely to come into the petitioner's hands is approximately UGX. 5,000,000,000

WHEREFORE, your petitioners pray that they jointly be granted probate of the estate of late timothy kitayimbwa.

Dated at Kampala on this 1st day of February 2020

COUNSEL FOR THE PETITIONER

VERIFICATION OF THE PETITION BY PETITIONER

I, NANKINGA RESTY, being one of the petitioners in the above petition declare that whatever is stated herein is true and correct to the best of my knowledge and belief.

DECLARANT

Before me

COMMISSIONER FOR OATHS.

VERIFICATION OF THE PETITION BY A WITNESS TO THE WILL

I, LUMALA JOEL, one of the witnesses to the last will and testaments of the late Timothy Kitayimbwa mentioned in the above petition, declare that I was present and saw the testator offer his signature to the will in my presence.

DECLARANT

Before me

COMMISSIONER FOR OATHS

Drawn and filled by

FIRM DI AND CO ADVOCATES

P.O BOX0000, KAMPALA

- Summary of evidence
- Add a declaration of the petitioner.

Revocation of letters of administration/probate

Pursuant to Section 234 (1) of the succession act, the letters of administration any be revoked or annulled for just cause.

Just cause is defined to mean:

- a) That the proceedings to obtain the grant were defective in substance
- b) That the grant was obtained fraudulently by making a false suggestion or by concealing from the court something material to the case. **IN ROMANO SALIM OGWANGA AND 5 ORS V SAIDA ATALA HCT -02-CV-CS-0020,2005**, Justice Remmy Kasule stated in order to impeach the letters on grounds of fraud, the fraud must be specifically pleaded and the allegations of fraud must be specifically pleaded and the allegations of fraud must be strictly proved. The standard of proof is more than a mere balance of probabilities.
- c) That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant, though the allegations was made in ignorance or inadvertently.
- d) That the grant has become useless and inoperative through circumstances.
- e) That the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with part xxxiv of this act or has exhibited under that part an inventory or account which is untrue in material respect.

PROCEDURE

- I. File a suit by way of plaint seeking orders for revocation of the letters of administration.

CITATION

Applications by the plaintiff to temporary withdraw the letters pending disposal of the suit.

NECESSARY DOCUMENTS

- i. Notice of intention to sue
- ii. A plaint
- iii. Summary of evidence.

In **AMECHO V TWALIB AND 2 ORS H.C.C.S NO.9 OF 2008**, it was held that it is trite law that a grant remains valid until revoked even if obtained by fraud so long as the grant remains unrevoked, the grantee represents the estate of the deceased.

RICHARD BABUMBA AND 13 ORS V JAMES SSALI BABUMBA H.C.C.S NO.78 OF2012

Amendment of letters of administration/probate

Amendment of letters of administration is made pursuant to **Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 52 rules 1 and 2 of the Civil Procedure Rule.**

IN JOSEPH BUYE AND3 ORS V DR SAMUEL SSENYANGE H.C.M CAUSE NO.15 OF 2015, court was moved under the aforementioned provision so as to cancel two executors from the probate having not been around to carry out such activities.

PROCEDURE

- Lodge a notice of motion with a valid affidavit
- Pay court fees.

DOCUMENTS

- Notice of motion
- Affidavit

EXERCISE OF POWER BY JOINT ADMINISTRATORS/EXECUTORS

In **SILVER BYARUHANGA V FR. EMMANUEL BYARUHANGA AND RUDEGA, CIVIL APPEAL NO.9 OF 2014**, the Supreme Court held that a single executor or administrator cannot convey land of a deceased person without the express consent or authority of the co-executors or co-administrators.

The court stated that **Section 272 of the Succession Act** does not confer powers on a single executor or administrator to singularly exercise powers vested in the joint executors or administrators with respect to conveyancing of land belonging to the estate of a deceased without the express consent or authority of co executors or co administrators.

The court reasoned that where executors or administrators jointly apply for probate or letters of administration and a grant is obtained simultaneously or together, they must act jointly at all times.

The **Section 272 must be read with Section 134 of Registration of Titles Act** (in respect of transfers) which states that where probate is granted to several executors all of them must concur in every instrument, surrender or discharge relating to the land, lease or mortgage.

WORKSHOP 2

Brief facts

In 2004, Geoffrey fell in love with Santa Namulonde and they immediately started living together giving birth to two issues i.e. marine aged 20 and Harriet aged 18. They separated because of Santa's lewd language and ever drunk statement. Geoffrey then lived with Resty giving birth to three children i.e. Gregory aged 12, Christopher aged 10 and Christine aged 8

Geoffrey passed on two weeks back and left no will.

RIGHTS AND DUTIES OF THE DECEASED'S FAMILY

Rights

These will accrue to the beneficiaries of the intestate.

In **ROMANO SAMIL OGWANGA AND ANOR V SANDE OTAAL H.C.C.S NO.20 BOF 2205**, justice Remmy Kasule defined a beneficiary as a person entitled to share in the deceased's property as per the succession laws of Uganda.

i. CHILDREN

In **ROMANO SAMIL OGWANG AND ANOTHER V SANDE OATAALE H.C.C.S NO.20 OF 2005**, justice Remmy Kasule having found that the first plaintiff was a biological son to the deceased, he was a beneficiary of his estate subject to the will of the deceased.

Section 2 (b) of the Succession Act defines a child or children, issue and lineal descendants include: legitimate, illegitimate and adopted children.

In **KAJUBI V KABALI 1994 EACA 14**, court held that all children have a right to share in their father's estate whether born within wed lock or not.

From the fact all the children of the deceased have a right to share in deceased's estate.

II. WIDOWS/WIDOWERS.

A widow/widower has the first right to administer his or her deceased spouse's estate. For one to be a widow/widower they must have been legally married to the deceased as per Section 2 (w) of the succession act.

This was re-emphasized in **CHRISTINE MALE AND ANOR V SYLIFIYA MARY NAMANDA AND ANOR (1882) HCB 140**, in which court held that a wife is one who was validly married to the deceased under the law.

In **GLADYS ELLA AND FLESTER OMELLA V NICHOLAS ELLE AND ENOKA ODEKA (1994) 2 KALR 98**, where two co-wives applied for letters of administration however the clan objected on grounds that it was against the teso customary law for women to administer the estate of the deceased. Court held that the 2nd plaintiff was legally married to the deceased and therefore a widow entitled to apply for grant of letters of administration of the estate of her deceased husband.

However, under **Section 30(1) of the Succession Act**, if at the time of the intestate's death, the couple was separated, then the wife or husband does not have any interest in the deceased's estate. They must have separated as members of the same household.

However, **Section 30 (1)** will not apply where the wife/husband had gone to pursue further studies by virtue of **Section 30 (2)**.

Further under **Section 30 (3)** the husband or wife may apply to court within 6 months of the separation that the provisions of **Section 30 (1)** shall not apply to them.

In **ELIZABETH NALUMANSI V JOLLY KASANDA AND 2 ORS S.CCA NO.10 OF 2015**, the supreme court in the lead judgement of prof. Lillian Tibatmwa held that Section 30 (1) creates a general rule that a spouse who is prima facie separated from the other as a member of the same household is not entitled to any interest in the estate in case the other spouse dies intestate. Section 30 (2) and (3) creating merely exceptions to the general rule.

In **FARANSIA RWABAGANDA V DONATO BAHMURWABUSHA (1978) HCB 244**, the deceased had in 1964 got married to the defendant in church but they had separated in 1965. Though they were not divorced, she never returned to the home until the death of the deceased. Court held that the defendant

having been separated from the deceased till his death could not take any interest in the estate of the deceased as provided for by **Section 30(1) of the Succession Act**

III. DEFENDANT RELATIVES.

Section 2 G defines a dependent relative to include a wife, a husband, a son or daughter of or above 18 years of age who is wholly or substantially dependent on the deceased or a parent, a brother or sister a grandparent or grand child who on the date of the deceased's death was wholly or substantially dependent on the deceased's for the ordinary necessities of life suitable to a person of his or her station.

These are entitled to benefit from the estate of the deceased.

DUTIES OF BENEFICIARIES

- To select an administrator
- To attend the family meeting appointing the administrator.

DUTIES OF ADMINISTRATOR

- Section 25: property devolves to personal rep
- Section 2(1) defines personal rep

PROCEDURE FOR OBTAINING LETTERS OF PROBATE

1. Report of death of person to the administrator General pursuant to **Section 4 (1) of the Administrator General's Act.**

- Report is usually by adducing a short death certificate and swearing an S.D in regard to the death.
- Must have a report of death letter from the L.C 1.

2. Upon report of death a file is opened and a letter sent to the CAO of the district where the deceased was resident to call for a family meeting. Meeting should be chaired by the CAO or a person delegated who must be a civil servant.

3. Family meeting is held and it must be attended by all beneficiaries. At the meeting the following happens:

- a) All beneficiaries are listed
- b) Administrator selected
- c) List of all properties
- d) Consent to the selection of the administrator is signed by all beneficiaries declaring that they have without duress agreed to the administration selected.

4. The minutes of the family meeting and the consent to be forwarded through the CAO to the administrator general with an application for the issuance of a letter of no objection. As per **Section 5 (1) Of The Administrator Generals Act**.

However, under the same section a widow or widower to the deceased if selected administrator does not need a certificate of no objection in order to petition for the letters. In **ADMINISTARTOR GENERAL V AKELLO JOYCE OTTI AND ANOR SCCA NO.15 OF 1993**, court held that **Section 5 (1) of Administrator Generals Act**, entitles only the widow, widower or executor of the will of a deceased to apply for letters for administration.

5. Where admin general is contended a certificate of no objection is issued. The certificate can only be signed by the person of the administrator general.

6. Upon issuance of certificate the selected administrator should ascertain the value of the estate to determine the appropriate forum.

7. Draft the necessary documents. That is

a) PETITION SHOULD HAVE THE FOLLOWING ANNEXURES

- Letter of no objection
- Marriage certificate if the applicant is a spouse.
- Original family consent
- Death certificate.

b) Notice of application

c) Declaration

d) Administration bond

8. Lodge the documents for assessment of court fees.

9. Pay the court fees. Rule 4 of judicature (court fees) rules.

10. File the petition and receive a cause no.

11. Publish the notice with the cause no given and the notice should be signed by the registrar or magistrate. Rule 2 of the judicature (administration of estates) rules. The notice should be published in the gazette or a newspaper.

12. After 14 days return the evidence of publication of the notice which must be the original copy of the newspaper where the notice was published.

13. Identification by the registrar and once certified forwards the file to the judge for the grant

IN SEBOWA AND ORS V SEBOWA HCCS NO.96 OF 1991, court held that days start to count from the date of publication inclusive.

Petition for letters

IN THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ADMINISTRATION CAUSE NO. 0F 2020

IN THE MATTER OF AN APPLICATION FOR LETTERS OF

ADMINISTARTION OF THE ESTATE OF THE LATE GEOFFEY

SEMAKULA BY RESTY TENDO (WIDOW)

PETITION

This is the humble petition of RESTY TENDO of FIRM DI AND CO ADVOCATES, P.O BOX0000, KAMPALA showeth:

1. That your petitioner is a female adult Ugandan of sound mind and the widow to the late GEOFFREY SEMAKULA.
2. That the late GEOFFERY SEMAKULA (hereinafter referred to as the deceased) died intestate on the 14th day of January 2020 at Kira, Wakiso district. (Attached hereto is a photocopy of the death certificate marked Annexure "A")
3. That the deceased was married to RESTY TENDO, the petitioner herein and a copy of the marriage certificated is hereto attached and marked annexure "B"
4. That the deceased is survived by five children, Marin Semakula aged 20, Harriet Semakula aged 18, Gregory Ssemakula aged 12, Christopher Semakula aged 10 and Christine Semakula aged 8.
5. That the deceased left properties of approximately five hundred million Uganda shillings and these include a matrimonial home in Bweyogerere, a farm at Nakisuga having cattle, a poultry farm, a banana plantation and a garden jointly owned with the petitioner.
6. That your petitioners verily believe that the gross value of the property likely to come into her hands is in the region of Shs.500, 000,000 (five hundred million shillings)
7. That the deceased at the time of his death had a fixed place of abode at Kira, in Wakiso district within the jurisdiction of this Honorable court.
8. That the petitioner was by consensus of the beneficiaries at a family meeting held on the 28th January 2020 selected to administer the estate of the deceased. (Attached hereto is a copy of the minutes of the meeting marked annexure "C" and the signed consensus marked annexure "D").
9. That the petitioner undertakes to well and faithfully administer the estate of the late GEOFFERY SEMAKULA and make full and true inventory of the same to this honorable court within 6 months of grant

of letters of administration or within further time as this court may from time to time appoint and also render to this court a true account within a year of the said date or within such further time as court may from time to time appoint.

10. That the administrator General does not object to the grant of Letters of administration as evidenced by the certificate of No objection granted (Attached hereto is a copy of the certificate marked Annexure “E”)

WHEREFORE, your petitioner prays that she be granted letters of administration to the estate of the late GEOFFREY SEMAKULA.

Dated at Kampala this 3rd day of February 2020.

M/S FIRM DI AND CO ADVOCATES.

COUNSEL FOR THE PETITIONER.

Verification

I, RESTY TENDO the petitioner in the above petition declare that whatever is stated herein is true and correct to the best of my knowledge and belief.

DECLARANT

Before me

COMMISSIONER FOR OATHS.

Drawn and filed by:

FIRM DI AND CO ADVOCATES

P.O BOX0000, KAMPALA

UGANDA.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
ADMINISTRATION CAUSE NO OF 2020
IN THE MATTER OF THE ESTATE OF THE LATE GEOFFERY
SEMAKULA (DECEASED)
AND
IN THE MATTER OF AN APPLICATION FOR LETTERS OF
ADMINISTRATION OF THE ESTATE OF THE LATE GEOFFERY
SEMAKULA BY RESTY TENDO (WIDOW)

DECLARATION

I, RESTY TENDO do hereby solemnly swear and sincerely declare that, I will faithfully administer the estate and effects of the late GEOFFREY SEMAKULA by paying his debts, managing and distributing the residue of his said estate and effects according to the law and that I will exhibit a true inventory of all and singular effects to the deceased's estate and render a just and true account thereof whenever required by law so to do

DECWLARED AT KAMPALA by the said RESTY TENDO on this 3rd day of February 2020.

DECLARANT

Before me

COMMISSIONER FOR OATHS

Drawn and filed by

FIRM DI AND CO ADVOCATES

P.O BOX0000, KAMPALA,

UGANDA

Lodgement and removal of caveats.

Caveats are lodged if there is any opposition to the grant of letters of administration.

A caveat is lodged pursuant to Section 253 of the succession act. Form of caveat is provided in Section 254 supported by an affidavit with grounds.

Under **Section 255 of the Succession Act**, no proceedings in relation to the petition can take place until after reasonable notice requiring the caveator to vacate the same has been given.

The caveat before placing a caveat must have a caveatable interest.

In ADONG SUZAN AND 2 ORS V OTACK RAYMOND HCT -02- CU -0089-2002HC, the defendant who was not related to the deceased lodged a caveat against the grant of letters to the plaintiff's children to the deceased. His ground was that the application included customary land. Karia J, held that the defendant not being in any way related to the deceased was not entitled to lodge a caveat forbidding the grant. Court awarded 2,000,000 general damages were awarded against the defendant for preventing the proper management of the estate causing losses to the plaintiff.

REMOVAL OF CAVEAT. (SUIT IS INSTITUTED PURSUANT TO SECTION 265 AND IT BY ORDINARY PLAINTS AS ITS CONTENTIOUS)

PROCEDURE

1. Issue a notice to the caveator requiring them to remove the caveat or commence a suit to have the caveat vacated pursuant to Section 255 of the succession Act. The notice mandatory as failure to issue the same makes the subsequent suit filed liable for dismissal on a preliminary point of law.

IN THE MATTER OF THE ESTATE OF THE LATE JUSTICE DAVID KIRUNDA, HCMA NO.252 OF 2014, justice Percy night Tuhaise citing the decision in **MARGRET KABAHUNGULI V ELIAZALI TIBEKINGA AND ANOR HCAC 08/95** with approval held that the notice in section 255 of the succession act is a mandatory statutory notice which must be effected on the caveator notifying him of an intended suit should he or she fail or refuse to remove the caveat.

2. Where the caveator fails to heed to the notice then the petitioner can bring a suit under Section 265 of the succession act in which they will be plaintiffs and the caveator defendants.

3. Drafting of plaint and the necessary accompanying documents. Order 6 Rule 2 of the Civil Procedure Rule.

4. Lodgment for assessment of court fees.

5. Payment of court fees. Judicature (court fees) rules rule 4.

6. Filing of the plaint and the accompanying documents and the receipts of payment.

7. Extracting summons to file a defense. Order 5 rule 1 of Civil Procedure Rule.

8. Serving the summons onto the defendant within 21 days. Order 5 rule 1 Civil Procedure Rule.

9. Affidavit of service deponed and filed on court record. Order 5 rule 16 of Civil Procedure Rule.

Plaint for Revocation of A Caveat.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)

CIVIL SUIT NO. 2387 OF 2020

(ARISING FROM PROBATE ADMINISTRATION CAUSE NO.283 OF 2020)

RESTY TENDOPLAINTIFF

SANTA NAMULONDODEFENDANT

PLAINT

1. The plaintiff is a female adult Ugandan of sound mind and the widow of the late Geoffrey Semakula whose address for purposes of this suit is FIRM DI AND CO ADVOCATES, P.O BOX0000, and KAMPALA.
2. The defendant is a female adult Ugandan presumed to be of sound mind and the plaintiff's advocates undertake to effect service of court process upon him.
3. The plaintiffs claim against the defendant is for vacation of a caveat lodged against the defendant is for vacation of a caveat lodged against the petition for letters of administration and costs for the suit.
4. The plaintiff's cause of action against the defendant is for unlawful lodgment of a caveat against the petition for letters of administration.
5. The facts giving rise to the cause of action are as follows:
 - a) The plaintiff and the deceased were legally married on the 26th day of January 2020. (Annexure A)
 - b) They then lived together in their matrimonial home at Bweyogerere and were blessed with two issues: martin aged 20 and Harriet aged 18.

- c) In 2019, the plaintiff left for the United Kingdom to pursue a master's degree of law at the University of Manchester. (Attached and marked annexure "B" is the admission letter and marked Annexure "C" is a photocopy of her master's transcript.)
- d) In January 2020, the deceased past on leaving no will behind. (Attached hereto is a copy of the death certificate marked annexure "D").
- e) Following the death of the deceased, the plaintiff as the wife of the deceased applied for letters of administration to the estate of the deceased.
- f) The defendant without any color of right caveated the application for the grant of letters of administration.

6. The plaintiff avers that actions of the defendant have caused and continue to lead to waiting of the estate of the deceased.

7. The defendant was issued with a notice to vacate the caveat but she did not heed to the notice. (Attached and marked Annexure "E" is the notice to vacate the caveat issued to the defendant.)

8. The facts giving rise to this suit arose within the jurisdiction of this honorable court at kira Wakiso district.

WHEREFORE the plaintiff prays for judgement against the defendant for orders that:

- a) The defendants caveat be vacated
- b) Cost of the suit.

Dated at Kampala this 3rd day of February 2020

M/S FIRM DI AND CO ADVOCATES
COUNSEL FOR THE PLAINTIFF

Drawn and filed by

FIRM DI AND CO ADVOCATES

P.O BOX0000, KAMPALA

UGANDA.

RESEALING OF PROBATE OR LETTERS OF ADMINISTRATION

Resealing of probate or letters of administration applies to grants made in other commonwealth counties other than Uganda where the deceased had some of his properties in Uganda.

Procedure

1. Have the copies of the grant certified by the common wealth court issuing them or obtain the original grant. **Section 5 of the Probate (Resealing) Act ap 160.**
2. Draft an application letter for resealing addressed to the deputy registrar of the high court
 - On the letter attach a copy of the certified grant that is to be resealed, a will if any pursuant to **Rule 3 of the Probate (resealing) rules S.1 .160-1**
3. Make oath as **per Rule 4(b)** and the form of the Oath is prescribed in form c of the schedule and attach it to the application.
4. Pay probate duty as required by **Section 3 of the Probate (resealing) Act** and attach evidence of payment to the application
5. Payment of requisite fees which are UGSHS 45 as per **Rule 5 of the rules** and attach the evidence of payment to the application.
6. File the application with the high court registrar
7. under **Rule 4 (a)**, advertisement of the application if directed by the registrar and the advertisement is as prescribed under form C.

MISSING PERSONS ESTATE

Who is a missing person?

Section 1 (f) of the Estates of Missing Person’s Management Act Cap 159, defines a missing person who disappears from Uganda without making provision for the administration of his or her estate and investigations have shown that his or her whereabouts are unknown.

Who can apply to manage estates?

Setion 2 (1) of the Estates of Missing Persons Management At, is to the effect that where a person in the act referred to as a “missing person” disappears without making provision for the admin of their estate on the maintenance of his/her dependent relatives if any and is not heard of within 6months, any relative of the missing person may with the concurrence of the family of the missing person, apply the court to be granted an order to manage his estate but the court may, if it considers it necessary or desirable, grant an order to more than one relative to manage the estate jointly.

Section 2(c) defines a family member to include a parent, grand parent, uncle, first cousin, child, grand child, wife’s or husband of a missing person.

Section 1(2) postulates that an order of management of an estate a missing person shall not be granted to any person under the age of 21 years.

Procedures, forum and documents necessary

Filing of application

Section 4 of the Act provides that an application for grant of an order under the act must be made subject to such modification as may be necessary in the same form as an application for grant of letters of administration.

Section 246 of the Succession Act provides that an application for Letters of Administration shall be made by petition.

Section 247 of the Succession Act postulates that a petition for Letters of Administration must in all cases be subscribed by the petitioner and his/her advocates, if any and must be verified by the petitioner.

The application for administration of estate of missing person is made by way of petition, verified by the petitioner.

Jurisdiction

This is stipulated under **Section 3 of the Act:**

- a) M.G 2 where the total value of the estate does not exceed 10,000 shillings
- b) M.G. 1 where the total value of the estate exceeds 10,000 shillings but does not exceed 20 million
- c) CM where value of the estate exceeds 20 million but not above 50 million.

What are the powers and duties of a manager of the estate of a missing person.

Section 1 (d) defines a manager to mean any person to whom an order to manage an estate of a missing person is granted under the act.

1. Under **Section 8(1)** a manager has general and special power for the management of the estate of the missing person as appears to court to be necessary and stipulated in the order of the appointment or any subsequent order.

Section 8 (2) bars any manager without the permission of court from:

- a) Mortgaging, charging or transferring by will, sale or gift, involves, surrender, exchange or otherwise any immovable property of a missing person.
- b) Lease any such property for term exceeding three years
- c) Invest any property of a missing person in any securities other than those authorized by the trustees act.

2. Under **Section 11(1)**, the manager has a duty to collect all debts owing to the estate by issuing a notice to the debtor in writing, showing the amount due and to have it settled within the notice period. The notice should be verified with an affidavit.

3. Under **Section 13 (1)**, the manager has the power to appoint an agent for the efficient and economic management of the estate, on such terms and remuneration as she considers reasonable in the circumstances.

4. Furnish court with inventory and annual accounts as per **Section 15 (1)**

- Person can by petition impugn the accuracy of any inventory.

DUTIES OF THE MANAGER

1. Under **Section 12(3)**, they have a duty to clear the outstanding insurance premiums and pay the regular premiums within 3 months from date of appointment or else the policy, if any will lapse.

2. **Section 15(1)** obliges a manager to furnish an inventory within 6 months from their date of appointment or on such other time as the court may order and also furnish an account annually.

PRESUMPTION OF DEATH AND DEATH

Under Section 20 upon lapse of 3 years from date of disappearance, the missing person is presumed dead.

WHEN PERSON DIES (PROCEDURE)

1. Report to the A.G within one month of the confirming the death. **Section 21 (1)**, the report should be accompanied by all accounts and any other documents relating to the estate. **Section 21 (2)**

Under **Section 21 (1) of the Act**, the manager must report the presumption of death within one month, in writing to the administrator general and then cease to manage the estate.

Section 47 (2) of the Registration of Persons Act no.4 of 2015, a person is presumed dead in accordance with **subsection (1)**, any person who would have been duty bound under **Section 43** to give notice of the death of the person of presumed dead may apply for an order of presumption of death in a court of competent jurisdiction and order shall issue and be served upon the authority and shall have the same effect as a certificate of death. **In RE YEKOYASI, HCMA NO.6 OF2017**

PERSONS OF UNSOUND MIND

Who is a person of unsound mind?

Setion 1(c) of the Administration of Estates of Persons of Unsound Mind Act, defines a person of unsound mind to mean any person adjudged to be of unsound mind under Section 4 of the mental treatment act or any person detained under **Section 113 OR Section 117 of the Magistrate Court Act as amended.**

In the case of **ABIRIA V AFMA, HCMA NO.53/2015**, a person is deemed to be of unsound mind for purposes of these proceedings if he or she is afflicted by a total or partial defect of reason or perturbation thereof to such degree that he or she is incapable of managing himself or herself or his or her affairs.

The rationale of the inquiry was explained in **BOLAKISHRAN V BOLACHONDRAN (1956)1 MAD LJ 439**, as to ensure that no man is adjudged a lunatic without proper inquiry and that the court should hold a judicial inquiry and it may seek the assistance of medical experts. Same reasoning is cited in **ASERU JOYCE AJIU V ARIJAYO AGNES MISC CIVIL APP NO.1 OF 2016**.

In determining the sanity of a person, the court follows the test laid down by Phillimore J in **WHYSALL V WHYSALL (1960) P.S.2**, in which he held that “the Est of the degree of insanity is to be found in the phrase “incapable of managing himself and his affairs the test of ability to manage affairs is that to be required of the reasonable man. The elderly gentleman who is no longer capable of dealing with the problems of a “take over bird” is not in my judgement to be condemned on that account as of unsound mind.

Who can apply to manage the estate of a person of unsound mind?

Section 2 of the Administration of Estates of Persons of Unsound Mind Act (AEPUMA) provides that the court may appoint a manager of the estate of a person of unsound mind on the application a superintendent or other person in charge of the prisons or a relative of such person.

Section 3(1) of the Administration of Estates of Persons of Unsound Mind Act, postulates that upon application, the court must make an inquiry into the applicant or any other person whom it may summon whether or not the person of unsound mind has any suitable relative who is willing to manage the person’s estate.

Section 3(2) of the Administration of Estates of Persons of Unsound Mind Act, if the court is satisfied following the inquiry made, that a relative of a person of unsound mind is a suitable person to act as manager of the estate, then such person may be appointed manager.

Section 3(3) of the Administration of Estates of Persons of Unsound Mind Act, permits the court to appoint the administrator general as manager where upon inquiry it establishes that there is no suitable relative of the person willing to administer the estate.

- **Section 1(d) of the Administration of Estates of Persons of Unsound Mind Act**, defines a relative to include a member of a clan or other customary organization. The black’s law dictionary, 8th edn at pg. 1337, defines a relative as a person connected with another by blood or affinity.

Affinity is defined in the black’s law dictionary 9th edn at page 67 to include a relationship by marriage.

JURISDICTION

Section 2 postulates that a “court’ has the power to appoint a manager. S.1 defines court to mean the high court. This is the court with jurisdiction is the high court.

PROCEDURE AND DOCUMENTS

Documents

1. Chamber summons Rule 3(1) of the administrator of estates of persons of unsound mind (procedure) rules S.1. 155-1.

2. The rule further requires that the application to be supported by an affidavit of kindred and fortune in Form A of the 1st schedule to the rules. A medical certificate in form B in the 1st schedule to the rules by the superintendent of the mental hospital where the person of the unsound mind is a patient, or by the O.C of the prison where that person is detained and if the person alleged to be of unsound mind is not a patient in a mental hospital or is not detained in prison, an affidavit by a medical practitioner stated that they personally examined the person that the person is still of unsound mind.

- The applicant should state in the affidavit and attach an order of the magistrate adjudging the person to be of unsound mind or detaining them under **Section 113 or 117 of the Magistrate Courts Act.**

In THE MATTER OF THE ESTATE OF KIGGUNDU JAMES (A PERSON OF UNSOUND MIND) MISC. CAUSE NO18 OF 2015, the applicant did not attach evidence of the person of unsound mind being adjudged unsound nor did he attach any of the documents required by Rule 3(1), the court held that the application was incompetent and dismissed it.

Procedure

- Drafting of documents
- Payment of fees
- Lodging of documents
- Service of application (Rule 4(1)) and (5)
- Hearing of application and inquiry rule 8 and S.3(1)

POWERS OF MANAGER APPOINTED.

These are stipulated under **Section 4(1) of the Act** and are as such as the court may order as being necessary in the circumstances, bearing regard to the nature of property i.e. movable or immovable.

Civil customary law provided it's not repugnant to natural justice, equity and good conscience.

5. Must be binding upon the parties who profess it to be basis for regulating their relations
6. must be established, must have been consistently and for such long time that it is no longer in contention.
7. Must be capable of peaceful application.

DISSOLUTION BY ORDER OF COURT

There is no bar to a couple petitioning for divorce in the H.C

Justice Eva Luswata in **NIGULLU MILLY V DR. SOLOMON SEUGGA H.C.CIV APPEAL NO.105/2013**, held that the grounds for divorce under any custom.

In **DR. JOSEPHINE NAKAKANDE V JOSEPH BALIKUDEMBE DIVORCE CAUSE NO.60/2017**, Justice P. Tuhaise citing **AIYA V AIYA DIVORCE CAUSE NO.08 OF 1973**, held that courts of law have jurisdiction to dissolve customary marriage.

JURISDICTION OF MAGISTRATE COURTS

Section 10 (1) of the Magistrate Court Act empowers M.Cs to enforce civil customary law provided it is not repugnant to equity justice and good conscience. In **DR. JOSEPHINE NAKAKANDE (SUPRA)**, Justice Tuhaise held that the magistrate erred when she held that magistrate courts have no jurisdiction to dissolve customary marriages and she accordingly set aside the order of the magistrate court.

DISSOLUTION OF CUSTOMARY MARRIAGES

Law applicable.

- The constitution of the republic of Uganda
- The Judicature Act Cap 6
- The MCA
- Divorce act
- Case law.

The customary marriages (registration) act does not provide for dissolution of customary marriages.

WAYS TO DIVORCE.

There are two:

- a) Under the customs under which the marriage was conducted
- b) By an order of court

Dissolution of customary marriages under custom

Under **Section 14(2) (b)(2) of the Judicature Act**, custom is one of the sources of law applicable in Uganda. Custom is recognized as law as long as it conforms to the principles of law governing customs as a source of law.

These principles are:

1. Custom must not violate the constitution since the constitution is a supreme law. **Article 2(1) of the Constitution**

2. The custom of requiring a woman to refund price as a condition for valid divorce was declared unconstitutional in **MIFUMI (U) LIMITED V ATTORNEY GENERALSCCA N0.02 OF 2014**.
3. It must not violate any legislation /written law.
4. It must not be repugnant to principles of natural justice, equity and good conscience. **Section 15(1) of Judicature Act. Section 10 of Magistrates Court Act** also empowers Magistrate courts to enforce.

RECENT LAW REVIEWS

The Uganda Law Reform Commission with support from the Justice Law and Order Sector undertook a study to review the laws of succession in Uganda. The purpose of the study was to ensure among others that; the provisions of the laws of succession are in conformity with the 1995 Constitution of the Republic of Uganda, national laws and international and regional human rights standards and practices, are up to date with the changing socio- economic circumstances of Uganda, and that the law is accessible to the people and its implementation can be better realised.

Succession means the acquisition of rights and/or property of a deceased person by law. The terms “Succession” and “inheritance” are commonly used interchangeably.

For purposes of this book, we shall restrict ourselves to the use of the term succession which is the legal term. In Uganda, succession is provided for under various laws. These include; the Constitution of the Republic of Uganda, 1995, the Succession Act, the Administrator Generals Act, the Estates of Missing Persons (Management) Act, the Administration of Estates (Small Estates) (Special Provisions) Act, the Local Council Courts Act, the Probate (Resealing) Act, the Trustees Incorporation Act, the Public Trustee Act, the Administration of Estates by Consular officers Act, the Administration of Estates of Persons of Unsound Mind Act.

AMENDMENTS TO SUCCESSION LAW IN UGANDA UNDER THE SUCCESSION (AMENDMENT) ACT 2022

The Succession (Amendment) Act, 2022 repeals provisions of the Succession Act, Cap 162 that was declared unconstitutional by the Constitutional Court in 2007, re-defines the distribution of estates of intestates, and provides for the duration of probate and letters of administration

In 2007, several provisions of the Succession Act, Cap 162 were declared unconstitutional by the Constitutional Court in *Law Advocacy for Women in Uganda v. Attorney General*, Const. Petition No s 13/2005 & 05/2006 in as far as they discriminated on the basis of sex and did not accord equal treatment in the division of property between male and female.

The declaration by the Court left a lacuna in the law that the Succession (Amendment) Act seeks to address by amendments to the Succession Act in order to accord equal rights between men and women and bring the Act in conformity with the Constitution.

The distinction between legitimate and illegitimate children has been removed. This means that even children borne out of wedlock should have equal rights as the other children.

1. To align the law on succession with the rights to family and affirmative action of marginalized groups under the Constitution of the Republic of Uganda.
2. To provide for the distribution of Estates of intestate deceased persons.
3. To provide for the guardianship of minor children of deceased persons.
4. To provide for the discretion of courts
5. To provide for an expiry period of two years for Grant of Probate and Letters of Administration
6. To provide for the requirement of the consent of spouses and lineal descendants prior to the disposal of estate property by administrators
7. To provide for joint administration of Executors and Administrators of Estates.

Salient Issues

- a.** The distinction between legitimate and illegitimate children has been removed. All children are treated as such. This means that even children borne out of wedlock should have equal rights as the other children.
- b.** Parents are now required to appoint a guardian for minor children. The court may remove this guardian though, where it is proved that he or she has failed, refused and or neglected to act as guardian. Court would consider the interests of the child, and where for any reason, it is clear that they are not being met, then court can remove the powers.

c. The Guardian has been given specific duties under the law, among which include, custody of the minor, disposal of the property of the minor and ensure that reasonable steps are taken to protect the property from loss or damage.

d. 20% of the deceased's estate shall not be distributed but shall be held in trust for the education, maintenance and welfare of the minor children. ie. Children above 18 years of age but below twenty-one years, where at the time of death, these children were undertaking studies and were not married. This also includes children with disabilities who are above eighteen years of age, but were not married at the time of death.

e. Married women are now allowed to dispose of any property which they are entitled to dispose of during their life, or which they are entitled to under a Will.

f. Anyone making a Will is now required by law to provide for their spouses, lineal descendants and dependent relatives.

g. Witnesses to a Will are now required to write their names and addresses on each and every page of the will, in the presence of the Testator (the person making the Will).

h. Where a Will is handwritten or produced in a typed format by a person, other than the Testator, and that person has a benefit in the Will, it will become void, if the benefit is claimed by the spouse or any other person who can claim.

i. Where someone does not appoint an executor or executrix, but appoints a guardian for the minor children, the guardian shall take up that role.

j. The Courts have been given powers to remove someone who was granted probate, or defer such appointment, where it is found that they are not fit and proper for the role.

k. It is now an offence punishable by imprisonment for a period of two years or a fine of UGX 960,000/= or both, where an Executor or Executrix misapplies the estate causing its loss or damage, before the Grant of Probate.

l. The validity of a Grant of Probate and Letters of Administration is for a period of two years from the date when they are granted. m. No disposal of estate property shall be done without the consent of the spouses and lineal descendants of the deceased persons. Where the beneficiaries are minors, the guardians of the minors shall give consent.

n. Where there are several Administrators and Executors and Executrices, the powers should be exercised jointly and all such persons shall sign all the documents necessary for the administration of the estate.

o. Where a person misapplies the estate of the deceased person, subjecting it to loss or damage, or causes a loss as a result of negligence, such person shall have committed an offence and liable to imprisonment for a period of three years or to a fine not exceeding UGX 2m/=. The court shall in addition order the person to make good the loss or damage occasioned to the estate.

Where someone dies without leaving a Will, the following shall be the manner in which their property shall be distributed;

- i. Any distribution shall exclude the residential properties;
- ii. Where such person is survived by a spouse, a lineal descendant, a dependent relative and a customary heir;

- The spouse shall receive 20%.
- The dependent relative shall receive 4%
- The lineal descendants shall receive 75% and,
- The customary heir shall receive 1%.

iii. Where such person leaves no surviving spouse or dependent relative capable of taking a proportion of his or property, that proportion shall go to lineal descendants.

iv. Where such person is survived by a spouse, a dependent relative and a customary heir, but no lineal descendant;

- The spouse shall receive 50%.
- The dependent relative shall receive 49% and
- The customary heir shall receive 1%.

v. Where such person is survived by a spouse or a dependent relative, but no lineal descendant, the spouse or the dependent relative, shall receive 100%

vi. Where such person leaves no person surviving him or her, capable of taking a proportion of his or her property, the estate shall be divided equally among the relatives nearest in kinship

vii. Where such person leaves no person surviving him or her, capable of taking a proportion of his or her property, then the property shall be managed by the Administrator General.

viii. A spouse who remarries before the Estate of the deceased is distributed shall be entitled to the share, he or she would be entitled to under the law.

ix. A surviving spouse shall not take any interest in the Estate of the person who dies without leaving a Will, if at the death of such person, they were separated.

However, where the surviving spouse has been absent on an approved course of study in an educational institution, or the intestate was, at the time of his or her death, the one who had separated from the surviving spouse a member of the same household, then the surviving spouse would be entitled to their portion.

x. A Will obtained by fraud, undue influence, duress, coercion, mistake of fact or abuse of position of trust or vulnerability shall be void.

xi. A gift made to anyone in contemplation of death may within 6 months of the recovery of the donor, be resumed by the donor. Such gift does not take effect if the donor recovers from the illness during which it was made.

Additional Amendments in the Succession Amendment Act 2022

(a) Residential Property: The Act, in addition to the provisions in the Act, creates an offence for persons who unlawfully evict a surviving spouse, lineal descendant or dependent relative who are entitled to occupy the residential holding or any other residential holding. Such person is liable to a fine not exceeding one hundred and sixty-eight currency points (UGX3,260,000/=) or imprisonment not exceeding 7 years or both.”

(b) Consent: The Act had introduced a requirement for the consent of spouses and lineal descendants prior to the disposal of estate property by administrators. However, the Act also empowers the executor or administrator to apply to court for redress where consent is unreasonable withheld by the spouse and descendants.

(c) Disputes between Executors or Administrators: The Act provides for dispute settlement in an estate with more than one executor or administrator or between the executor or an administrator and a beneficiary of the estate. Any dispute between the parties shall be referred for arbitration by the Registrar of the High Court or a Chief Magistrate.

(d) Timeline of administration and execution of an estate: The Act only provided for a time period of 2 years for administration by an administrator or executor. The Act did not provide for the administration by the Administrator General. This was addressed by the Parliament and the administration by the Administrator General shall remain valid only in respect of the trust created under Section 27(2) of the Act and shall expire when the trust expires.

(e) Effect of the timelines on existing probates and letters of administration: The Act provides that any probate or letters of administration issued to a person by a court of competent jurisdiction before the coming into force of the amendment Act shall remain valid for a period of three years after the coming into force of the amendment Act.

A grant of probate or letters of administration issued to the Administrator General before the coming into force of the amendment Act shall remain valid for a period of five years after the coming into force of the amendment Act.

(f) Attestation to wills: The Act made it a requirement for each of the witnesses to write his or her name and address on every page of the will in the presence of testator. The Act provides for the validity of the rest of the will where a page of a will is not attested and states that where a person attesting a will does not write his or her name or address on a page of a will, the will shall be valid except that the page of the will which does not bear the name or address of the testator shall, unless otherwise directed by Court.

(g) Void wills: The Act had added other factors that make a will void, to include fraud, undue influence, duress, coercion, mistake of fact, or abuse of position of trust or vulnerability rather than just fraud or coercion under the current law. The Act, as a way to save wills that are in existence at the commencement of the amendment Act from the strict application of the amendments, provides that a will made before the coming into force of amendment Act shall not be affected by the provisions of the amendment.

(h) Application for probate: The application shall be made within one year from the date of death of the testator. The Act provides that where a person named as executor in a will does not apply for probate within one year, a beneficiary under the will may, with the will annexed, apply for letters of administration.

(i) Separated spouses: The Act provides that a surviving spouse of an intestate shall not take any interest in the estate of the intestate if, at the time of death of the intestate, the surviving spouse was separated from the intestate. However, this shall not apply where—(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.

This grants court the discretion to determine, on a case-by-case basis, justifiable grounds upon which a surviving spouse may be allowed to benefit from the estate of an intestate notwithstanding the separation of the surviving spouse from the intestate.

(j) Meaning of child: The Act restricts the reference to a child in a will to apply only to the biological and adopted children of the testator since the word “lineal descendant” used in the Act was broad and includes all persons who are descended in a direct line from the deceased person and includes a grandchild of the deceased and any person related to the deceased in a direct descending line up to six degrees downwards.

In addition, the Act removes any unlawful distinction between children, whether they have been acknowledged by their parent or not, legitimate or illegitimate.

(k) Gifts in contemplation of death: The Act requires every donation of a gift made in contemplation of death of a value exceeding UGX 500,000/= to be in writing.

The amendments in the Act, transform the law of succession in Uganda, by addressing the lacunas in the Succession Act, to provide for gender equality and repealing provisions that were declared unconstitutional and, in addition, they solidify principles for the distribution of the estate of deceased persons in Uganda.

THE SUCCESSION AMENDMENT LAW HIGHLIGHTS

The newly enacted legislation expands the provision of distribution of property of an intestate to apply to both male and female dependents as well as to spouses in a marriage. This is an amendment to Section 27 of the Succession Act.

According to the new legislation, upon the death of a surviving spouse, the residential holding or any other residential holding shall devolve to the lineal descendants equally, who shall occupy it subject to the terms and conditions set out in the Second Schedule to the Act.

A person who evicts or attempts to evict a surviving spouse, lineal descendant or dependent relative who is entitled to occupy the residential holding or any other residential holding commits an offence and is liable to a fine not exceeding one hundred and sixty-eight currency points, which is equivalent to 3.36 million Shillings or imprisonment not exceeding seven years or both.

Sections 29 and 30 deal with intestate distribution, which stipulates that an intestate's estate, save for his or her residential holdings or other residential holdings, should be distributed among the following classes: by a spouse, a lineal descendant, a dependent relative, and a customary heir.

The spouse will get 20%, dependent relatives will receive 4%, lineal descendants, 75%, and the usual heir will receive 1% of the intestate's inheritance.

When an intestate leaves no surviving spouse or dependent relative, the lineal descendants receive 99% of the estate, while the usual heir receives 1%.

If the intestate has a spouse, a dependent relative, and a customary heir but no lineal descendant, the spouse receives 50% of the intestate's property, the dependent relative receives 49%, and the customary heir receives 1%.

If the intestate has a customary heir, a spouse, or a dependent relative but no lineal descendant, the customary heir receives 1% of the intestate's property and the surviving spouse or dependent relative receives 90%.

If the intestate leaves no survivor other than a customary heir capable of claiming a share of his or her estate, the inheritance is divided equally among the relatives closest in kinship to the intestate.

The spouse who remarries before the deceased's estate is divided is entitled to the part he or she would have been entitled to under subsection (1).

If the customary heir is also a lineal descendant of the intestate, the customary heir is entitled to share as a lineal descendant in addition to his or her part as a customary heir.

A spouse or lineal descendant of an intestate who occupies a principal residential property or any other residential property under section 26 is not required to take that occupation into account when determining any share of the intestate's property to which the spouse, lineal descendant, or child may be entitled under section 27.

If the surviving spouse was separated from the intestate as a member of the same household when the intestate died, the surviving spouse has no claim to the intestate's estate.

Also, Section 1, which provides for the distribution of the deceased's property, shall not apply if: the surviving spouse was absent at the time of his or her death, or the deceased was separated from the surviving spouse because of divorce or the intestate is the cause of the separation.

Despite subsection (1), the court may, for good reason, decide that subsection (1) does not apply to a surviving spouse on an application filed within six months of the intestate's death by or on behalf of the surviving spouse.

Regardless of the surviving spouse's separation from the intestate as a member of the same household, a child or lineal descendant sired by the surviving spouse and the intestate is entitled to profit from the intestate's estate.

The surviving spouse has priority over any other individual in the estate administration when selecting who may administer the deceased's estate. However, if the Administrator-General determines that the surviving spouse is not a competent and appropriate person to manage the estate or that it is essential, under the circumstances of the estate, to assign administration to another person, her wishes may be ignored.

Under paragraph (1), a person who is given letters of administration shall govern the estate for no more than two years. The court may, however, extend the term if it is in the best interests of the beneficiaries to do so.

Succession law in Uganda deals with the management, administration, distribution and acquisition of property and rights of a deceased person. This is either in accordance with the deceased person's wishes which are usually expressed in a will or in accordance with statutory laws enacted by Parliament. They are various laws dealing with succession in Uganda including the Succession Act Cap 162.

The Succession Act Cap 162 was commenced in 1906 to provide for matters dealing with testamentary (where one dies and leaves a will behind) and intestate succession (where one dies and leaves no will behind) and it has been revised and consolidated by the Uganda Law Reform Commission since 2000 to date. However, Court in the case of **Law and Advocacy for Women in Uganda v Attorney General, Constitutional Petitions No. 13/2005 and 05/2006** declared provisions of this Act relating to the distribution of estates of intestate persons as well as other succession rights unconstitutional and discriminatory against the female gender which left a gap in succession law.

Recently, the Parliament of Uganda has passed the Succession (Amendment) Act of 2021 putting to rest months of lobbying by civil society and women rights activists for the same. The Act seeks to align the Act with the Constitution of the Republic of Uganda as well as promote gender equality in succession matters in Uganda.

The following provisions of Cap 162 were declared unconstitutional; **Section 2(n)** that provided for a legal heir preferring a male heir to a female one, **Section 2(1)** that particularized children as legitimate and illegitimate, **Section 14 and 15** on a spouse acquiring a domicile and a wife following her husband's domicile during marriage, **Section 26** on residential holding, **section 27** on the distribution of a deceased's estate which focused on a male intestate, section 29 and **rules 1, 7, 8, and 9 of Schedule 2 to the Act** that provided for occupancy of the matrimonial home in which a woman ceased to occupy the principal residential property if she married but was silent on the same for men and **Sections 43 and 44** of the Act, which provided for the appointment of the testamentary guardian as it was only a father who, by will, could appoint a guardian or guardians for his child during minority.

The new clauses in the Act provide for gender-neutral language and inclusivity in various aspects of succession, disposal of property and administration of the estate of the deceased; have introduced various changes and guidelines relating to wills, guardianship, domicile (permanent dwelling or residence), the administration and management of the estate of the deceased as well as offences related to the administration and management of the deceased.

1. Gender-neutral language. Previously, Uganda being a predominantly patriarchal state, the language of the Act was mostly biased towards the male gender. The Act is now more gender-inclusive and friendly as it substitutes words for example: "a married woman or man" for spouse; "man" to "person"—and inserts immediately after the word "his" the word "or her", "father" the word "or mother", "son" the words "or daughter" "heir" "or heiress" etc.

2. The legal heir. The legal heir has been redefined to include a female heir as previously, a male heir was preferred to a female heir, to inherit the estate and step into the shoes of the deceased as Uganda was mainly dominated by a patrilineal society.

3. Distribution of the estate. The Act now provides for the distribution of both the female and male intestate (a person who dies without a will). It goes ahead to promote the welfare and best interests of children by excluding 20% of the estate of the deceased to cater for the upbringing of children, their education including; maintenance and welfare of the minor children, children above eighteen years but below twenty-five years of age, if at the time of the death of the intestate these children were undertaking studies and were not married, children with disabilities who are above eighteen years of age, if at the time of the death of the intestate, these children were not married and were wholly dependent on the intestate for their livelihood.

It also offers a form of financial security and protection to widows/widowers and lineal descendants. It gives 20% of the estate of intestate to a spouse and requires the consent of a spouse and lineal descendants prior to the disposal of estate property by administrators or executors and executrix. This will aid in securing the interests of spouses and beneficiaries.

4. Revision of percentages. Where an intestate is survived by a spouse, a lineal descendant, a dependent relative and customary heir, the Act has revised the distribution of the estate of the deceased by increasing the percentage of the spouse from 15% to 20% and reducing that of dependant relatives from 9% to 4%. It has however maintained the percentages of the lineal descendants at 75% and the customary heir at 1%.

5. Discretion of Court in the grant of probate of letters of administration: The Act has given the Court power and the choice to determine and approve an executor or executrix (a person appointed to carry out the terms in a will) before grant of probate (a grant given by Court that confirms the legal authority given to an executor of the deceased's will in the administration of his or her estate).

This is important as it shall aid in the elimination of fraudulent dealings in estates as well as safeguard the interests of spouses and beneficiaries.

6. Administration of an estate: The Act gives preference to surviving spouses whether male or female over any other person in the administration of the estate of the deceased.

7. Wills: The Act has made the following changes;

- Compulsory provision for spouses and beneficiaries by a testator in a will is now required. This will help to safeguard spouses and beneficiaries against relatives of the deceased.
- **Attestation to wills:** Under the Act, witnesses to a will are now required to write their names and addresses on each page of the will in the presence of a testator (a person who makes a will). This will help to safeguard against fraud and forgery of wills which is common today.
- **Invalidity of wills:** Other factors that make a will invalid have been added to the Act. These include; fraud, undue influence, duress, coercion, mistake of fact, or abuse of position of trust or vulnerability.

8. The Estate of the deceased. The Act has provided for joint administration of the estate and offences relating to administration and mismanagement of the estate.

A person who, before grant of letters of administration or probate, misapplies the estate of a deceased and subjects it to loss or damage commits an offence and is subject to a penalty under the Act. In addition, misapplication of the estate of the deceased by any person before grant of letters of administration or probate is subject to a penalty under the Act.

Regarding joint administration of the estate, the Act provides that where there are several executors, executrices or administrators, their powers shall be exercised jointly and that all parties shall sign all the documents necessary for the administration of the estate. Doing so shall aid in the elimination of uncoordinated and fraudulent administration of estates.

9. Maintenance: Spouses, children, lineal descendants and dependants who are left out in a will can now apply to court for maintenance (financial support).

10. Guardianship: Either parent of a minor may, by will, appoint a guardian for the minor.

The Act also introduces various types of guardianship which include, testamentary, customary and statutory guardianship whose provisions align the **Succession Act** with the **Children's Act, Cap 59** and give priority to the latter Act in cases of conflict regarding issues of guardianship. A customary guardian who shall be appointed by family members of a minor in given circumstances must be confirmed or rejected by court through an application to Court.

Qualification of Guardianship: Persons who qualify as guardians have been listed and statutory guardianship has been restricted to citizens of Uganda.

Custody by a Guardian: This is not automatic as a guardian shall apply to court to exercise powers of custody and disposing property of minors.

Removal of a Guardian: The Act has given these powers to only the High Court and not any court of jurisdiction in Uganda.

11. Domicile: The Act introduces domicile of choice where a person may upon marriage, acquire the domicile of his or her wife and upon dissolution of marriage, a spouse may acquire any other domicile. In addition, the Act repeals the provision that provides a woman's domicile follows her husband.

12. Residential Holdings: The Act provides that the residential holding of a deceased person shall devolve (pass on) equally to the surviving spouse and lineal descendants who were normally resident and any person who evicts or attempts to evict them commits an offence and is liable to a penalty.

It also provides that the descendants of the deceased shall be deemed to hold the property as joint tenants.

13. Disposal of property. Married women are allowed to dispose of any property which they would be entitled to dispose of during their life or which they are entitled to under a will.

ESTATE OF MISSING PERSONS MANAGEMENT AMENDMENT ACT 2021

The law responsible for missing persons is called THE ESTATES OF MISSING PERSONS (MANAGEMENT) ACT 2021

This act provides that where a person disappears from Uganda without making a will or any arrangement for how his/her property will be looked after or how the relatives and those who depend on the person will be maintained, and they do not hear from him/her for 6 months.

Then it means that person's property needs to be looked after.

Who can do this?

It can be any relative after discussing with and receiving consent from the family members of the missing person. The family members have a right to also apply to court for the order allowing them to administer this estate.

If the family members so choose, they can even appoint the administrator general to fill this role.

What does this order affect?

If the missing person had a business partner, then the order covers the share of the missing person's business and it will put a duty on the remaining partner(s) to furnish records of the business dealings. It also includes personal property such as houses, bank accounts, etc. Is a manager of an estate the same as an administrator of the estate?

No, an administrator of an estate is charged with managing the estate of a deceased person. A missing person is not classified as deceased under the law. You (or someone you know) can be missing but not dead. However, if you are missing for 3 years, then the law will presume you are dead.

When a missing person is confirmed dead, or 3 years since the disappearance have elapsed, then the manager must make a report to the administrator general and stop working as a manager of the estate.

Are the people on the fated boat cruise whose bodies were not found classified as missing persons?

Well, if the bodies of these people who boarded the boat were not found, it means they are presumed dead.

However, if there's no evidence that someone was on the boat for the boat cruise available with the only evidence being telling someone like the house-girl that they were going for boat cruise, then they can be part of missing persons. However, this status only starts after 6 months since their disappearance.

Government proposed an amendment to the Estates for Missing Persons Act 1973 that will allow persons between 18 and 25 years of age to benefit from the estate of a missing person provided they are still in school and not married.

Estates of Missing Persons (Management) (Amendment) Act, the Act seeks to amend certain provisions of the 1973 Act. There are three proposals including one that seeks to revise the age for sons and daughters as dependent relatives.

The Act among others sought to amend the age of a minor from 21 in the 1973 Act to 18 years in line with the 1995 constitution of Uganda and to provide for rights of children with disabilities.

Government proposed to amend the interpretation for dependent relative who in the Estates for Missing Persons, Act 1973 include a wife, a husband, a son or daughter “less than eighteen years of age or daughter of or above eighteen years of age who is wholly or substantially dependent on the missing person...”

The Estates for Missing Persons, Act 1973 describes a missing person as one “who disappears from Uganda without making provision for the administration of his or her estate and investigations have shown that his or her whereabouts are unknown.”

It is argued that the dependent son or daughter should be “above eighteen years of age but below twenty-five years of age, where he or she is still in school and is not married and a son and daughter with a disability.” The 1973 Act bars any person less than 21 years from being granted an order to manage the estate of a missing person.

There is also a proposal that the courts shall have powers to determine whether a person who otherwise qualified to administer an estate as a dependent relative is fit to do so and that “the court may refuse to grant an order for the management of an estate of a missing person, where an applicant is not suitable.”

The Act seeks to revise the monetary jurisdiction of the Magistrates Courts to conform to the Magistrates Courts Act, 1971. Therefore, the Magistrate Grade 1 courts will grant orders for estates with a total value of a maximum of Shillings 20 million from a maximum value of Shillings 50,000.

The Chief Magistrates Court will handle estates with a maximum value of 50 million Shillings up from a maximum of Shillings 100,000 as the monetary jurisdiction. The Act seeks to repeal the provision for the High Court to grant orders for estates with a total value exceeding Shillings 100,000.

The 1973 Act gives a magistrate Grade 11 powers to grant orders where the total value of the estate does not exceed Shillings 10,000, from Shillings 10,000 to 50,000 for magistrate grade 1, between Shillings 50,000 to Shillings 100,000 for a chief magistrate and above Shillings 100,000 for the High Court.

four others relating to the management of properties of deceased or missing persons. These include The Administrator General’s (Amendment) Act, The Administration of Estates (Small Estates) (Special Provisions), The Probate Resealing (Amendment) Act and The Succession (Amendment) Act.

THE ADMINISTRATOR GENERAL’S (AMENDMENT) ACT

The Administrator-General's Act grants the Administrator-General the right to apply to court to administer the estate of a deceased person where; a) A deceased person appoints the Administrator-General as a sole probate. b) The deceased did not appoint an administrator or probate.

The Office of the Administrator General manages estates of deceased persons, who die without leaving a will, or where a will has been left but disputes arise in the management or distribution of the deceased person's property. The office also institutes legal proceedings in Courts of law against intermeddlers, fraudulent administrators of deceased's estates, unscrupulous relatives and others for the recovery of the deceased's properties from wrong hands.

Other functions include: distribution of properties of deceased persons to the beneficiaries of their estates and winding up of estates; management of the interests or properties of minors and persons of unsound mind, which come under the control of the Public Trustees in accordance with the Public Trustee Act; giving legal advice and arbitrating in succession matters to resolve conflicts and issuing Certificates of No Objection to persons intending to apply to Court for Letters of Administration

PROCEDURE

1. Buy a file from 15 on 3rd Floor, at Ug. Shs. 2,000/=
2. Fill in all relevant information in the A.G.A Form. MAKE SURE you indicate the PROPER and CORRECT names of the deceased person as they appear on the death Certificate or the land Title or Bank Account.
3. Attach a Death Certificate or Affidavit in Lieu of a Death Certificate.
4. Take the file to a Legal Officer for Sanctioning.
5. After the file is authorized to be opened by a Legal Officer, take it to the Registry in Room 6 on 2nd Floor to be given a file number.
6. The Registry officials will then give you a card indicating the file number and tell you when you should return to find out which legal officer will be handling your file. This is usually one to three days after the file has been given a file number.
7. After the file is allocated to a Legal Officer, he or she will cause a family meeting to be held either at Georgian House in the offices of the Administrator general or through the Chief Administrative Officer (CAO) of the district where the deceased person had his or her residence. The CAO may request the concerned Sub County or Parish Chief to hold this meeting.
8. The Administrator General may request additional information if he or she finds that the meeting at CAO's office was not properly held or that it was not attended by all the concerned beneficiaries.
9. During this meeting in number 7 above, the family is expected to nominate a person or persons to take over administration of the estate of the deceased person.
10. Following the family meeting of all concerned beneficiaries, a certificate of No Objection will be issued within 28 days after the Legal handling the file has received the photocopies of identification

documents of all the persons who attended the meeting; and the photographs of the persons who are applying for a Certificate of No Objection (intending administrators

11. For all beneficiaries, including children who live outside Uganda, the Administrator General requires a Power of Attorney properly made and notarized in the country where the beneficiary lives. The beneficiary must indicate that he or she agrees with the process being undertaken in Uganda, including the persons who are being nominated to administer the estate of the deceased.
12. The Administrator General issues a Certificate of No Objection to the person(s) nominated to enable them apply for Letters of Administration in the relevant Court of Law.
13. A Certificate of No Objection is issued at a cost of U. shs. 2,000/= in either Room 12,13 or Room 1
14. The Office of the Administrator General does Not Issue Letters of Administration.
15. The Office of the Administrator General does not get involved in matters where Letters of Administration from a competent Court have already been issued for the estate.

Fees Information

1. Buying a file and Death Report form: 2,000/= payable in Room 15
2. Buying a Certificate of No Objection: 2,000/= payable in Room 15
3. 1% of the value of the property (before the Administrator General issues a transfer of property in cases where the Administrator General is the administrator of the estate). This money is paid in Room 15 and is receipted.
4. 1% of the amount of money in the custody of the Administrator General (before the Administrator General pays out any money to a beneficiary of an estate being administered by the Administrator General). This money is paid in Room 15 and is receipted.

All other fees and charges involved and necessary in the administration of the estate not limited to the following: Central and Local Government taxes, rates, and fees; Title registration fees; Charges for making Special and Substitute Certificates of Title in the Land office; Fees for land surveying, including opening of boundaries must be paid out of the estate or by the beneficiaries themselves in cases where the Administrator General is administering the estate.

Fees and Cost including those awarded against the Administrator General **MUST** be borne by the estate or paid by the beneficiaries. The Administrator General **DOES NOT CHARGE ANY FEES** for holding family and other meetings at the offices of the Administrator General.

THE ADMINISTRATION OF ESTATES (SMALL ESTATES) (SPECIAL PROVISIONS)

Key highlights:

The objective of the Administration of Estates (Small Estates) (Special Provisions) (Amendment) Bill is to-

(a) Revise the monetary jurisdiction of the Magistrates courts to conform to the Magistrates Courts Act; and

(b) Provide for the revocation of a grant of probate or letters of administration for want of jurisdiction

An Act to confer jurisdiction on Magistrates Courts to grant probate or letters of administration in respect of small estates of deceased persons and for other matters connected therewith.

ADMINISTRATION OF ESTATES (SMALL ESTATES) (SPECIAL PROVISIONS) ACT IN EFFECT SEEKS TO PROVIDE FOR THE FOLLOWING.

- Interpretation.
- Jurisdiction to grant probate, etc. of small estates.
- Application for grant of probate, etc.
- Grantee of probate or administration alone to sue.
- Effect of payment to executor or administrator.
- Appeals.
- Appeals to the Court of Appeal.
- Probate rules.
- Punishment for false averment in petition or declaration.
- Application.
- Saving for jurisdiction of the High Court.
- Administrator General not precluded from grant.

An Act to confer jurisdiction on magistrates' courts to grant probate or letters of administration in respect of small estates of deceased persons and for other matters connected therewith.

THE PROBATE RESEALING (AMENDMENT) ACT

The case of **DELAHAIJE V KASOLO & ANOR** (Administration Cause 1558 of 2018) [2019] UGHCFD 34 makes significant references to this Act.

For the purposes of this Act, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

THE LAW APPLICABLE ON PROBATE RESEALING IN UGANDA

LEGAL MEMORANDUM TO: MR SUIGENERIS FROM: ANIMIS: LEGALIZING PROBATE GRANTED IN A FOREIGN COUNTRY.

The objective of this opinion in regard to the above-mentioned reference is to resolve issues on;

- a) How to legalize probate granted in a foreign country in Uganda.
- b) The forum, procedure and documents required.
- c) Fees payable and the following laws will quote for that purpose.

The probate (Resealing) Act Cap 1602.

The probate (Resealing) Rules SI 160-1

Resealing of Probates and letters of administration granted outside Uganda. S.2 of the Act states that,

where a probate or letters of administration have been granted in a Commonwealth foreign country, in respect of the estate of a deceased person, such probate or letters so granted may, be sealed with the High Court seal and shall be of the like force and effect in Uganda as if granted by that court.

However, for the High Court to seal such probate or letters of administration,

Section 3 of the Act puts conditions before sealing such probate, which include;

- a) *Payment of the probate duty* (as defined under **Section 1** of the Act)
- b) In case of letters of administration,

that security has been given in a sum sufficient in amount to cover the property, if any, in Uganda to which the letters of administration relate.

Who has the capacity to make the application for resealing probate or letters of administration?

Rule 2 of the probate (Resealing) Rules gives powers to *such a person to whom the grant was made or the attorney of that person, either in person or by Advocate.*

Issue 2 Forum According to **Section 2** of the Act and **Rule 3** of the **probate (Resealing) Rules**, such an application is *made to the Chief Registrar of the High Court of Uganda at Kampala*.

Procedure: **Rule 3** of the **probate (Resealing) Rules** provides that the *application is made by lodging with the Chief Registrar of the High Court at Kampala* by presenting the following;

- a) *The grant required to be sealed, including a copy of any will relating to grant if any or certified copy of the grant*
- b) *Certificate as to payment of probate duty*
- c) *If the applicant is acting under a power of attorney, the instrument creating the power.*

The Registrar may also require under **Rule 4** to *advertise the application and to support the application by an oath*, after sealing the grant, the registrar under

Rule 6 makes an *endorsement order on the grant and signs on the same on that particular date*. The Sealed grant after payment of all the necessary fees under **Rule 5** is then *returned to the applicant or his or her advocate*

Documents:

- a) The probate
- b) Copy of will if any
- c) Powers of Attorney (If the applicant is acting under a power of attorney)
- d) Certificate as to payment of probate duty

Issue 3

Fees according to **Rule 5** have to be paid and include;

- application fees
- probate duty

SEALING OF PROBATE AND LETTERS OF ADMINISTRATION OBTAINED FROM COUNTRIES OUTSIDE UGANDA

FOREIGN GRANT There are instances where the deceased, in his lifetime, acquired properties in not only Uganda but also in other jurisdictions. It is not uncommon for the personal representatives of the deceased to apply for and get a grant of probate or letters of administration from a jurisdiction where some of the deceased's property is situated.

So, to deal with the property located in Uganda, do the personal representatives of the deceased have to get fresh grants to deal with the property in Uganda?

Under the Common Law, a grant of probate or letters of administration in a foreign country is not to have any effect or operation outside the place of the initial grant. Thus, at Common law, an executor or administrator would have to take steps to commence the process of obtaining a fresh grant in Uganda, in the event that an earlier grant of probate or letters of administration has been made in a foreign country other than Uganda. Fortunately, the process of making foreign grant of probate or letters of administration operational in Uganda has been simplified under the Ugandan law, thanks to the Probates (resealing) Act cap. 160 as amended and the rules made thereunder.

THE PROBATES (RESEALING) ACT CAP.160 as amended contains some provisions on the subject of resealing of foreign grants. It is to the effect that where grant of probate or letters of administration is made by a court in any country other than Uganda, a fresh grant is not necessary as the foreign grants can merely be resealed by the High Court in Uganda. Section 2 of the Probates(resealing) Act cap. 160 as amended provides for Sealing of probates and letters of administration granted outside Uganda and it reads as follows; Where a court of any country other than Uganda grants probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy deposited with, the High Court, be sealed with the seal of that court, and thereupon shall be of the like force and effect, and have the same operation in Uganda as if granted by that court. This section essentially provides for resealing of probate or letters of administration granted by a foreign court and it also states that the jurisdiction to reseal lies with the High Court of Uganda and Rule 3 of the Probates (resealing rules) confirms this and goes ahead to specify that the application to reseal shall be made to the Chief Registrar of the High Court of Kampala. The effect of the resealing is that the resealed letters of administration or probate will operate as if the same were granted by the High Court. They will act like any other letters of administration or probate granted by the High Court. This saves the administrators from the hustle of having to apply for a fresh grant from the Ugandan courts. This is a simpler process and saves the administrators a lot of time and unnecessary expenses. Section 5 of the Probates(Resealing) Act Cap.160 provides as follows; For the purposes of this Act, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

This section allows the applicant to deposit a true copy or a certified copy of the foreign grants for the purposes of resealing. It is the foreign court that issued the grant that certifies the grant but the foreign court can also authorise someone to certify the grant on its behalf (This can be discerned from Rule 3(a) of the Probates(resealing) rules.) By certifying, a foreign court is essentially confirming and affirming the authenticity of the foreign grant and hence such a document can then be perceived or have the same effect as an original. To certify, the foreign court, embosses its official seal on the said copies of the grants.

CONDITIONS TO BE FULFILLED BEFORE RESEALING

Section 3(1) of the Probates(Resealing) Act Cap.160 provides for the Conditions to be fulfilled before sealing and it states as follows; The court shall, before sealing a probate or letters of administration under this Act, be satisfied—

a. that probate duty has been paid in respect of so much, if any, of the estate as is liable to probate duty in Uganda; and

b.in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in Uganda to which the letters of administration relate, and may require such evidence as it thinks fit as to the domicile of the deceased person.

Thus, what is required under law is that the necessary probate duty is paid and that sufficient security has been provided to cover the property situated in Uganda. The section seems to leave the discretion to the court to determine what evidence it thinks fit as to the domicile of the deceased person. Section 3 (2) of the Probates(Resealing) Act Cap.160 provides that Probate or letters of administration granted by a court of a country other than Uganda shall only be resealed in a court in Uganda where the relevant law under which the letters of administration or probate was granted is not contrary to the Succession Act, Cap. 162, the Administration of Estates (Small Estates) (Special Provisions) Act, Cap. 156 or the Estate of Missing Persons (Management) Act, Cap. 159.

For a foreign grant to be resealed in a court in Uganda, the relevant laws under which such grants were made should not be contradictory to cap. 162, cap.156 and cap. 159 of the laws in Uganda. If the relevant law under which the foreign grant was made is contrary to the aforementioned laws of Uganda, the court in Uganda cannot reseat the same. This section limits the foreign grants that can be resealed in a court in Uganda, to only those grants made in the countries whose relevant law under which letters of administration and probate are granted are in agreement with cap. 156, 159 and 162 of the laws of Uganda. It is prudent that one first studies the relevant laws under which the foreign grants were made to ascertain whether they are contrary to the aforementioned laws in Uganda or not, since they will have to prove to the court that the said laws are in agreement with those Ugandan laws. Further still; Section 3 (3) of the Probates(Resealing) Act Cap.160 provides that Probate or letters of administration granted by a court of a country other than Uganda or a Partner State of the East African Community, shall only be resealed in Uganda where the relevant laws of that country allow the enforcement, within that country, of letters of administration or probate obtained in courts of law in Uganda.

This section provides that for a foreign grant of a country that is not a partner state of the East African Community to be resealed, it must have a reciprocal arrangement in their country for enforcement of probate or letters of administration obtained in courts of law in Uganda. However, this section does not apply to a partner state as stated in the section and this position is further cemented in section 3(4) which provides that Section 3 shall not apply to a partner state of the East African Community. What a partner state is has a meaning assigned to it in section 3(5) which provides that A Partner State of the East African Community means the Republic of Kenya, the Republic of Rwanda, the Republic of Burundi, the Republic of South Sudan, the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty Establishing the East African Community." Section 4 of the Probates(Resealing) Act cap 160 provides for Security for payment of debts and it reads as follows; The court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Uganda. From this section it can be discerned that any creditor resident in Uganda can apply to the court to have adequate security to be given for the payment of debts due from the estate to creditors residing in Uganda, but like in all matters before court, the high court is left with the discretion to so order. In my opinion, the best time for a creditor to make this application is as soon as the advertisement of notice is placed in the newspapers and this submission.

Line with section 4 since the advertisement is before the sealing or sealing of the foreign grants. The creditor can make the application for security for payment of debts, within 14 days after the advertisement of the notice appears in the newspaper. It is highly improbable, if not impossible for the creditor to lodge an

application before the advertisement in the newspaper since the application for resealing would not be in their knowledge. It is the advertisement that brings the application for resealing to the attention of the creditors residing in Uganda. The application has, by any means to precede the sealing. This application has to be made to the court to which the application for resealing has been made because it is the one handling the matter. Who can make this application for resealing? Rule 2 of the Probates(resealing) rules provides an answer to this and it stipulates as follows; An application for the sealing of a grant of probate or letters of administration may be made by the person to whom the grant was made or the attorney of that person, either in person or by advocate. From this section, it can be discerned that either the administrator of the estate or the executor entrusted into the office by the foreign court can make the application for resealing of the foreign grant of probate or letters of administration. However, the said persons can act personally or through their Advocates. MANNER OF APPLYING Rule 3 of the Probates(resealing) rules provides for the Manner of applying and provides as follows; The application shall be made by lodging with the chief registrar of the High Court at Kampala

(a) the grant required to be sealed, which shall include a copy of any will to which the grant relates or shall be accompanied by a copy thereof certified as correct by or under the authority of the court by which the grant was made;

(b) a copy of that grant and of the will, if any;

(c) a certificate as to payment of probate duty under the hand of the proper authority for the purposes of section 3(a) of the Act;

(d) in the case of a grant of letters of administration, a bond for the purposes of section 3(b) of the Act, in the Form A in the Schedule to these Rules; and

(e) if the applicant is acting under a power of attorney, the instrument creating the power and, if the applicant requires the instrument to be returned with the grant, a copy of the instrument. Application for resealing in Uganda is as simple as lodging with the chief registrar of the High Court the pertinent documents as listed in Rule 3 above but the registrar might require that the application be accompanied by an oath and require that the notice of the intention be advertised in a newspaper or whatever mode the registrar sees fit. (Rule 4 of the Probates(Resealing) rules. Advertisement, in my opinion serves so many purposes for example it might inform the creditors of the estate in question, who are resident in Uganda, of the impending application for resealing so that can make an application to the court for adequate security of payment of due debts to Ugandan resident creditors. In my view, it also serves as a notice to those who intend to object to the application for the grant of the application for resealing. An application fee of 45 shillings shall be paid upon making an application under the rules pursuant to Rule 5 of the Probates (Resealing) Rules.

In practice, this figure might be way higher than that stated in the rules because in Uganda, we do not have 45/- and also given the fact that Bank charges have to be paid, this figure is higher. Make sure all probate duty has been paid since the Court will not reseal if the same has not been paid. It is trite law that no document is validly filed until the requisite fees have duly been paid. The oath has a statutory form in the schedule to the rules but it is essentially an affidavit. It must contain information pertaining to the deceased to wit his name, the date on which he died, where the deceased was domiciled at the time of his death, the value of the deceased's estate in Uganda and then the date when the grant was made to the applicant and the name of the court that made the grant. In the event that an advertisement is required by the registrar, a copy of the advertisement notice is annexed thereto to the oath. The Registrar then seals the foreign grants in line with Rule 6 and returns the grant to the Applicant or his Advocate in line with Rule 7 of the Probates(Resealing) Rules. When a foreign grant has been resealed, it operates as if the same had been granted by a 368 court of

Uganda and the personal representative can then deal with the property in Uganda that forms part of the estate of the deceased. They can thereafter collect all the property that forms part of the estate of the deceased, register their names onto the property, bring suits on behalf of the estate, distribute the estate among the beneficiaries and do all other duties that come with the office of the personal representative.



DOCUMENTS FOR DOMESTIC RELATIONS

NOTICE OF APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION

This is to notify the public in case of an application for letters of administration in case the deceased died intestate.

THE REPUBLIC OF UGANDA

IN THECOURT OFHOLDEN AT.....

ADMINISTRATION CAUSE NO.....OF 20.....

**IN THE MATTER OF THE SUCCESSION ACT (CAP 162)/ ADMINISTRATION OF SMALL
ESTATES ACT AS AMENDED)**

**IN THE MATTER OF THE ESTATE OF (DECEASED) FORMERLY A
RESIDENT OF..... (Village/Sub-county/County/District)**

AND

**IN THE MATTER OF AN APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION
BY (Name, description and place of
Residence)**

NOTICE OF APPLICATION

TO WHOM IT MAY CONCERN

TAKE NOTICE that an application for Letters of Administration to the Estate of the late

..... (Deceased’s Description)

This court will proceed to grant the same if no caveat is lodged with this Honourable court of Uganda within (14) fourteen days from the date of publication of this notice, unless cause has been shown to the contrary.

DATED at Kampala this Day of20.....

DEPUTY REGISTRAR

PETITION

Application for letters of administration and these are applied for when the deceased died intestate and are used to manage the estate of the deceased.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT

ADMINISTRATION CAUSE NO: OF

.....

IN THE MATTER OF THE SUCCESSION ACT (CAP 162)

IN THE MATTER OF THE ESTATE OF LATE (DECEASED)

FORMERLY A RESIDENT OF (Village/Sub-

County/County/District)

AND

IN THE MATTER OF AN APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION

BY

(Son/Daughter/Widow/Father/Mother/Sister/Brother) TO THE DECEASED

PETITION

To.....

.....

.....

The humble petition of

(Son/Daughter/Widow/Father/Mother/Sister/Brother) showeth;-

1. That the petitioner is an adult person of sound mind and a citizen of Uganda.
2. That the late (Hereinafter referred to as the deceased) died intestate in (Date) at (Place).
3. That the deceased at the time of his/her death left the following children namely:-
 - a)
 - b)
 - c)
 - d)
4. That the deceased did not leave a will.
5. The deceased by the time of his/her death left the following property:-
 - a)
 - b)
 - c)
6. That the petitioner believes that the approximate value of the property likely to come into her/his hands is estimated at Shs..... (In words).
7. That the deceased at the time of his/her death had a fixed place of abode at (Village/Sub-county/County/District).
8. That the petitioner prays to this Honourable court that pursuant to the provisions of the Succession Act, the Letters of Administration to the Estate of the said deceased be issued to the petitioner.
9. That whatever I have stated herein above is true and correct to the best of my knowledge and belief.

DATED at Kampala this Day of20.....

By the said:

PETITIONER

BEFORE ME:

COMMISSIONER FOR OATHS

Drawn & filed by:

Petitioner

ADMINISTRATION BOND

Commitment to manage the deceased's estate appropriately and make inventories.

THE REPUBLIC OF UGANDA

IN THE COURT OF UGANDA AT

PROBATE/ADMINISTRATION CAUSE NO: OF 20.....

IN THE MATTER OF THE ESTATE OF THE LATE

**(DECEASED) FORMERLY RESIDENT OF (Village/Sub-
county/County/District)**

AND

IN THE MATTER OF APPLICATION FOR LETTERS OF ADMINISTRATION

BY

(Son/Daughter/Widow/Father/Mother/Sister/Brother) TO THE DECEASED

ADMINISTRATION BOND

KNOW all persons that I/we (Relationship to the deceased).
DO HEREBY bind ourselves unto the High Court of Uganda in the sum of
Shs..... (In words), esquire, the magistrate or to any magistrate of the above court
for the time being, for which payment well and truly to be made, I/we bind
myself/ourselves/my/our heirs, executors and administrators firmly by these present.

SIGNED and DATED at Kampala the day of 20.....

.....

.....

I/we, the intended administrator(s) of all and singular the personal effects of (Deceased), will when lawfully called upon in that behalf make a true and perfect inventory thereof, and to truly administer the same according to law, and to make a just and true account of the said administration whenever required by law so to do and to deliver and pay unto such person or persons as shall be entitled.

If it shall hereafter appear that any Will was made by the said deceased, and the executor(s) therein named do apply for Probate, thereof if the said being thereunto required to deliver up the said Letters of Administration, then the obligation to administer the estate shall be void.

SIGNED and DATED at Kampala this day of20.....

By the said:

Petitioner(s)

MAGISTRATE/DEPUTY REGISTRAR



**CAVEAT FORBIDDING THE GRANT OF LETTERS OF ADMINISTRATION
THE REPUBLIC OF UGANDA**

IN THE COURT OF UGANDA AT

ADMINISTRATION CAUSE NO: OF 20.....

IN THE MATTER OF THE ESTATE OF THE LATE

(DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION

**BY (Son/Daughter/Widow/Father/Mother/Sister/brother) TO THE
DECEASED**

CAVEAT

LET NOTHING BE DONE TO THE ESTATE OF THE LATE

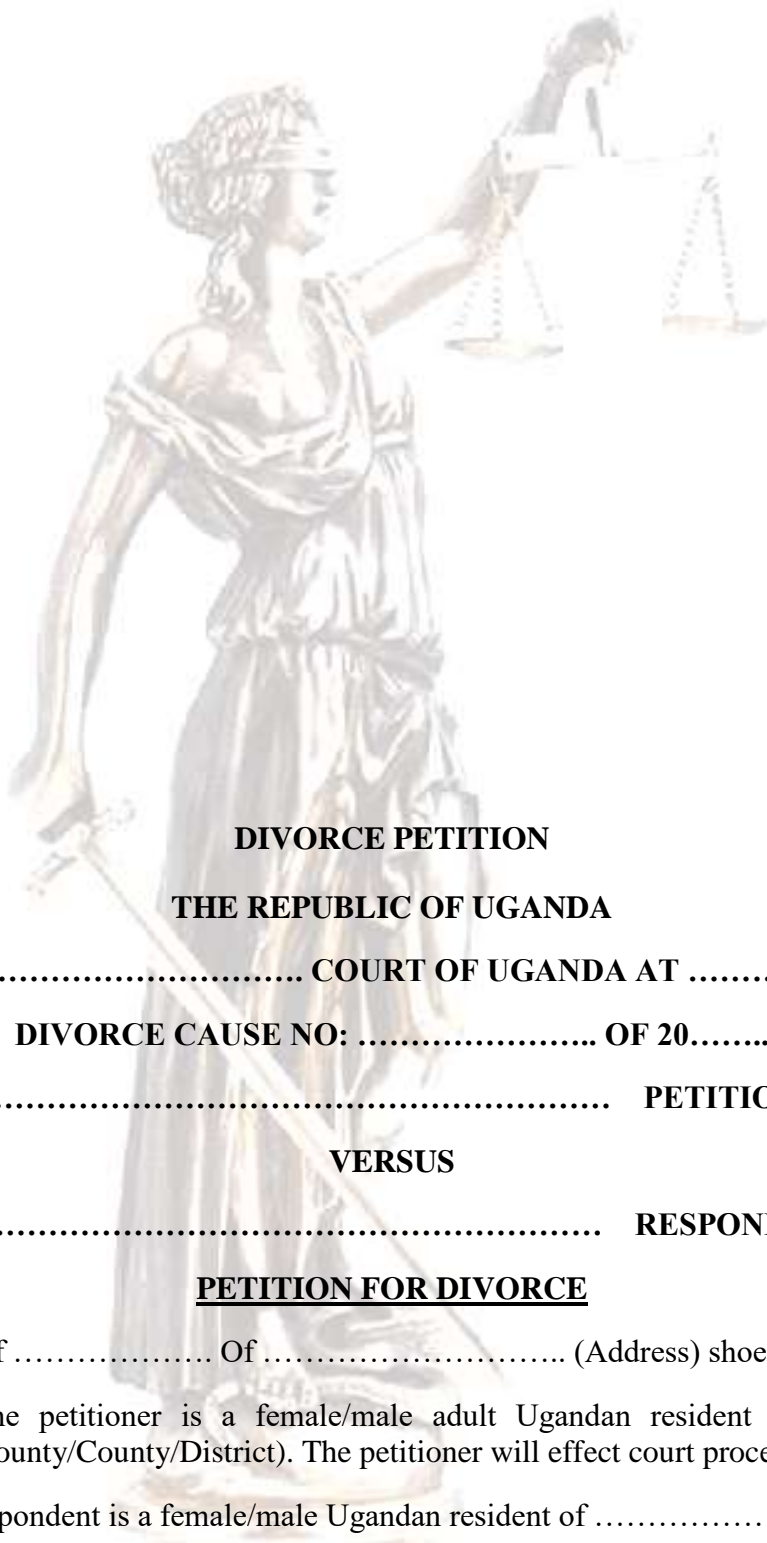
..... (Deceased of Village/Sub-county/County/District) without notice to
..... (Relationship to the deceased)

The grounded which this caveat is lodged are stated in the affidavit of Here to attached.

DATED at Kampala this Day of 20.....

CAVEATOR

MAGISTRATE/DEPUTY REGISTRAR



DIVORCE PETITION

THE REPUBLIC OF UGANDA

IN THE COURT OF UGANDA AT

DIVORCE CAUSE NO: OF 20.....

..... PETITIONER

VERSUS

..... RESPONDENT

PETITION FOR DIVORCE

The humble petition of Of (Address) shoes:

1. That the petitioner is a female/male adult Ugandan resident of (Village/Sub-county/County/District). The petitioner will effect court process personally.

2. The respondent is a female/male Ugandan resident of

(Village/Sub-county/County/District). The petitioner undertakes to effect service to her/him.

3. That the petitioner was married to the respondent on in a church ceremony at Church and/or customary marriage under

..... Custom at
(Village/Subcounty/County/District).

4. The petitioner shall aver that since the solemnization of the marriage, the respondent has deserted him/her or committed adultery or been cruel (state acts of cruelty).

5. That all steps by relatives were done to settle differences have failed.

6. The petitioner shall aver that due to irrevocable differences, the marriage to the respondent has irretrievably broken down.

7. That in (date), the respondent started being cruel to the petitioner by denying him/her conjugal rights claiming that the blessed virgin had told him/her not to indulge with petitioner as result the petitioner suffered mentally and psychologically. (**outline all the other particulars of cruelty**)

8. The cause of action arose in which is in this court's jurisdiction.

9. That this petition is not prosecuted in collusion or connivance with the respondent or with any other person connected in any way with the proceedings nor is your petitioner guilty of condemnation.

10. The petitioner humbly prays this Honourable Court for orders that:

- a. The marriage to the respondent be dissolved by this court and a decree nisi be granted.
- b. Custody orders be made for the children.(give the names)
- c. Orders on disposal of matrimonial property.
- d. Any other remedy that this Honourable Court may deem fit.

DATED at this Day of 20.....

PETITIONER

VERIFICATION

I, certify that the statements above are true to the best of my knowledge and belief.

PETITIONER

(Attach list of witnesses and list of documents to support the petition)



SUMMONS TO ANSWER PETITION

THE REPUBLIC OF UGANDA

IN THE COURT OF UGANDA AT

DIVORCE CAUSE NO: OF 20.....

..... PETITIONER

VERSUS

..... RESPONDENT

SUMMONS TO ANSWER PETITION

To:

.....

.....

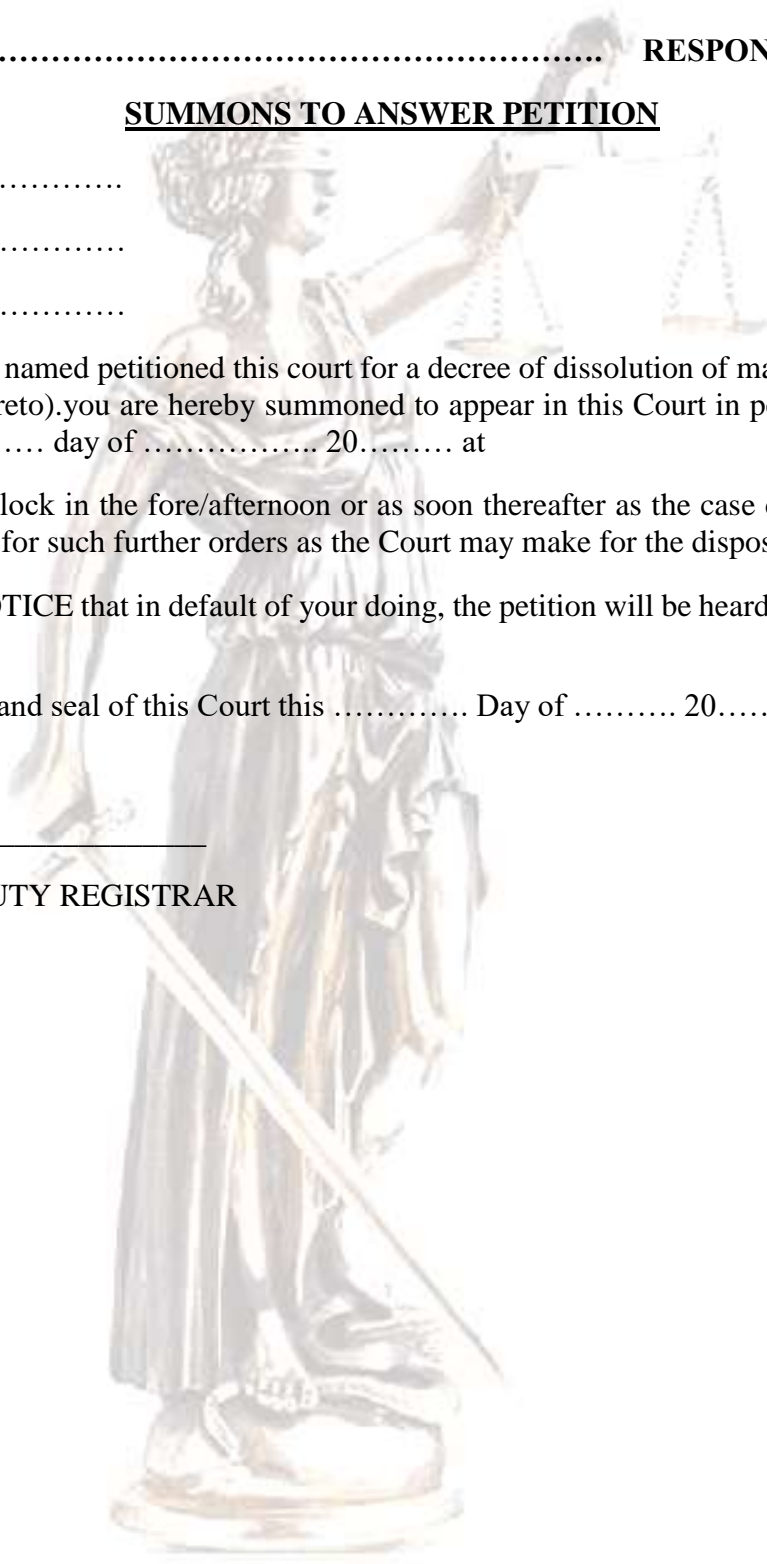
WHEREAS the above named petitioned this court for a decree of dissolution of marriage (a copy of which petition is attached hereto).you are hereby summoned to appear in this Court in person or by an agent on the day of 20..... at

..... O'clock in the fore/afternoon or as soon thereafter as the case can be heard, to answer the above petition and for such further orders as the Court may make for the disposal of the suit.

FURTHER TAKE NOTICE that in default of your doing, the petition will be heard and determined in your absence.

Given under my hand and seal of this Court this Day of 20.....

MAGISTRATE/DEPUTY REGISTRAR





ANSWER TO THE PETITION

THE REPUBLIC OF UGANDA

IN THE COURT OF UGANDA AT.....

DIVORCE PETITION NO: OF 20.....

..... **PETITIONER**

VERSUS

..... **RESPONDENT**

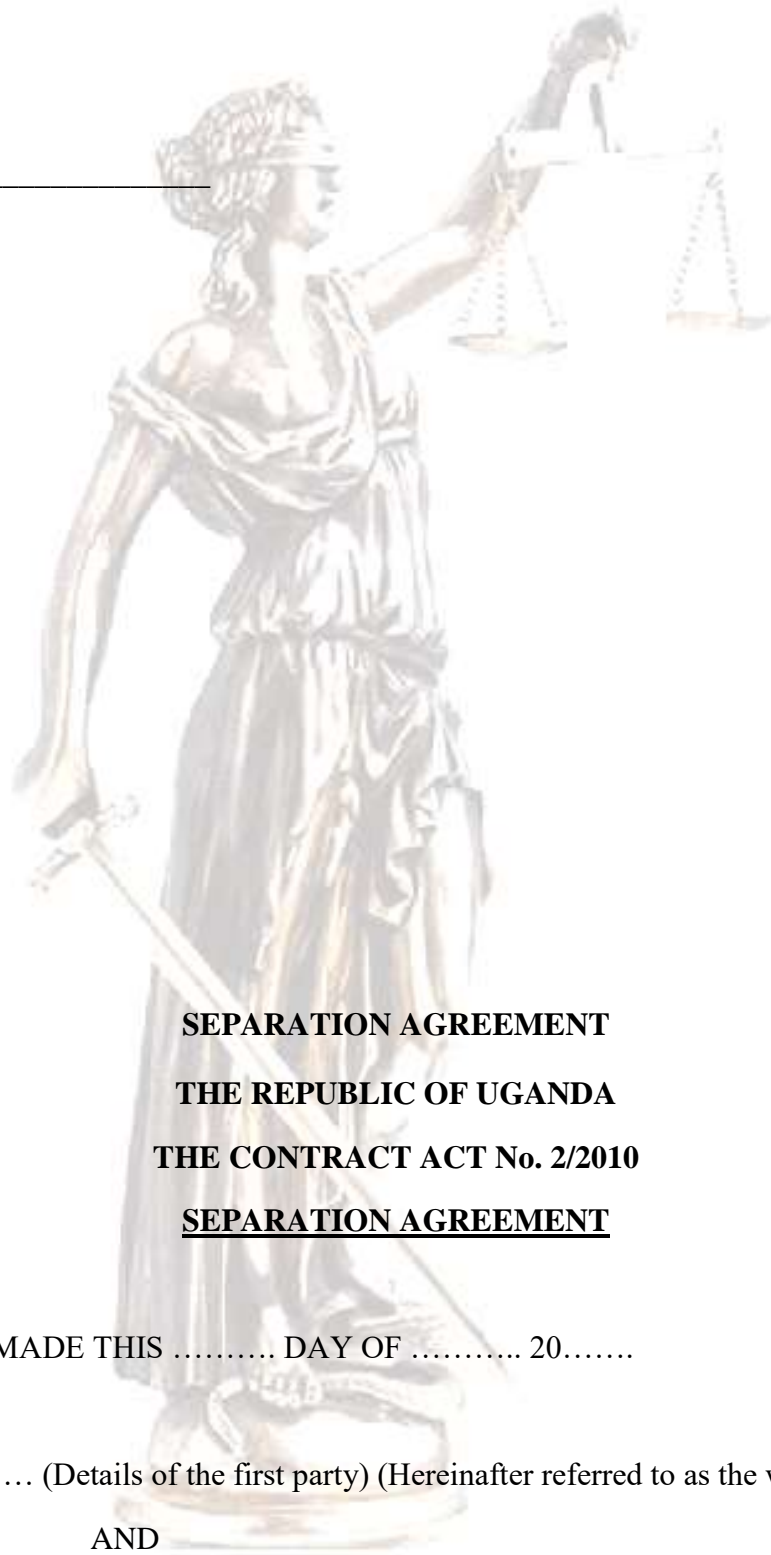
ANSWER TO PETITION AND CROSS-PETITION

1. The respondent is an adult female/male of (Address) and resident of (Village/Sub-county/county/District).
2. The respondent admits that a valid marriage subsisted with the petitioner and confirms that there are Children in the marriage.
3. The respondent denies acts of cruelty or desertion or adultery and the petitioner shall be put to strict proof.
4. The respondent cross-petitions for divorce/judicial separation or nullity. (select the relevant one)
5. (state grounds or reasons for the cross petition)
6. Your respondent submits to the jurisdiction of this court.
7. The respondent prays for:
 - a) Decree nisi
 - b) Judicial separation
 - c) Custody and maintenance order

- d) Division of matrimonial property
- e) Any other relief Court deems fit.

SIGNED

RESPONDENT



SEPARATION AGREEMENT
THE REPUBLIC OF UGANDA
THE CONTRACT ACT No. 2/2010
SEPARATION AGREEMENT

THIS AGREEMENT MADE THIS DAY OF 20.....

BETWEEN

..... (Details of the first party) (Hereinafter referred to as the wife)

AND

..... (Details of the second party) (Hereinafter referred to as the husband)

AND WHEREAS the parties were blessed with Children (outline the names).

(Hereinafter referred to as the children)

AND WHEREAS the relationship between the parties has been broken down the reasons are not mentioned.

NOW THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. Non molestation

The parties mutually agree that there shall be no molestation of one of the other during the continuance of the agreement and in case of breach.

2. Maintenance of wife and children

- a) The husband shall provide for the maintenance of the children and the wife.
- b) The maintenance of the wife shall continue subsisting on condition that she remains chaste.

3. Live a part

The parties agree that they shall continue to live separately in consideration for having each other's consortium.

4. Dum casta clause

None of the parties to the agreement shall be at liberty to have sex outside marriage or with another person during the subsistence of this agreement.

5. Agreement relating to property

- a) Each party shall be entitled to take property which constitutes necessary wearing apparel.
- b) Other property shall be shared equally by the parties.

6. Duration

This agreement shall unless otherwise agreed upon by the parties run for Years from the date of execution, save herein, this agreement can be terminated by mutual consent.

7. Custody

The parties agree that the custody of the children shall go to the wife and the husband shall have access to them provided that he visits at reasonable time.

8. Amendment

The agreement may be amended anytime upon the agreement by the parties hereto and amendments shall be reflected in writing and duly signed by the parties and witnessed.

IN WITNESS WHEREOF, the parties have set their hands hereto on the date and year first mentioned above;

Signed by the said:

WIFE

In the presence of

Signed by the said

HUSBAND

In the presence of



APPLICATION FOR CUSTODY

THE REPUBLIC OF UGANDA

IN THE FAMILY AND CHILDREN COURT AT.....

FAMILY CAUSE NO: OF 20.....

IN THE MATTER OF (Name of the child and age)

AND
IN THE MATTER OF AN APPLICATION FOR CUSTODY
APPLICATION FOR CUSTODY

Under Rule 19(3) of the children (family and children court Rules) S.I 59-2

I, (Name, address and relationship to the child) hereby apply for a custody order against (Person with the child and relationship to the child) on the following grounds:

1. That I am (relationship to the child)
2. That I am a fit and proper person to take care of the child.
3. That the respondent (give reasons as to why the respondent is not fit to stay with the children)

DATED at Kampala this Day of 201.....

APPLICANT

(Attach affidavit in support of the application)

APPLICATION FOR GUARDIANSHIP
THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA (FAMILY DIVISION)
MISCELLANEOUS CAUSE NO: OF 20.....

IN THE MATTER OF (Name of the child) (An infant)

AND

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY

NOTICE OF MOTION

(Under Article 139(1), 34(1) and (2) of the Constitution, Ss. 14, 33 and 39 Judicature Act, Cap.

13, Section 98 CPA, Cap. 7, Ss. 3,4,5,6 Children’s Act, Cap. 59 and O. 52 Rr 1 and 3 CPR S. I 71-1)

TAKE NOTE that this Honourable Court will be moved on the Day of
20..... at o’clock in the fore/afternoon or soon thereafter as counsel for the applicant
shall be heard on an application for orders that:

- a) This Honourable Court be pleased to appoint (Name of the applicant) as guardian of (Name of the child).
- b) The applicant be granted custody of the said infant.
- c) That the costs be met by the applicant.

TAKE FURTHER NOTICE that this application is supported by the affidavit of the applicant, which contains the grounds of the application but briefly are;

1. (Outline the grounds briefly)

DATED at Kampala this Day of 20.....

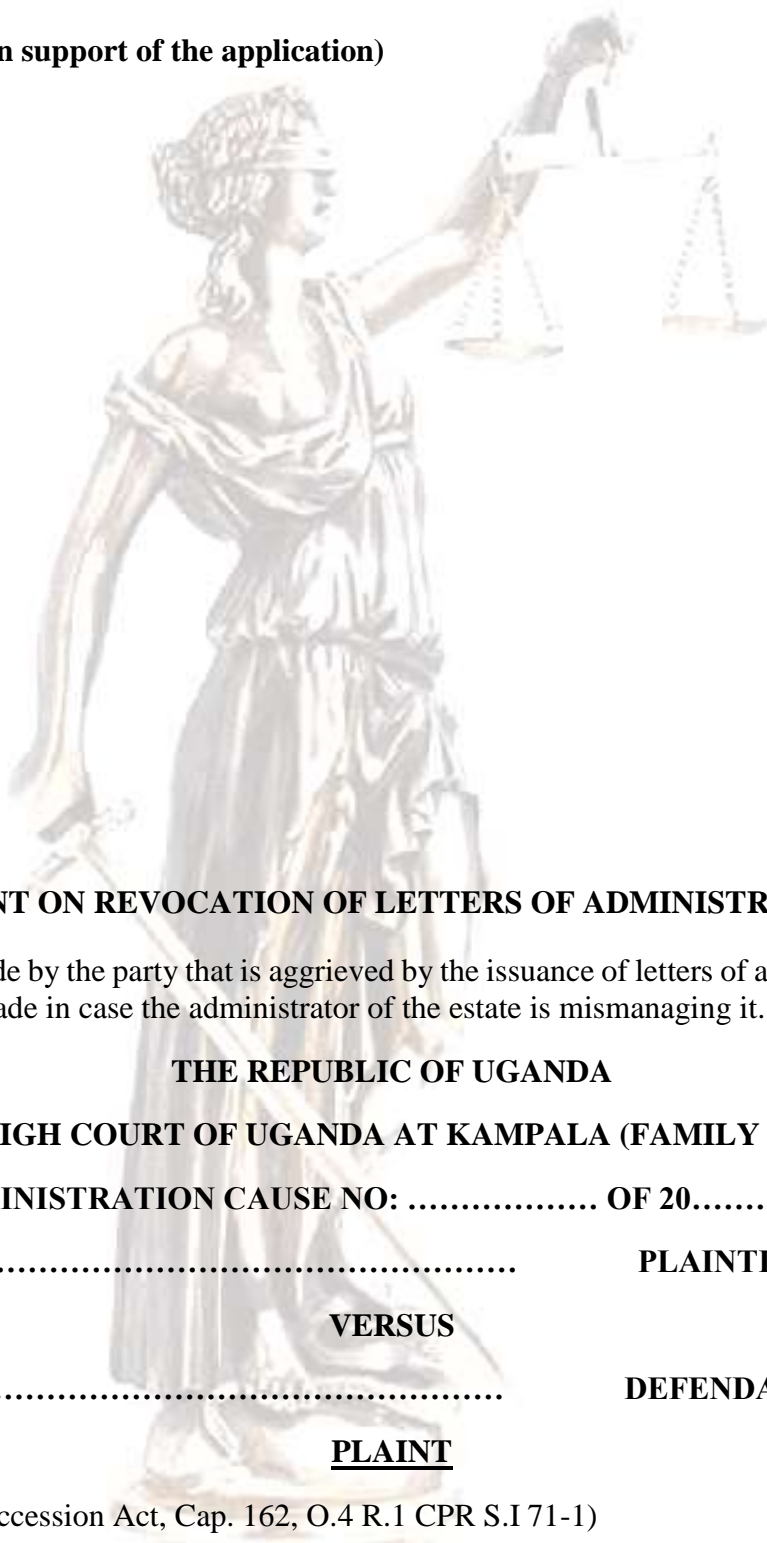
COUNSEL FOR THE APPLICANT

Given under my hand and seal of this Honourable Court

This Day of 20.....

REGISTRAR

(Attach an affidavit in support of the application)



PLAINT ON REVOCATION OF LETTERS OF ADMINISTRATION

This application is made by the party that is aggrieved by the issuance of letters of administration to another party or can also be made in case the administrator of the estate is mismanaging it.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (FAMILY DIVISION)

ADMINISTRATION CAUSE NO: OF 20.....

..... **PLAINTIFF**

VERSUS

..... **DEFENDANT**

PLAINT

(Under S. 234, 265 Succession Act, Cap. 162, O.4 R.1 CPR S.I 71-1)

1. The plaintiff is a female/male adult Ugandan of sound mind and a beneficiary to the estate of the late (Deceased) whose address for the purposes of this suit is
2. The defendant is a female/male of adult Ugandan of sound mind and holds letters of administration to the estate of the late (Deceased) and the plaintiff's advocates undertake to effect service of the court process upon her.
3. The plaintiff's claim against the defendant is for;
 - a) An order revoking the grant of letters of administration to the defendant.
 - b) A declaration that the plaintiff be granted the said letters of administration.
 - c) A permanent injunction restraining the defendant from any other dealings in the estate.
 - d) An order that the defendant surrenders the letters of administration and files a comprehensive inventory.
 - e) Costs
4. The facts constituting the plaintiff's cause of action arose as follows;
 - a) Deceased passed away on (Date) leaving (Beneficiaries).
 - b) Date of obtaining letters of administration by
 - c) The defendant has failed to properly discharge her duties as an administrator by: (i) Give details of the management
5. The plaintiff shall aver and contend that the acts of the defendant tantamount to mismanagement of the deceased's estate.
6. Notice of intention to sue was duly served on the plaintiff who ignored the same.
7. The Cause of action arose at within the jurisdiction of this Honourable Court.

WHEREFORE; the plaintiff prays that judgment be entered against the defendant for:

- a) An order revoking the defendant's Letter of Administration.
- b) An order that Letters of administration be granted to the plaintiff
- c) A permanent injunction restraining the defendant from further dealings with the estate of the deceased.
- d) An order that the defendant surrender the Letters of Administration granted to her and files a comprehensive, true and correct inventory.
- e) Costs

DATED at Kampala this Day of20.....

_____ COUNSEL FOR THE PLAINTIFF (**Attach summary of evidence**)

APPLICATION FOR APPOINTING OF A MANAGER OF THE ESTATE OF A PERSON OF UNSOUND MIND

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS CAUSE NO: OF 20.....

IN THE MATTER OF, A PERSON OF UNSOUND MIND

AND

IN THE MATTER OF AN APPLICATION UNDER SECTION 2 OF THE ADMINISTRATION OF ESTATES OF PERSONS OF UNSOUND MIND ACT FOR THE APPOINTMENT OF A MANAGER

CHAMBER SUMMONS

(Rule 3(1), (8) of S.I 155-1)

LET ALL PARTIES concerned attend the learned judge in chambers on the Day of 2013 at O'clock in the fore/afternoon or soon thereafter as counsel for the applicant can be heard on an application for orders that:

a) The applicant be appointed manager of the estate of of unsound mind.

TAKE NOTICE that this application is supported by the affidavit of Which shall be read and relied upon at the hearing and contains the grounds upon which this application is based but briefly are;

a) (Outline the grounds)

TAKE NOTICE that this summons is taken out by

Given under my hand and seal of this Honourable Court this Day of20.....

REGISTRAR

(Attach affidavit in support of the chamber summons)

MANAGEMENT ORDER

This is an application made to manage an estate of a missing person.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

IN THE MATTER OF THE ESTATE OF (Missing person)

AND

IN THE MATTER OF AN APPLICATION FOR GRANT OF MANAGEMENT ORDER BY

.....

PETITION ON MANAGEMENT ORDER

1. I, (Name and address) do hereby apply for grant of an order of management of the estate of (Missing person).
2. (Name) went missing on (date)
3. That I reported the matter to the police on (Date) and run a notice in the monitor newspaper from to to no avail.
4. On (Date) called a family meeting and still, no one knew his whereabouts.
5. (missing person) left behind a wife/husband and children
6. He/she left behind the following properties
 - i) (outline the properties)
7. At the time of disappearance (Missing person) was a resident of (Village/Sub-county/County/District).
8. This application is made by (Name and relationship to the missing person) and I believe the value of the estate is around (State amount).

DATED at Kampala this Day of 20.....

PETITIONER

VERIFICATION

I, (Applicant) solemnly and sincerely declare that whatever is stated in this application is true to the best of my knowledge.

PETITIONER

WITNESS

BEFORE ME

COMMISSIONER FOR OATHS



PETITION FOR NULLITY OF MARRIAGE

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE’S COURT OF AT

MATRIMONIAL CAUSE NO: OF 20.....

.....

PETITIONER

VERSUS

RESPONDENT

PETITION FOR NULLITY

(Under S. 11, 12(1) (d) Divorce Act, Cap. 249)

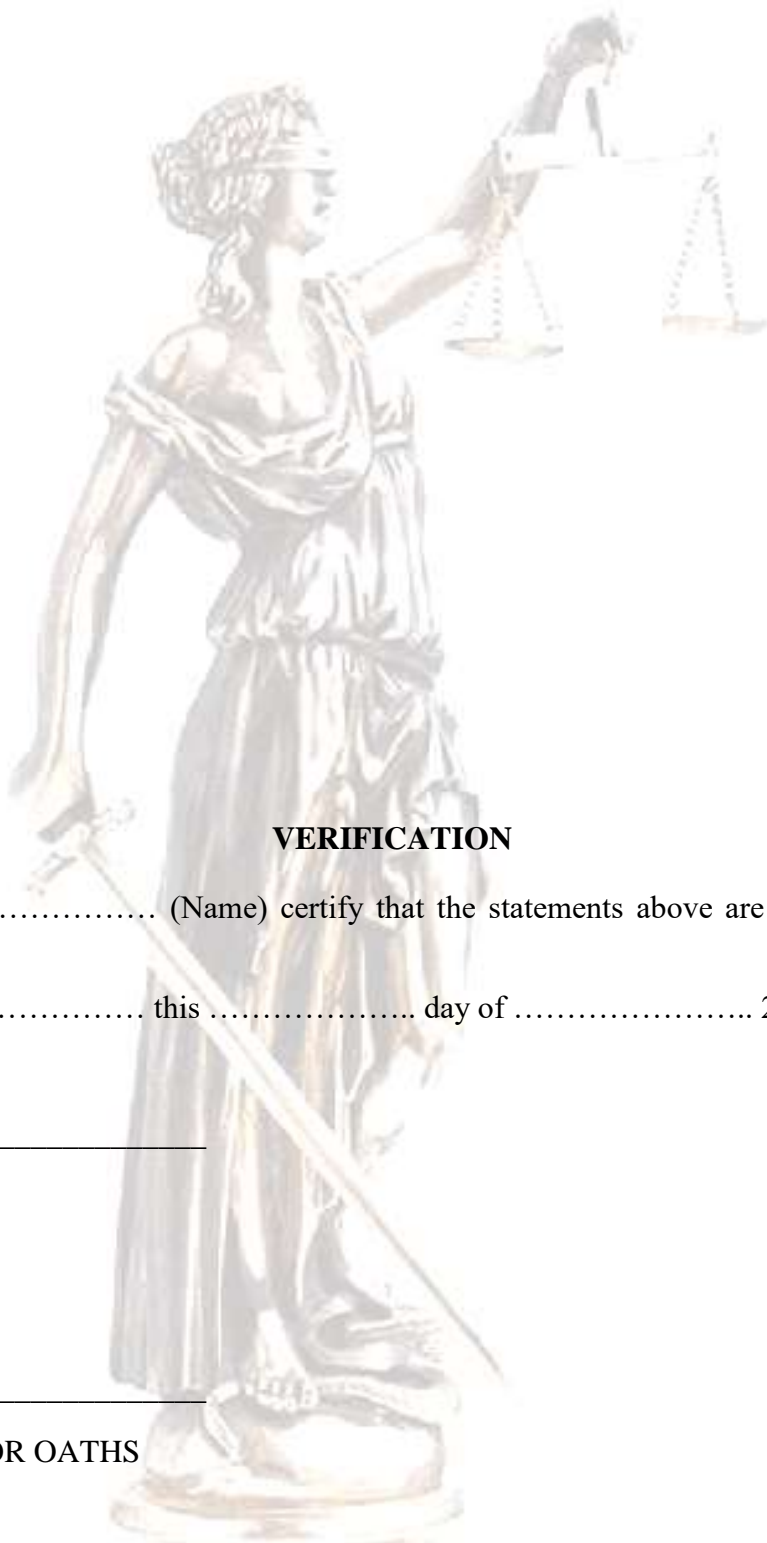
1. The petitioner is a male/female of sound mind residing at
(Village/Sub-county/County/District) and the petitioner’s address for purposes of this petition is
2. The respondent is a female/male Uganda believed to be of sound mind and the petitioner’s advocates undertake to effect court process on him/her.
3. The petitioner and the respondent are both Africans domiciled in Uganda.
4. That in (Date) went through a valid customary/civil/church marriage ceremony with In accordance with Customs (if it was a customary marriage).
5. That during the subsistence of the said marriage, the respondent entered into a marriage contract with the petitioner in (Date) under the marriage Act.
6. That the petitioner therefore, did not have capacity to enter into the purported monogamous marriage with the respondent in (Date).
7. That this cause of action arose in with the jurisdiction of this honourable court.
8. WHEREOF the petitioner prays for orders that:
 - a) The purported marriage of the respondent to the petitioner was a nullity.
 - b) The respondent is therefore not entitled to a share of the petitioner’s property.
 - c) That the petitioner is granted custody of their children.

DATED at Kampala thisday of 20.....

PETITIONER

BEFORE ME:

COMMISSIONER FOR OATHS



VERIFICATION

I, (Name) certify that the statements above are true to the best of my knowledge and belief.

DATED at this day of 20.....

PETITIONER

BEFORE ME:

COMMISSIONER FOR OATHS

LIST OF DOCUMENTS:

1. Customary marriage registration certificate

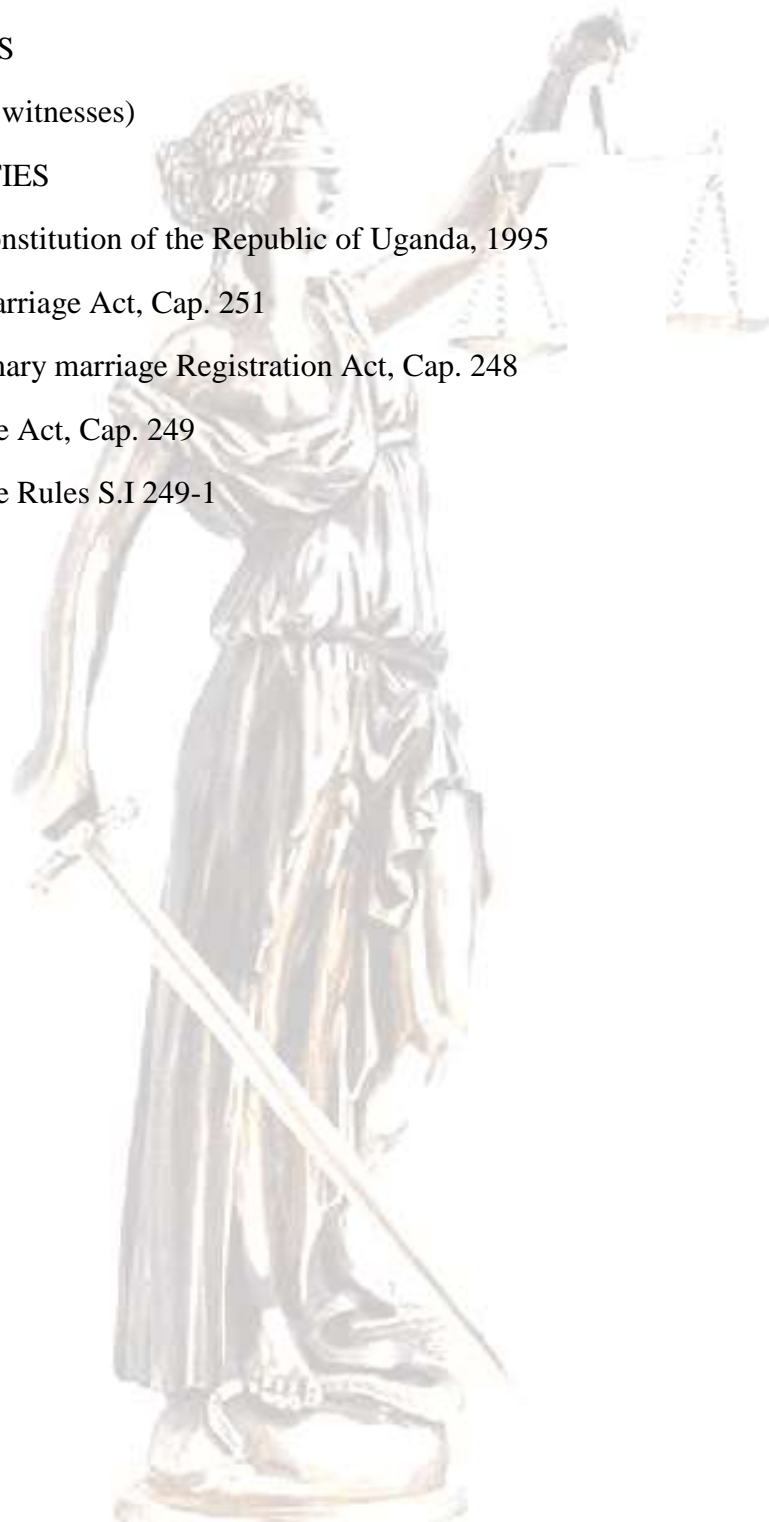
2. Consent letter of the parents to the wife
3. Birth certificates of the issues

LIST OF WITNESSES

1. (list all the relevant witnesses)

LIST OF AUTHORITIES

1. The Constitution of the Republic of Uganda, 1995
2. The Marriage Act, Cap. 251
3. Customary marriage Registration Act, Cap. 248
4. Divorce Act, Cap. 249
5. Divorce Rules S.I 249-1



PETITION FOR JUDICIAL SEPARATION

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE'S COURT OF AT

MATRIMONIAL CAUSE NO: OF 20.....

..... PETITIONER

VERSUS

..... RESPONDENT

PETITION FOR JUDICIAL SEPARATION

(Under Section 14, 30, 31, Divorce Act)

THE HUMBLE PETITION OF (Name) SHOWETH THAT:

1. The petitioner is an adult female/male Ugandan of sound mind and resident of (Village/Sub-county/County/District), whose address for purposes of this petition shall be
2. The respondent is an adult male/female Ugandan believed to be of sound mind and the petitioner undertakes to effect service of court process on him/her.
3. The petitioner was in (Year) lawfully married to the respondent at and the marriage was solemnised under the provisions of the marriage Act in force. (The marriage certificate should be attached).
4. That these are the issues to the marriage:
 - a) (give the names of the children)
5. That since the solemnisation of the said marriage:
 - a) The respondent has changed his faith from Christianity to Islam.
 - b) (outline the other reasons)
6. That since the celebration of the said marriage, that the respondent has treated the petitioner with cruelty forcing her to leave their home. **(give particulars of cruelty)**
7. That no collusion, connivance, or condonation exists between the petitioner and the respondent.
8. That both parties are Africans domiciled in Uganda and the cause of action arose in (Place) within the jurisdiction of this honourable court.

WHEREOF, the petitioner prays for a decree:

- a) That the petitioner shall be judicially separated from the respondent.
- b) That the petitioner shall be granted custody of the issue(s) of the marriage.
- c) That the respondent shall provide maintenance for the petitioner.

DATED at this..... day of20.....

PETITIONER

VERIFICATION

I, (Name) certify that the statements herein are true to the best of my knowledge and belief.

PETITIONER

BEFORE ME:

COMMISSIONER FOR OATHS



SUMMARY OF EVIDENCE

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE’S COURT OF AT

.....

MATRIMONIAL CAUSE NO: OF 20.....

..... **PETITIONER**

VERSUS

.....

RESPONDENT

SUMMARY OF EVIDENCE

The petitioner shall adduce evidence to show that the petitioner is legally married to the respondent and as a result of the said marriage, they have three children. That on various occasions, the respondent has committed adultery and treated the petitioner with cruelty, thus, forcing her to leave their matrimonial home.

LIST OF WITNESSES

1. (outline all the relevant witnesses)

LIST OF DOCUMENTS

1. The Constitution of the Republic of Uganda, 1995
2. The marriage Act, Cap. 251
3. Divorce Act, 249
4. (any other relevant authority)

DATED this day of 20.....

PETITIONER

**PETITION FOR ADOPTION BY A NON-UGANDAN
THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT
ADOPTION CAUSE NO: OF 20.....
IN THE MATTER OF THE CHILDREN ACT, CAP. 59**

AND

IN THE MATTER OF (INFANCT)

THE PETITION OF (Name and address of applicant)

PETITION FOR ADOPTION

1. The petitioner is desirous of adopting the said (Infant) under the provisions of the children's Act, Cap. 59.
2. The petitioner is a citizen of (Country) who first came to Uganda on (Date) and resided at (Village/Subcounty/County/District), aged (Age).
3. The petitioner is married to (Name) the mother of the said child.
4. The petitioner is by profession. (Attach birth certificate)
5. The said child is:
 - a) Female/male
 - b) A child born to (Name of parent(s) and attach birth certificate).
 - c) Now in actual custody of the petitioner.
 - d) Under the guardianship of the petitioner
6. The said child has not been the subject of any adoption order or application or petition for adoption order.
7. The petitioner has not received or agreed to receive any payment or reward or agreed to make or give consideration of the adoption of the said child (name of the infant).
8. The petitioner has no criminal record in Uganda or any other country.
9. The petitioner has attached a recommendation showing his suitability to adopt the said child from:
 - a) (outline the recommenders and attach recommendations)
10. The petitioner affirms that the adoption order made by this court shall be recognised by the authorities in (Country).
11. It is proposed that court makes no orders as to costs.
12. The petitioner prays:
 - a) That an order for adoption of the said child be made.
 - b) Such other order be made as court deems fit.

DATED at Kampala this day of 20.....

PETITIONER

(Attach a verification and summary of evidence, adjust the application accordingly).



PETITION FOR PROBATE

This is an application made to administer the estate of the deceased who died testate (left a will).

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT PROBATE AND
ADMINISTRATIVE CAUSE NO: OF 20.....**

IN THE MATTER OF AN APPLICATION FOR PROBATE BY

(Executor) OF THE ESTATE OF LATE (DECEASED)

PETITION FOR PROBATE

1. I, (Name and address of the petitioner) hereby apply to this honourable court for the grant of probate of the will of the late (Deceased) who died on (Date) at (Place).
2. That the writing annexed to this application is the last will and testament of the deceased executed by him on the Day of 20.....
3. That the deceased was married to (Name and place).
4. That the deceased is survived by the following children:
 - a) (outline the children by name)
5. The deceased left the following properties:
 - a) (outline the properties)
6. The deceased had the following liabilities:
 - a) (outline the liabilities)
7. That at the time of his death, the said (Deceased) had a fixed place of abode at Within the jurisdiction of this court.
8. This application is made by (State the applicant and his relationship to the deceased) named as executor in the will.
9. That I do hereby solemnly and sincerely declare that what is stated herein is true to the best of my knowledge and belief and I make this solemn declaration consciously believing the same to be true by virtue of the provision of the statutory declaration Act, 2000.

Declared at Kampala by the said this day of20.....

PETITIONER

BEFORE ME:

COMMISSIONER FOR OATHS

VERIFICATION

I, (Name) the petitioner in the above petition declares that what is stated in it is true to the best of my information and belief.

PETITIONER

BEFORE ME

COMMISSIONER FOR OATHS



CONSENT TO ADOPTION

This is consent given by a child who is 14 years and above in regard to this/her adoption.

THE REPUBLIC OF REPUBLIC

IN THE HIGH COURT OF UGANDA AT

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF A PETITION FOR ADOPTION OF

(CHILD)

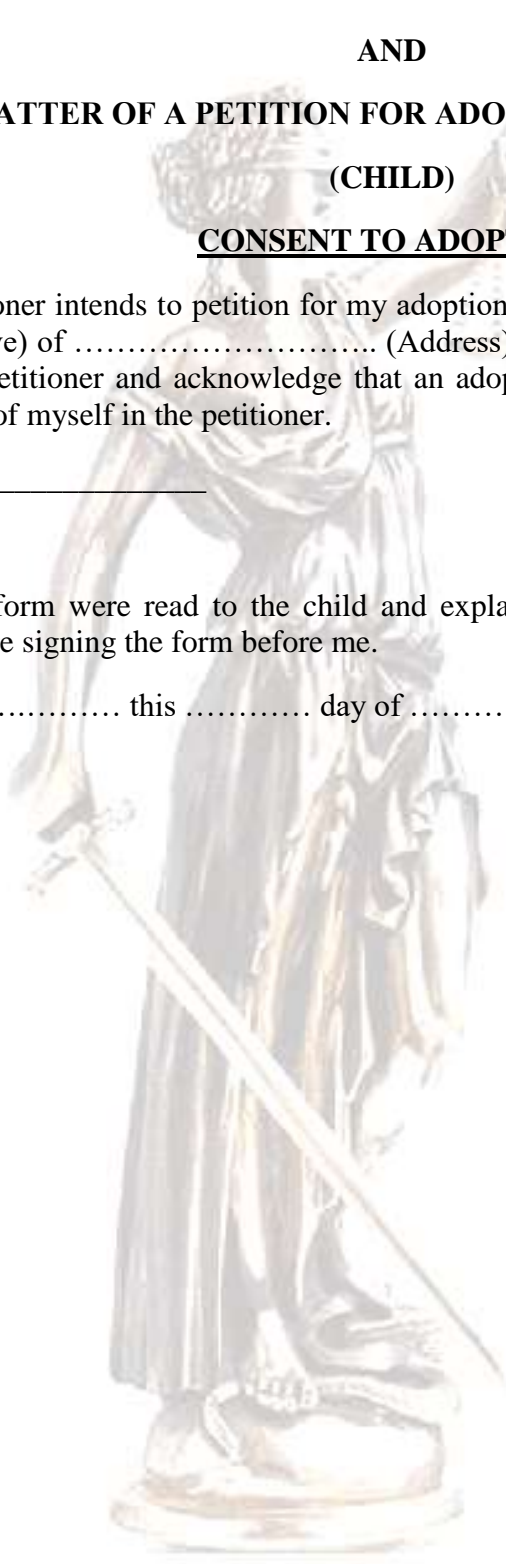
CONSENT TO ADOPTION

WHEREAS the petitioner intends to petition for my adoption, I (Name of the child, should be 14 and above) of (Address) being the subject of the petition consent to my adoption by the petitioner and acknowledge that an adoption order will vest all parental rights and obligations in respect of myself in the petitioner.

CHILD

The contents of this form were read to the child and explained to her/him and I established that she understood them before signing the form before me.

DATED at this day of 20.....



CAVEAT FORBIDDING THE GRANT OF PROBATE

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HIGH COURT MISCELLANEOUS CAUSE NO: OF 20.....

IN THE MATTER OF THE ESTATE OF LATE (Deceased)

OF (Village/Sub-county/County/District)

AND

IN THE MATTER OF APPLICATION FOR GRANT OF PROBATE OF THE WILL OF

..... (DECEASED) BY (Name and relation

to the deceased)

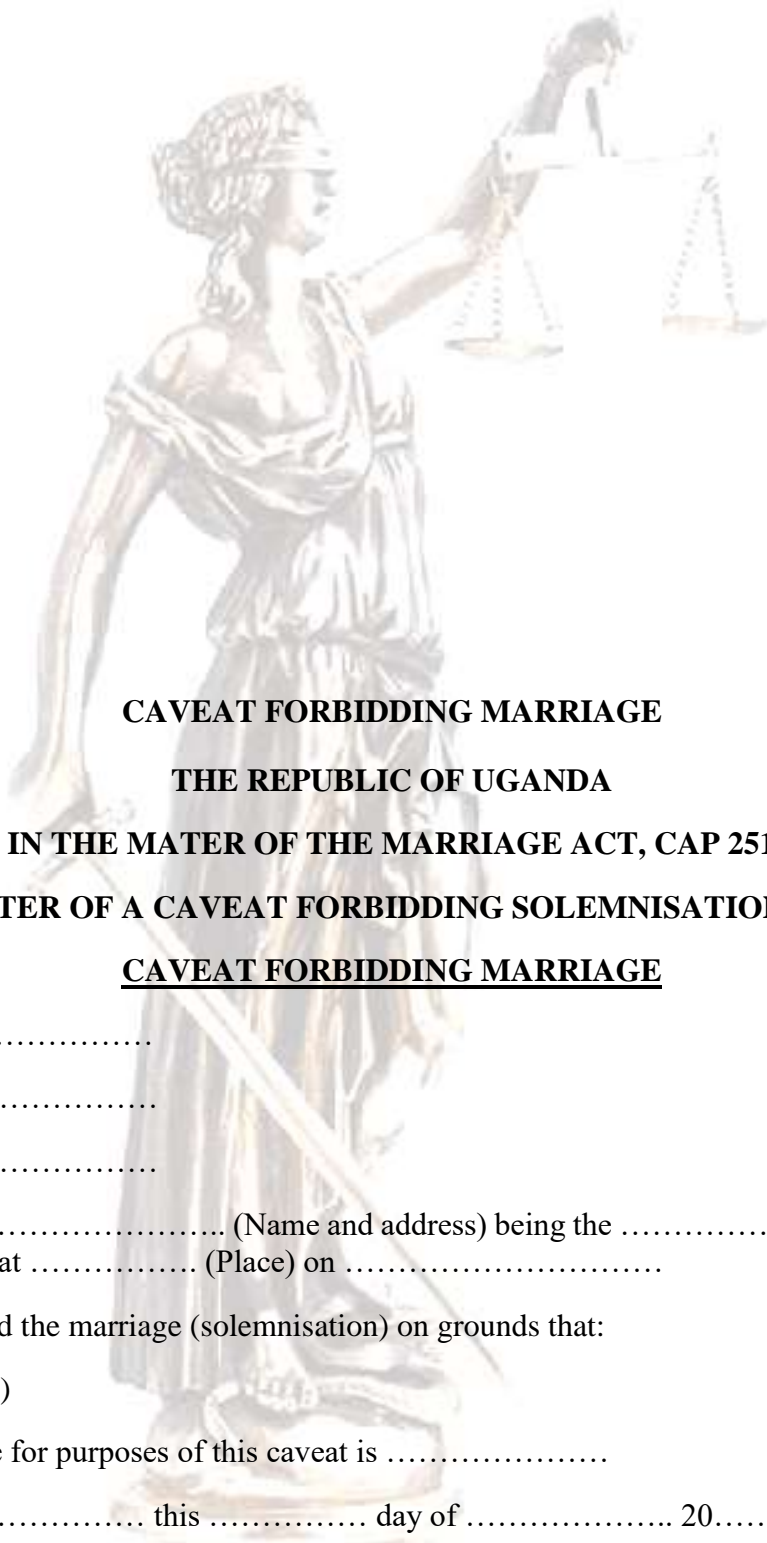
CAVEAT

LET NO GRANT be sealed in the estate of the late (Deceased's name and former residence), who died testate on the Day of 20..... without notice to (Name and address).

DATED at this day of 20.....

CAVEATOR

(Attach affidavit to support the caveat)



CAVEAT FORBIDDING MARRIAGE

THE REPUBLIC OF UGANDA

IN THE MATER OF THE MARRIAGE ACT, CAP 251

AND IN THE MATTER OF A CAVEAT FORBIDDING SOLEMNISATION OF A MARRIAGE

CAVEAT FORBIDDING MARRIAGE

TO:

.....

.....

Take notice THAT I, (Name and address) being the to who intends to get married at (Place) on

(Date) do hereby forbid the marriage (solemnisation) on grounds that:

1. (outline the grounds)

My address for service for purposes of this caveat is

DATED at this day of 20.....

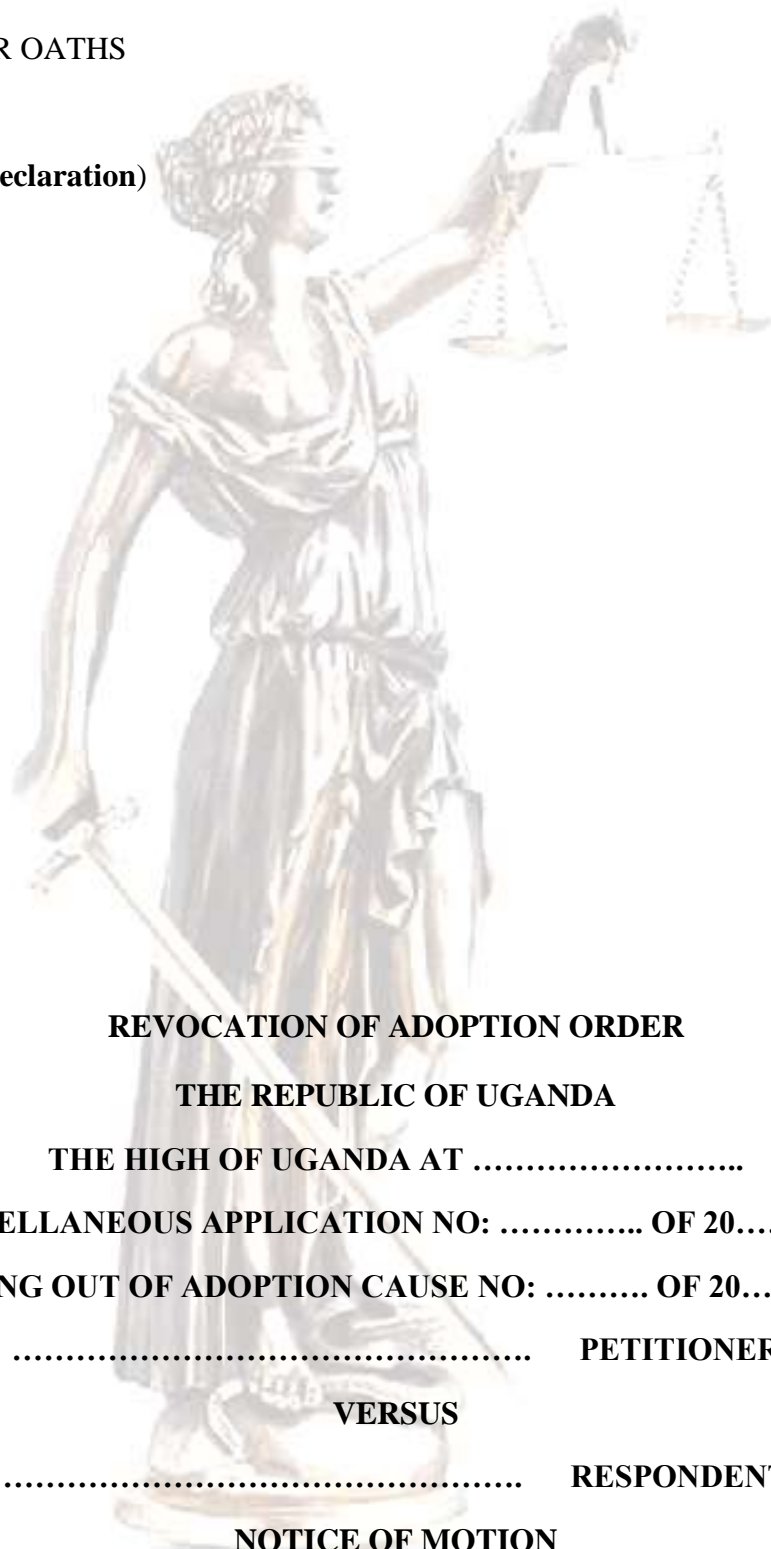
SIGNED by the said _____

CAVEATOR

BEFORE ME

COMMISSIONER FOR OATHS

(Attach a statutory declaration)



REVOCATION OF ADOPTION ORDER

THE REPUBLIC OF UGANDA

THE HIGH OF UGANDA AT

MISCELLANEOUS APPLICATION NO: OF 20.....

ARISING OUT OF ADOPTION CAUSE NO: OF 20.....

..... PETITIONER

VERSUS

..... RESPONDENT

NOTICE OF MOTION

(Under S. 14 & 33 Judicature Act, S. 98 C.P.A, O. 52 r 1 & 3 C.P.R, S.I 71-1, Article 139(1) Constitution of the Republic of Uganda)

TAKE NOTICE, that this honourable court will be moved this day of 20..... at O'clock in the fore/afternoon or soon thereafter as counsel for the applicant shall be handed for orders that:

- a) The adoption order granted to the respondent in adoption cause no..... of 20..... be revoked.
- b) The costs of the suit be provided for.

TAKE FURTHER NOTICE that this applicable is supported by an affidavit of the applicant herein but briefly states as follows:

- a) The applicant is the natural father/mother of the infant

(Name) the subject of adoption cause no:..... Of 20.....

- b) That an adoption order in the aforementioned cause was obtained without the applicant's consent as required by law.
- c) It is just and equitable that the said order be revoked.
- d) (Add any other relevant information)

DATED AT this day ofof 20.....

APPLICANT

GIVEN under my hand and seal of this Honourable Court this day of ...20

_____ REGISTRAR

AFFIDAVIT IN SUPPORT

THE REPUBLIC OF UGANDA

THE HIGH OF UGANDA AT

MISCELLANEOUS APPLICATION NO: OF 20.....

ARISING OUT OF ADOPTION CAUSE NO: OF 20.....

..... **PETITIONER**

VERSUS

..... **RESPONDENT**

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, (Name and address) hereby swear/affirm and state on oath as follows:

1. That I am a male/female adult Ugandan of sound mind and the applicant in this application.
2. That I am the natural father/mothers of (Child) in respect of whom an adoption order was granted to the respondents vide Adoption Cause no: of 20.....
3. That the said adoption order was granted without my consent as required by law.
4. That the respondents are fully aware of my address in but did not bother to contact me.
5. That I am informed by my advocates that I have a constitutional right to care for and bring up my child.
6. That pursuant to the adoption order, the respondents and my child went to (place/country) thereby denying me access to the child.
7. That it is in the child’s interest that the adoption order be revoked.
8. That I swear this affidavit in support of an application to revoke the adoption order.
9. That all that is stated here in above is correct to the best of my knowledge save for paragraph 4, 5 based on information whose source has been disclosed and I solely believe to be true.

(Change/add what is applicable)

SWORN at by the said this day of 20.....

_____ DEPONENT BEFORE _____

COMMISSIONER FOR OATHS

APPLICATION FOR A MAINTENANCE ORDER AND ANY OTHER ORDERS

THE REPUBLIC OF UGANDA

IN THE FAMILY AND ACHILDREN COURT AT

IN THE MATTER OF (Name of child)

AND

**IN THE MATTER OF AN APPLICATION FOR (State the
type of order)**

APPLICATION

I, _____ (name of applicant), being _____ (state
relationship to child) apply for a _____ (state type of order) against
_____ (name of respondent) being the (father/mother) of
_____ (name of child) on the following grounds:

1. (outline the grounds)

DATED at this day of 20.....

APPLICANT

APPLICATION FOR A DECLARATION OF PARENTAGE

THE REPUBLIC OF UGANDA
IN THE FAMILY AND CHILDREN COURT AT
IN THE MATTER OF (Name of child), A CHILD
AND
IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF
PARENTAGE
COMPLAINT ON OATH

I, _____ (name of complainant), being _____ (state relationship to child) apply for a declaration of parentage against _____ (name of respondent) being the (father/mother) of _____ (name of child) on the following grounds:

1. (Outline the grounds)
2. _____

SWORN at _____ this _____ day of _____, 20 _____

COMPLAINT

BEFORE ME

COMMISSIONER FOR OATHS

APPLICATION TO FOSTER

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CHILDREN'S ACT, CAP. 59

AND

IN THE MATTER OF (Name of child)

APPLICATION TO FOSTER CHILD

Name of applicant: _____

Married/single Age: _____

Address: _____

Telephone

No:

Number of children Age(s): _____

Employment of applicant: _____

Employment of husband: _____

Employment of wife: _____

Other sources of income (e.g. farm): _____

Have you ever fostered a child/children before? *(If so, give particulars)*

Reasons to foster

Are you willing to undertake short-term fostering? *(If so, give particulars)*

Names of two referees and their addresses *(one shall be your local LC 1 chairperson or village chief)*

1. _____

2. _____

Age range, Sex of child you wish to foster *(outline them)*

1. _____

Applicant's signature _____

Date _____



FOSTER CARE UNDERTAKING

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CHILDREN'S ACT, CAP. 59

AND

IN THE MATTER OF (Name of child)

FORM OF UNDERTAKING

I/We (*Names of foster parents*), who received
(*Name of child*) into my/our home on (*date*) from (*name of district probation and social welfare office*)
undertake that:

1. I/We will care for (*Name of child*) as though he/she were my/our own child.
2. I/We will bring him/her up in accordance with the religion.
3. I/We will look after his/her health and allow him/her to be medically examined as required by the district probation and social welfare office.
4. I/We will allow an officer of the district probation and social welfare office or representative of the Ministry to visit my/our home and to see the child at any time.
5. I/We will inform the district probation and social welfare office immediately if the child is seriously ill, or is missing, or is involved in an accident, or is in any kind of trouble.
6. I/We will inform the district probation and social welfare office immediately if I/we plan to change residence and address.
7. I/We understand that an officer of the district probation and social welfare office has the right to remove the child from my/our home in certain circumstances. (Add any other relevant terms and conditions)

SIGNED:

Foster father

SIGNED:

Foster mother

Address of foster parent: _____

VERIFICATION

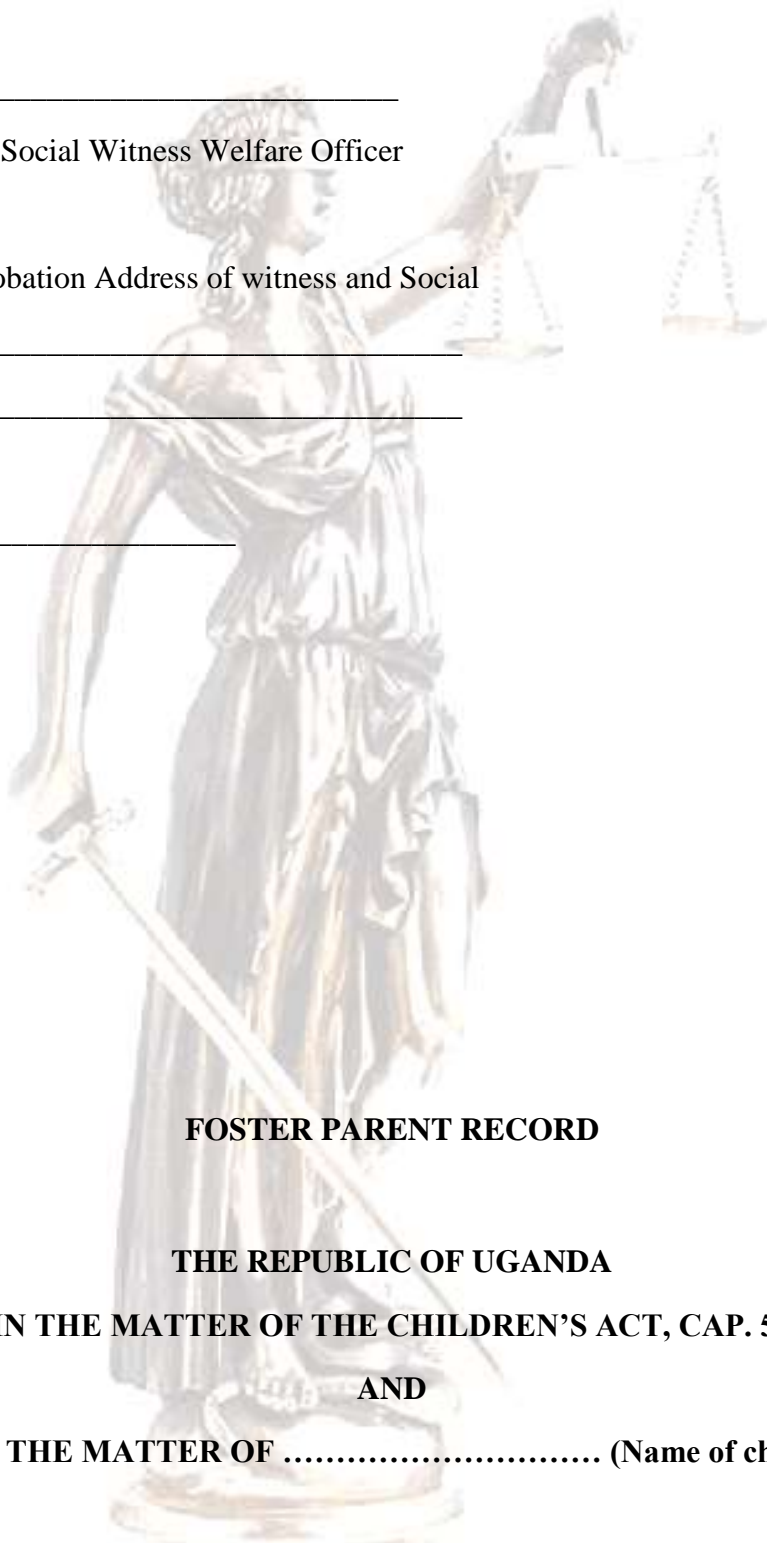
I, _____ (Name) certify that I have explained the foregoing undertaking in the language to and foster parent(s).

District Probation and Social Witness Welfare Officer

Address of District Probation Address of witness and Social

Welfare Office

Date: _____



FOSTER PARENT RECORD

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CHILDREN'S ACT, CAP. 59

AND

IN THE MATTER OF (Name of child)

PROSPECTIVE FOSTER PARENT RECORD

Name of prospective foster parent(s): _____

Date of birth: _____

Age: _____

District of origin: _____

Religion: _____

Occupation: _____

Marital status of prospective foster parents(s): _____ Date of marriage: _____
Is the relationship monogamous or polygamous?

_____ Home address:

LC1: _____

Village: _____

Parish: _____

Sub-county:

County: _____

Details of other people living in the home: _____

Name Relationship to prospective foster parent: _____

Is there or has there been any serious illness/infection in the family? *(If any, give details)*

State the income and wealth of the prospective foster parents

Give details of businesses and land owned by the family:

_____ Description of the home:

_____ Number of rooms:

Type of toilet:

Type of water supply:

Will the family/person need material support in order to start fostering? *(If the answer is “yes”, state what will be needed.)*

Why does this family/person wish to foster children?

Do they understand the temporary nature of fostering?

Has the person/any member of the family had a serious conviction? *(If yes, give details and dates and state whether in your opinion it is of such seriousness as to prevent the family/person from taking on a foster placement.)*

Assessment of the suitability of that family/person to foster children

Recommendation

What type of foster child would best benefit from this family/person? *(Baby, child, male, female, etc.)*

Details of foster child (ren) already placed with foster parents

Name

Sex

Date of placement

Age at date of placement

Details of parents and siblings of foster children (if known)

Name of foster child

Names of parents

Names of brothers/sisters of foster child

1. _____

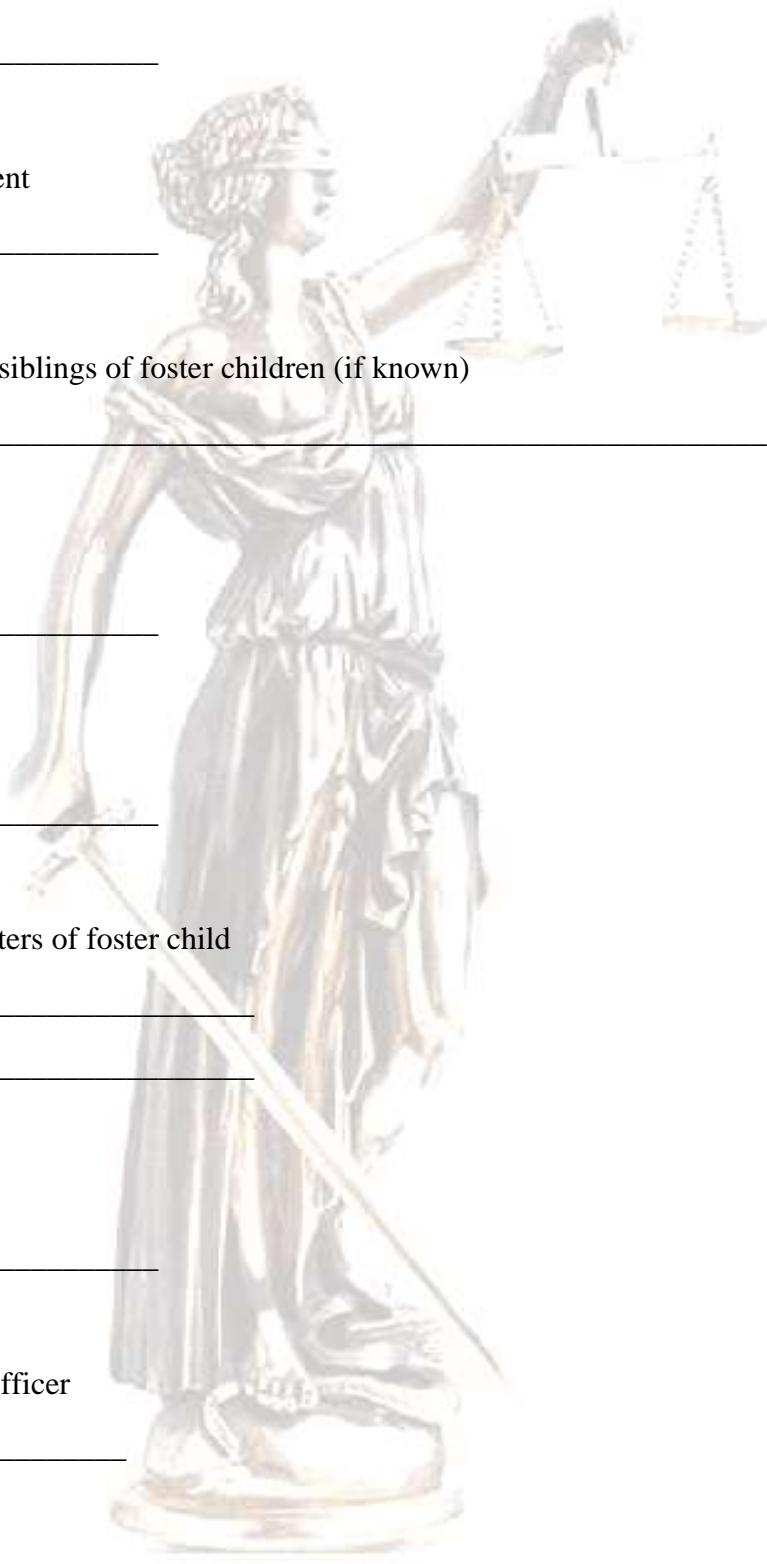
2. _____

Sex

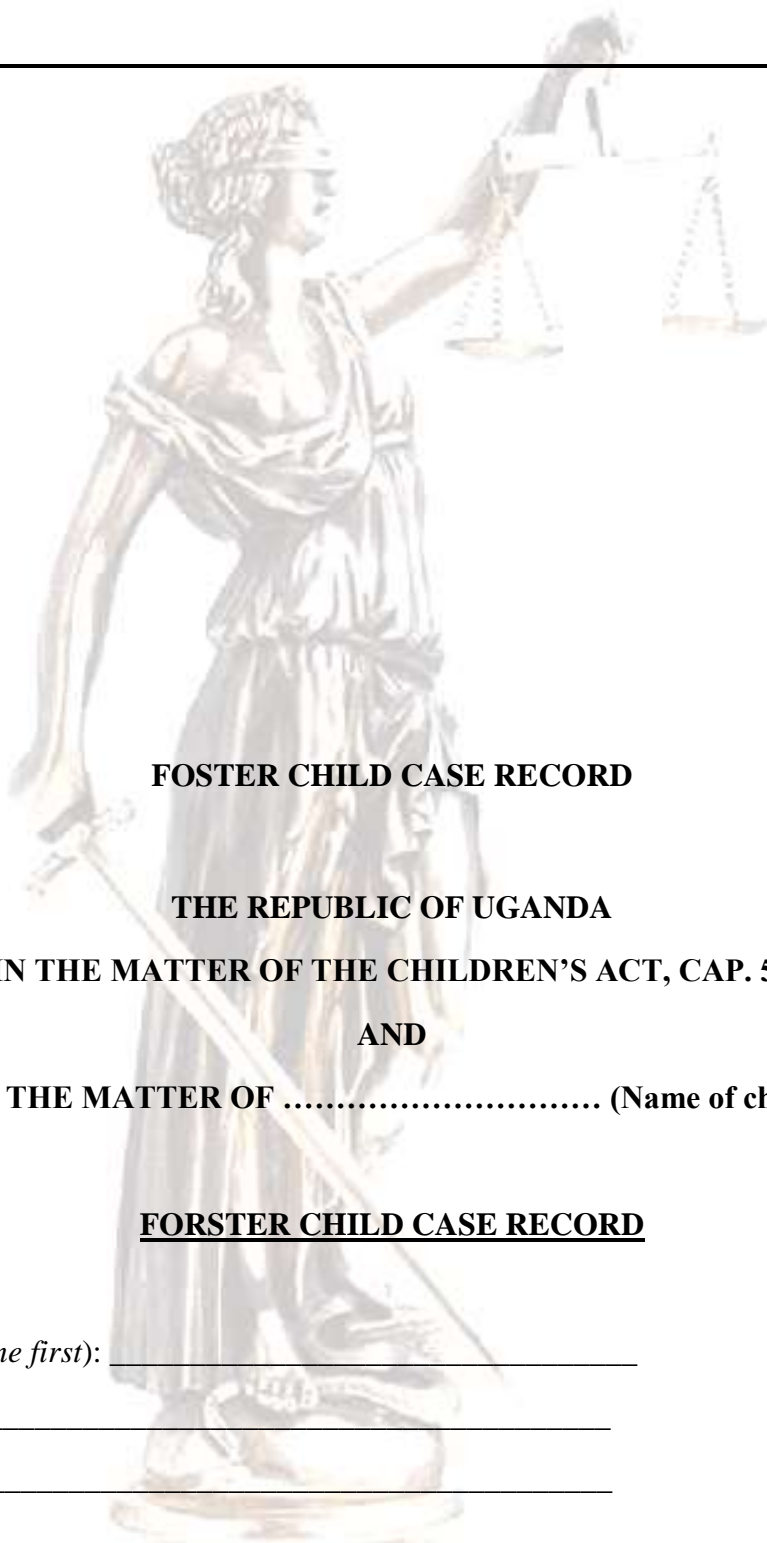
Name of supervising officer

Signature

Address



Date



FOSTER CHILD CASE RECORD

THE REPUBLIC OF UGANDA

IN THE MATTER OF THE CHILDREN'S ACT, CAP. 59

AND

IN THE MATTER OF (Name of child)

FORSTER CHILD CASE RECORD

Name of child (*surname first*): _____

Date of birth: _____

Age: _____

District of origin: _____

Sex: _____

Religion: _____

Names of foster parents: _____

Foster parent's home address: _____

LC 1: _____

Village:

Parish: _____

Sub-county:

County: _____

Natural father's name Alive/dead/unknown: _____

Natural mother's name Alive/dead/unknown: _____

Natural father or guardian's address: _____

LC 1: _____

Village:

Parish: _____

Sub-county:

County: _____

Details of foster child's brothers, sisters and relatives: _____

Names Addresses

Where was the child living immediately prior to this foster placement? *(Please give names and addresses of carers or institution).*

Case history of the child and his/her family

State what efforts have been made to trace the parents or relatives and to return the child to his/her family.

Details of medical history, including immunisation

Details of education

School Class

Name of supervising officer: _____

Address: _____

Supervisor's signature: _____

WARNING TO CAVEATOR

IN THE MAGISTRATE'S COURT OF AT.....
ADMINISTRATION CAUSE NO: OF 20.....
IN THE MATTER OF THE ESTATE OF THE LATE
(Deceased) OF (Village/Sub-county/County/District) AND
IN THE MATTER OF AN APPLICATION FOR PROBATE/LETTERS OF
ADMINISTRATION BY (Executor/Widow/Son, etc. of
the deceased)

WARNING TO CAVEATOR

To: _____

A party who has entered a caveat in the estate of _____ (deceased). You are warned within twenty-one days after service of this warning upon you, inclusive of the day of that service:

- a) To file in this court a statement setting forth what interest you have in the estate of _____, deceased, contrary to that of the party at whose instance this warning is issued; or
- b) If you have no contrary interest but wish to show cause against the sealing of a grant to that party, to state your reasons therefore.

AND TAKE NOTICE that in default of your so doing the court may proceed to issue a grant of probate/letters of administration notwithstanding your caveat.

DATED at _____ this _____ day of _____, 20 _____

_____ MAGISTRATE

CITATION TO ACCEPT OR REFUSE PROBATE/LETTERS OF ADMINISTRATION

THE REPUBLIC OF UGANDA

IN THE MAGISTRATE’S COURT OF AT

ADMINISTRATION CAUSE NO: OF 20.....

IN THE MATTER OF THE ESTATE OF THE LATE

(Deceased) OF (Village/Sub-county/County/District) AND

IN THE MATTER OF AN APPLICATION FOR PROBATE/ LETTERS OF

ADMINISTRATION BY (Executor/Widow/Son, E.T.C of the deceased)

CITATION TO ACCEPT OR REFUSE PROBATE/LETTERS OF ADMINISTRATION

To: _____

WHEREAS it appears by the statement on oath of _____ (Name), sworn this _____ day of _____ 20_____ that

_____ (Deceased) of _____ (Village/Subcounty/County/District) died on _____ (Date) having made and duly executed his or her last will and testament dated _____ (Date) (now remaining in this court) and in it named you, _____, sole executor (and residuary legatee and devisee in trust).

AND WHEREAS it further appears from that statement on oath that _____ is one of the residuary legatees and devisees named in the will.

NOW this is to command you, _____ (Name) that within twenty-one days after service of this citation on you, inclusive of the day of that service, you cause a statement to be filed in this court, and accept or refuse probate of the will, or show cause why letters of administration, with the will annexed, of all the estate which by law devolves to and vests in the personal representative of the deceased, should not be granted to _____.

AND TAKE NOTICE that, in default of your so appearing and accepting and extracting probate of the will, this court will proceed to grant letters of administration, with the will annexed, of the estate to _____, your absence notwithstanding.

DATED at _____ this _____ day of _____, 20 _____

MAGISTRATE

DECLARATION

IN THE MAGISTRATE'S COURT OF _____ AT _____

ADMINISTRATION NO: _____ OF 20_____

IN THE MATTER OF THE ESTATE OF THE LATE _____ (Deceased)

OF _____ (Village/Sub-county/County/District)

AND

IN THE MATTER OF AN APPLICATION FOR PROBATE/LETTERS OF

**ADMINISTRATION BY _____ (Executor/Widow/Son, E.T.C of the
deceased)**

DECLARATION

I, _____ of _____, solemnly and sincerely
declare that _____ (Deceased) of
_____, died _____ on the _____ day of
_____, 20 _____, testate/intestate, that I am _____ of the deceased, that I will
faithfully administer the estate and effects of the deceased by paying his or her just debts and distributing
the residue of his or her estate and effects according to his or her will/customary law, and that I shall make
a true and perfect inventory of all and singular that estate and effects and render a just and true account
thereof whenever required by law so to do.

Sworn to at _____ this _____ day of _____, 20 _____

APPLICANT

SWORN at _____ before me this _____ day of _____, 20 _____

MAGISTRATE

REPORT OF FINAL ACCOUNTS

Accountability in the administration of estates

THE REPUBLIC OF UGANDA

IN THE MAGISTRATE’S COURT OF _____ AT _____

ADMINSTRATION CAUSE NO: _____ OF 20_____

IN THE MATTER OF THE ESTATE OF THE LATE _____

(Deceased) OF _____ (Village/Sub-county/County/District)

DECLARATION

I, _____ of _____ the father/son/widow, etc.1 having been granted probate/letters of administration on the _____ day of _____, 20____, to administer the estate of the late _____ of _____ who died at _____ on the _____ day of _____, 20 _____, and having undertaken to administer the estate of the late _____ of _____ and to make a full and true inventory of the property and credits and to render to this honourable court a true account of the property and credits, hereby render the final accounts of the distribution of the property and credits to this honourable court.

The distribution of the estate was carried out as follows:

Person	His or her relationship to the deceased	Share taken
1. _____	_____	_____ 2.
_____	_____	_____ 3. _____
_____	_____	_____ 4. _____
_____	_____	_____ 5. _____
6. _____	_____	_____

AND I, _____ solemnly and sincerely declare that what is stated in this final account is a true and accurate account of the distribution of the property and credits of the late _____

deceased, to the best of my knowledge and belief, and I make this solemn declaration conscientiously believing it to be true and by virtue of the provisions of the Statutory Declarations Act.

Signature of Applicant

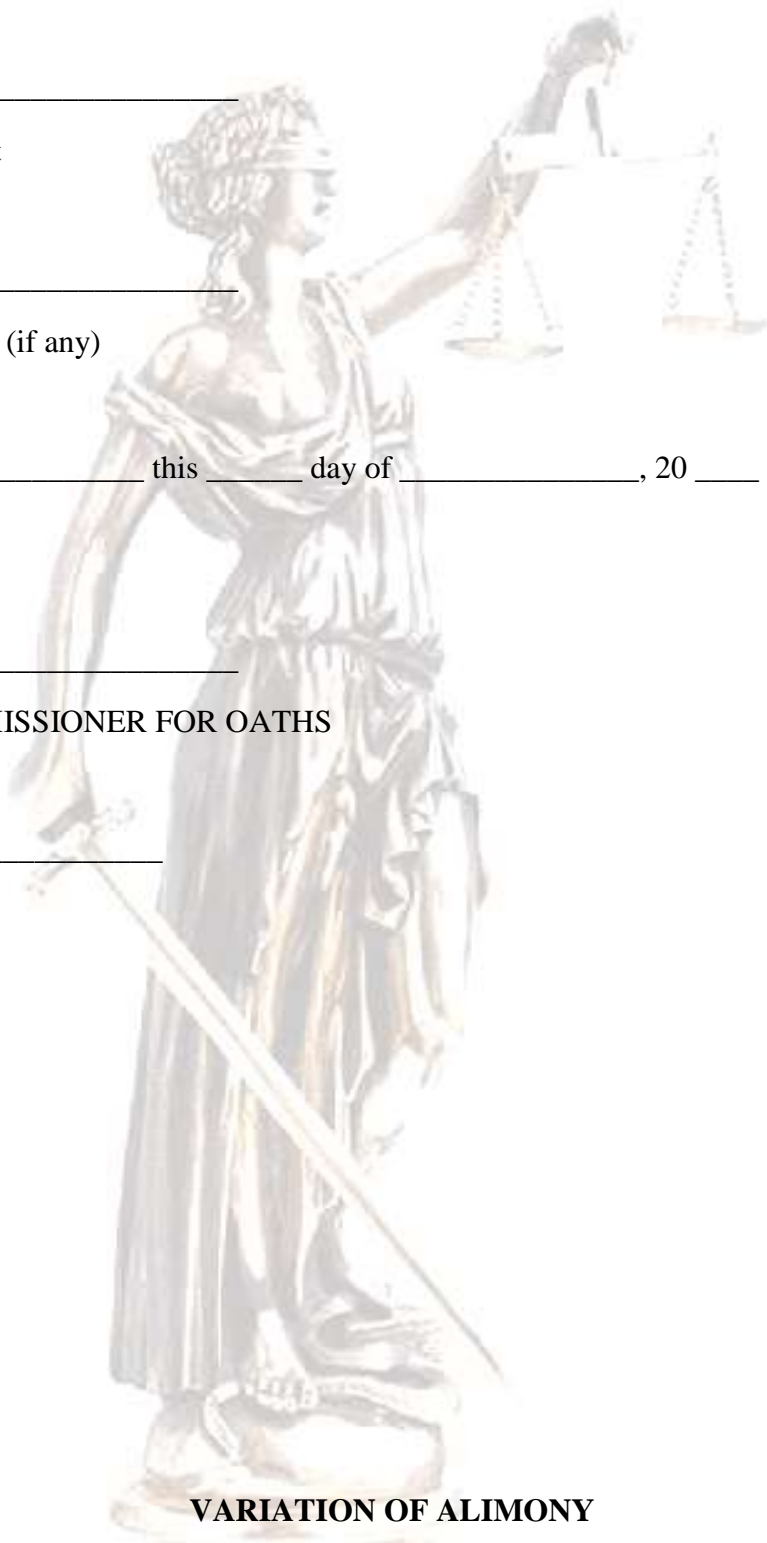
Signature of Advocate (if any)

DECLARED at _____ this _____ day of _____, 20 ____

BEFORE ME

MAISTRATE/COMMISSIONER FOR OATHS

Date _____



VARIATION OF ALIMONY

IN THE CHIEF MAGISTRATE'S COURT OF AT

MATRIMONIAL CAUSE NO: OF 20.....
.....
.....
APPLICANT VERSUS
RESPONDENT

NOTICE OF MOTION

(Under S.25, 29 Divorce Act, Cap. 249 and S. 78 Children’s Act, Cap. 59)

TAKE NOTICE on the Day of 20..... at O’clock in the fore/afternoon of soon thereafter as counsel for the applicant may be heard on an application for orders that:

- a) An order to discharge, vary, modify or suspend the order for payment of maintenance as had been determined in the main application.
- b) Costs of this suit application be provided.

TAKE FURTHER notice that this application is supported by the affidavit of, hereto annexed which shall be read and relied on at the hearing hereof and on the grounds stated herein briefly that:

- a) That the respondent lost his job and has not yet got another therefore, is no longer able to pay the maintenance allowance.
- b) That the applicant now has a job and can be able to look after herself and the children.

DATED at Kampala this day of 20.....

RESPONDENT

GIVEN under my hand and the seal of the Court this day of 20.....

_____ CHIEF MAGISTRATES

AFFIDAVIT IN SUPPORT

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE’S COURT OF AT

MATRIMONIAL CAUSE NO: OF 20.....

.....

APPLICANT VERSUS

.....

RESPONDENT

1. I, (Name and address), solemnly swear and state as follows:
2. That I am a male/female adult Uganda of sound mind.
3. That I am the respondent in the above application and as such swear this affidavit in that capacity.
4. That in (Date), the applicant applied for a judicial separation against me which was successful.
5. That the following orders were made:
 - a) Custody of the children was given to the applicant.
 - b) That I pay a monthly maintenance allowance in total of (Amount).
6. That at the time the orders were made and was employed and the applicant was a full time housewife.
7. That now I have no job and the applicant has now got a job.
8. That I am no longer able to pay the monthly maintenance allowance.
9. That it is in the interest of justice and in the best interest of the children that I be discharged of the payment of the maintenance as I can no longer afford it and the applicant now has a job.
10. That whatever is deponed to is correct to the best of my knowledge and belief.

SWORN at Kampala by me this day of 20.....

BEFORE ME COMMISSIONER FOR OATHS

PROCESS FOR CARE ORDERS, FOSTER CARE AND ADOPTION THE CHILDREN (AMENDMENT) ACT, 2016 BASED ON THE CHILDREN ACT 1997 INCLUDING THE AMENDMENTS OF 2016

PART I Interpretation “approved home” means a Government or nongovernmental home approved by the Minister to provide substitute family care for a child and includes a babies’ home and children’s home which provide care and accommodation for children aged below six years and aged between three to under eighteen years respectively; “care order” means a care order made under Part V of this Act; “foster care placement” means the placement of a child with a person who is not his or her parent or relative and who is willing to undertake the care and maintenance of the child; “foster parent” means a person not being the biological mother, father or relative of the child who assumes parental responsibility of the child by way of a care order;

PART II Rights of the Child

(6) 2. Where the natural parents of a child are deceased, parental responsibility may be passed on to relatives of either parent, or by way of a care order, to the warden of an approved home, or to a foster parent.

PART III Support for children by local authorities

10. Local councils to safeguard children and promote reconciliation between parents and children. (1) It is the general duty of every local government council from the village to the district level— (a) to safeguard and promote the welfare of children within its area; and (b) to designate one of its members to be the person responsible for the welfare of children; and this person shall be referred to as the secretary for children’s affairs. (6) Each local government council shall provide assistance and accommodation for any child in need within its area of jurisdiction who appears to the committee to require assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge. (7) Each local government council shall make every effort, including publication through the mass media, to trace the parents or guardians of any lost or abandoned child or to return the child to the place where he or she ordinarily resides; and where the committee does not succeed, it shall refer the matter to a probation and social welfare officer or to the police.

PART IV Family and children court

13. Establishment of family and children court. (1) There shall be a court to be known as the family and children court in every district, and any other lower government unit designated by the Chief Justice by notice in the Gazette. (2) A magistrate not below the grade of magistrate grade II shall be assigned to preside over the family and children court.

14. Jurisdiction of family and children court. (1) A family and children court shall have power to hear and determine— (b) applications relating to child care and protection.

PART V Care and protection of children

19. Supervision orders and care orders. On the application of a probation and social welfare officer or an authorised person, a family and children court may make— (b) a care order or interim care order, placing a child in the care of the warden of an approved home or with an approved foster parent in accordance with the Foster Care Placement Rules in the Second Schedule to this Act.

20. Welfare reports. (1) The family and children court shall require a written welfare report in respect of a child before making a supervision order or a care order. (2) It shall be the duty of the probation and social welfare officer to prepare a welfare report, and he or she shall comply with the request of a family and children court whenever required to produce a welfare report.

21. Grounds for making a supervision or care order. A family and children court may only make an order under this Part, if it is satisfied that— (a) the child concerned is suffering or is likely to suffer significant harm; and (b) that the harm, or probability of harm, is attributable to— (i) the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give to a child;

27. Care order. (1) A family and children court may, on the application of a probation and social welfare officer or an authorised person, make a care order or an interim care order placing a child in the care of the warden of an approved home or with foster parents. (2) An application for a care order may only be made— (a) after all possible alternative methods of assisting the child have been tried without success and the significant harm from which the child is suffering or is likely to suffer requires his or her removal from where he or she is living; or (b) the danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

28. Purpose of a care order. The object of a care order is— (a) to remove a child from a situation where he or she is suffering or likely to suffer significant harm; and (b) to assist the child and those with whom he or she was living or wishes to live to examine the circumstances that have led to the making of the order and to take steps to resolve or ameliorate the problem so as to ensure the child's return to the community.

29. Duration of care order. (1) A care order shall be for a maximum period of three years or until the child reaches the age of eighteen years, whichever is the shorter. (2) A care order shall be reviewed at least once in each year by the probation and social welfare officer who may make recommendations as to steps to be taken having regard to the outcome of the review.

30. Duty to enforce a care order. The duty to enforce the care order shall be vested in the probation and social welfare officer who applies for the order.

31. Parental responsibility of warden or foster parent. (1) The warden of the approved home or the foster parent with whom the child is placed has parental responsibility for the child while the child is with him or her. (2) The child's contact with parents, relatives and friends while he or she is in the approved home or with a foster parent shall be encouraged unless it is not in the best interests of the child. (3) The warden of the approved home or the foster parent with whom the child is placed shall ensure that the child's development while in the approved home or with a foster family, particularly his or her health and education, is attended to. (4) It is the responsibility of the warden of the approved home to communicate

with the parents or guardians of the child, to inform them of the child's progress and to arrange through the probation and social welfare officer for a trial return home by the child as soon as it is appropriate.

32. Special duties of the probation and social welfare officer in relation to care order. (1) The probation and social welfare officer shall, before and after the termination of the care order, work with the parents, guardians or relatives, to whom the child is expected to return after the termination of the care order. (2) The duties of the probation and social welfare officer under this section include child and family counselling, before, during and after the child's return and gaining the assistance of those in the community who can help in the process of resolving the problems which caused the care order to be made. (3) In carrying out his or her duties under this section, the probation and social welfare officer shall bear in mind the wishes of the child. (4) When a child is placed with a foster family, it shall be the responsibility of the probation and social welfare officer to communicate with the guardians or parents of the child, to inform them of the progress of the child and to arrange a trial period for the child to be at home as soon as it is appropriate. (5) The probation and social welfare officer shall visit the child during the trial period at home and make plans for the future of the child in consultation with the foster parents.

PART VI—FOSTER CARE PLACEMENTS.

43. Conditions for foster care placements. (1) Where a child has been committed to an approved home under a care order, the district probation and social welfare officer, in conjunction with the warden of the approved home, may place the child with a person who is willing to undertake the care and maintenance of the child, in this Part referred to as a "foster parent". (2) An application to foster a child shall be made to the district probation and social welfare officer, except that a relative of a child without a parent or guardian may foster the child without first applying to the district probation and social welfare officer, and this Part shall not apply to him or her. (3) A foster parent in whose care a child is committed shall, while the child remains in his or her care, have the same responsibilities in respect of the child's maintenance as if he or she were the parent of the child. (4) Foster care placements shall be made in accordance with the rules set out in the Second Schedule to this Act. (5) The Minister may, by statutory instrument, amend the rules in the Second Schedule to this Act.

PART VIA Guardianship

43A Legal Guardianship 2 A person who is not a citizen of Uganda shall not be eligible to apply for legal guardianship.

PART VII Adoption

44. Jurisdiction. (1) An application for an adoption order may be made— (a) to a chief magistrate's court within the jurisdiction of which the applicant or the child resides where both the child and the applicant are citizens of Uganda; (b) to the High Court where the child or the applicant is not a citizen of Uganda, and the court may, subject to this Act, grant the application. (2) A child need not be a Ugandan to be adopted. Prerequisites for adoption.

45. Restrictions and conditions. (1) An adoption order may be granted to a sole applicant or jointly to spouses where— (a) the applicant or at least one of the joint applicants has attained the age of twenty-five years and is at least twenty-one years older than the child; (b) in the case of an application by one of the spouses, the other has consented to the adoption. (2) The court may dispense with the consent required under subsection (1)(b) if the spouse whose consent is required cannot be found or is incapable of giving consent, or the spouses are separated and living apart and the separation is likely to be permanent. (3) An

adoption order shall not be made in favour of a sole male applicant in respect of a female child, or in favour of a sole female applicant in respect of a male child, unless the court is satisfied that there are special circumstances that justify, as an exceptional measure, the making of an adoption order. (4) The application shall not be considered unless the applicant has fostered the child for a period of not less than twelve months under the supervision of a probation and social welfare officer. (5) The probation and social welfare officer shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or the local authority to make a report in respect of the adoption application. (6) Except where the application is by spouses jointly, an adoption order shall not be made authorising more than one person to adopt a child at the same time.

46. Intercountry adoption. (1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she— (a) has stayed in Uganda for at least one year; (b) has fostered the child for at least one year under the supervision of a probation and social welfare officer; (c) does not have a criminal record; (d) has a recommendation concerning his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority; and (e) has satisfied the court that his or her country of origin will respect and recognise the adoption order. (2) For the purposes of an application to which this section applies, the probation and social welfare officer referred to in subsection (1)(b) shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or authority to make a report in respect of the application. (3) The restrictions and conditions in section

45, other than subsections (4) and (5), apply to an application to which this section relates. (4) The court may, in exceptional circumstances, waive any of the requirements specified in subsection (1). (5) The following persons may facilitate the courts of law with information to protect the best interest of the child – (a) Advocates; (b) Probation and Social Welfare Officers; or (c) A guardian ad litem for children. (6) Notwithstanding the provisions of this section, inter-country adoption shall be considered as the last option available to orphaned, abandoned or legally relinquished children, along a continuum of comprehensive child welfare services. (7) For the purpose of this section, continuum of comprehensive child welfare services means a broad range of preventive services and community-based family-centred alternative care options which may include – (a) Family preservation; (b) Kinship care; (c) Foster care; (d) Institutionalisation.

47. Consent. (1) The consent of the parents of the child, if known, is necessary for the adoption order to be made; but the consent may be revoked at any time before the pronouncement of the adoption order. (2) The court may dispense with the consent if the parents are incapable of giving it. (3) While an application for an adoption order is pending in the court, a parent who has given his or her consent to the adoption is not entitled, except with the leave of the court, to remove the child from the care and custody of the applicant. (4) The court may refuse to grant leave to remove the child from the care and custody of the applicant under subsection (3) if it considers it significantly harmful to the welfare of the child. (5) If in the view of the court a child is able to understand the adoption proceedings, then his or her views shall be taken into consideration. (6) If the child is at least fourteen years of age, his or her consent to the adoption must be obtained unless it is impossible for him or her to express his or her wishes. (7) Where it appears to the court that any person who is not the parent of the child has any rights or obligations in respect of the child under any order of the court or agreement or under customary law or otherwise, the court may require the consent of that person before the adoption order is made. (8) The court may also request a probation and social welfare officer to prepare a report to assist it to determine whether any person who is not a parent of the child has any rights or obligations in respect of the child and whether that person's consent ought to be obtained before the making of the adoption order.

48. Functions of the court. (1) The court shall, before making an adoption order, be satisfied that— (a) every person whose consent is required and is not dispensed with has consented and understands the nature and effects of the adoption, namely, that it will permanently deprive that person of parental rights over the adopted child; (b) the order if made will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his or her age and understanding; (c) the applicant has not received or agreed to receive, and that no person has made or agreed to make to the applicant, any payment or other reward in consideration of the adoption; and (d) the applicant or any person on behalf of the applicant has not paid or agreed to pay money or anything in place of money to the parent, guardian or any person in charge of the child in consideration of the adoption of the child. (2) The court may, in an adoption order, include such terms and conditions as it thinks fit.

49. Rules as to the procedure for adoption. (1) The Chief Justice may by statutory instrument make rules regarding all matters under this Part and the procedure to be followed by the court in adoption proceedings. (2) Without prejudice to the general effect of subsection (1), the rules may provide for— (a) the admission of documentary evidence of any consent to adoption; (b) the admission of evidence, documentary or otherwise, to determine the age of the child; (c) a probation and social welfare officer to prepare a report for the court to help determine whether the adoption order will be for the welfare and best interests of the child; (d) the conduct of adoption societies or similar bodies in placing children for adoption. 51. Effect of an adoption order. Upon an adoption order being made— (a) all rights, duties, obligations and liabilities of the parents and guardians in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to consent or give notice of consent to marriage, are extinguished; and (b) there shall vest in, and be exercised by, and enforceable against the adopter all such rights, duties, obligations and liabilities in relation to the future custody, maintenance and education of the child as would vest in him or her if the child were the natural child of the adopter born to him or her in lawful wedlock.

54. Adopted children register. The registrar of births and deaths shall maintain an adopted children register in which shall be registered particulars of adoptions under this Act.

56. Approval of homes. (1) A government or non-government home set up for the purposes of caring for children shall be approved by the Minister, in consultation with the probation and social welfare officer within six months of receipt of application for approval. (2) A person who establishes or runs a home without the approval of the Minister under this section commits an offence.

57. Admission of children to home. An approved home shall only receive children in the following two ways— (a) in an emergency situation from a police officer, a probation and social welfare officer or any other person for a maximum period of forty-eight hours pending production of the child in court; or (b) on an interim care order or a care order.

60. Contact with parents and relatives. (1) The approved home and the probation and social welfare officer shall maintain contact with the parents or relatives of a child in the home as well as maintain contact between the child and the parents or relatives of the child.

66. Rules for approved homes. The Minister may make rules for carrying this Part into effect and in particular for— (a) prescribing the form of application for an approved home; (b) prescribing requirements as to the accommodation and equipment to be provided in homes; (c) prescribing the medical arrangements to be made for protecting the health of the children in the approved homes; (d) regulating the management and discipline of an approved home; and (e) regular inspection of the home.

95A Appointment and supervision of probation and social welfare officers. The Ministry responsible for gender, labour and social development in consultation with the district service commission, shall be responsible to the appointment and supervision of probation and social welfare officers.

Second Schedule.

Foster Care Placement Rules.

3. Application of rules. These Rules apply to the placement of a child with foster parents by a probation and social welfare officer.

4. Application to foster a child. Any person interested in fostering a child shall complete the application form specified in Form 1 of the Schedule to these Rules and submit it to the district probation and social welfare officer or to the warden of an approved home.

5. Persons qualified to foster children. (1) The following persons may apply to be foster parents— (a) a husband and wife, but if a man has more than one wife, the name of the wife who is to be the foster mother shall be clearly stated; (b) a single woman not below the age of twenty-one years; or (c) a single man not below the age of twenty-one years. (2) A single man may not foster a female child under this Act. (3) A non-Ugandan citizen residing in Uganda is qualified to apply to be a foster parent subject to subrule (1).

6. Procedure before placement.

(1) A child shall not be placed with a foster parent who is not a relative of the child unless—

(a) a probation and social welfare officer has interviewed the prospective foster parent and assessed that he or she is a suitable person to foster a child;

(b) a probation and social welfare officer has visited the home of the prospective foster parent and has confirmed in writing that it is likely to meet the requirements of the particular child and that the conditions in it are satisfactory;

(c) two persons who know the prospective foster parent well have vouched for his or her good character and suitability to care for the child, and one of the two persons shall be the secretary for children's affairs of the village local council or the village chief;

(d) it has been established from the secretary for children's affairs of the council or the person in charge of any government medical unit in the area that no person in the household of the prospective foster parent is suffering from any physical or mental illness likely to affect the child adversely;

(e) it has been established from the secretary for children's affairs or from the officer in charge of the police station in the area that no person in the home has been convicted of a serious criminal offence rendering it undesirable for the child to associate with that person; and

(f) the wishes of the child so far as can be ascertained concerning the proposed fostering have been ascertained and have, so far as practicable, been taken into account.

(2) For record purposes, the probation and social welfare officer concerned with the fostering shall make a written report which shall contain the following—

(a) the information required in subrule

(1) of this rule;

(b) details of the name, approximate age, religion and employment of the prospective foster parents; and
(c) the number and approximate ages of other persons living in the household of the prospective foster parent.

(3) The report shall be in Form 3 as specified in the Schedule and shall be filed in the district probation and social welfare office.

7. Religion.

(1) Where a child's religion is known, the child shall be placed with a foster parent who is of the same religion as the foster child; but where that is not possible, the foster parent shall undertake to bring up the child in accordance with the religious denomination of the child.

(2) Where a child's religion is not known, the child shall be placed with a foster parent who shall undertake to bring up the child in accordance with the religious denomination of the foster parent.

8. Cultural background. Wherever possible, a child shall be placed with a foster parent who has the same cultural background as the child's parents and who originates from the same area in Uganda as the parents of the child. 9. Undertaking by foster parents.

(1) Each foster parent shall, on the day on which the child is placed with him or her, sign the undertaking specified in Form 2 in the Schedule in the presence of a witness.

(2) Where the prospective foster parent cannot read the English language sufficiently to understand the nature of the undertaking, the supervising officer or the authorised officer concerned shall cause the undertaking to be explained to the prospective foster parent in a language which he or she understands and shall certify to that effect as prescribed in Form 2 of the Schedule.

(3) Each foster parent shall be given a copy of the undertaking signed by him or her.

(4) A copy of the undertaking shall also be sent to the district probation and social welfare office and to the commissioner.

10. Medical arrangements.

(1) Except in the case of an emergency, a child shall not be placed with a foster parent unless he or she has been examined by a qualified medical practitioner or such other medical personnel not below a rank approved by the director of medical services, and the person examining the child has reported in writing on the child's physical and mental condition.

11. Supervising officer. A district probation and social welfare officer shall, subject to these Rules, be responsible for overseeing all aspects of the fostering and for ensuring that the provisions of these Rules are complied with.

12. Visits during placement.

(1) A probation and social welfare officer shall visit the foster family and see the child—

(a) within two weeks after the date of placement of the child with the foster family where the child is under two years of age, and thereafter once every three months;

(b) within one month after the date of placement of the child with the foster family where the child is above two years of age, and thereafter once every three months;

(c) within one month after receiving notification from a foster parent that he or she has changed his or her residence;

(d) immediately and in any case not later than one week after receipt of any information from the child, a foster parent or any other person which indicates the need for him or her to visit the child.

(2) The probation and social welfare officer who carries out a visit under subrule (1) of this rule shall make a written report to be placed in the child's case record stating in detail his or her observations as to the child's welfare, progress and conduct and any changes which have occurred in the circumstances of the foster family.

(3) The report made under subrule (2) shall also include the child's views and feelings concerning placement; and where there are any problems, they shall be discussed and resolved openly within the foster family.

13. Termination of placement.

(1) A child shall not be allowed to remain with a foster parent where it appears that the placement is no longer in the best interests of the child except that— (a) the foster parent may appeal to the commissioner if the supervising officer seeks to remove a child who has been in the care of the foster parent for more than twelve months; and (b) the commissioner on any such appeal may prohibit the removal or authorise it subject to such conditions as he or she thinks fit.

(2) A child shall not be required to remain in the care of a foster parent after he or she has attained the age of eighteen years.

16. Records.

(1) Every district probation and social welfare office shall maintain a register of foster parents, in which shall be stated in respect of each foster parent, a record set out in Form 3 specified in the Schedule to these Rules.

(7) Every district probation and social welfare office shall report to the commissioner within one month after each fostering effected by it, the fact of the fostering and stating the information in Form 3 specified in the Schedule to these Rules.

SUMMARY ON ADOPTION, CHILD CUSTODY, MAINTENANCE & GUARDIANSHIP

The position of the law is that when considering issues to deal with children, their welfare is paramount, pursuant to Article 34 of the Constitution of the Republic of Uganda, Section 3(1) of the Children Act, Article 3(1) of the United Nations Convention on the Rights of the child (which Uganda ratified in 1990); Article 4(1) of the African Charter on the Rights and the Welfare of the Child (which Uganda ratified in 1992). This position has been fortified by courts who have held that in all matters concerning children, the best interests of the child shall be the primary consideration, **(SEE THE CASE OF MARK SIDUDA TREVOR (AN INFANT) FAMILY CAUSE NO. 213 OF 2014 AND THE CASE OF DEBORAH JOYCE ALITUBEERA CIVIL APPEAL NO. 70 OF 2011.**

According to Bromley's Family Law, 8th Edition, at page 336,

“...the children’s welfare is the court’s sole concern, and other factors are relevant only to the extent that they can assist the court in ascertaining the best solution for the child....”

Adoption is the legal process where a person permanently assumes parental rights and responsibilities for a child from his or her biological parents.

Guardianship, on the other hand, is the process whereby a person is appointed by the court to take care of a child, with this, they acquire temporary parental rights and responsibilities.

Credit: Pixabay

“Adoption – because family isn’t made from blood, it’s made from love.”

Unknown

Who can Adopt?

Adopting a child may be simple enough on paper, however, the law presents a few conditions that allow a prospective parent to adopt. These are;

A. CITIZEN ADOPTION

i) A person at the age of 25 years can adopt a child however a prospective parent must be 21 years older than the child to gain custody.

ii) A prospective adoptive parent must have fostered the child for at least 36 months under the supervision of a probation officer.

- iii) In circumstances where the prospective adoptive parents are a couple, they must be able to adopt a child jointly.
- iv) A single parent can also adopt a child however; they are not allowed to adopt one of the opposite sex save for exceptional circumstances.
- v) Prospective adoptive parents must be in good physical and mental health as determined by a medical practitioner.

B. FOREIGN ADOPTION

- i) For a foreigner to adopt a child, the prospective parent must have fostered the child for at least 36 months while in Uganda under the supervision of a Probation Officer.
- ii) A foreign adoptive parent must;
 - a) Have no criminal record
 - b) Have been approved by their country of nationality to adopt
 - c) They must possess proof that their country will respect the Ugandan adoption Order.
 - d) Must meet the same requirements for adoption as a citizen.

CONSENTS

A prospective parent will require the following consent before they are allowed to adopt a child;

- a) Under circumstances where a child's parents are; known, alive, of sound mind and can be found, consent must be given for the said child to be adopted.
- b) Children who are of 14 years and above must also consent to the adoption.
- c) A child or parent is at liberty to withdraw their consent to adoption before the adoption order is made. They are also allowed to challenge said adoption in circumstances where consent wasn't obtained legally.

ADOPTION ORDER

The adoption order must be registered with the Office of the Registrar General, Probation office and National Council for Children. Where the prospective parent is a foreigner, the court will order that the Adoption Order be registered with the Embassy of Uganda in the country of the adoptive parents.

WHERE SHOULD ONE FILE AN APPLICATION FOR CUSTODY AND MAINTENANCE?

Child custody is filed in the Family and Children Court (FCC) presided over by a Magistrate not below the grade of Magistrate Grade II. These courts can be accessed at the Magistrate's courts in Uganda. In deciding the particular FCC in which to file the application, it must be filed in the court that has jurisdiction in the area where the child resides.

Who may apply for custody/maintenance of the child?

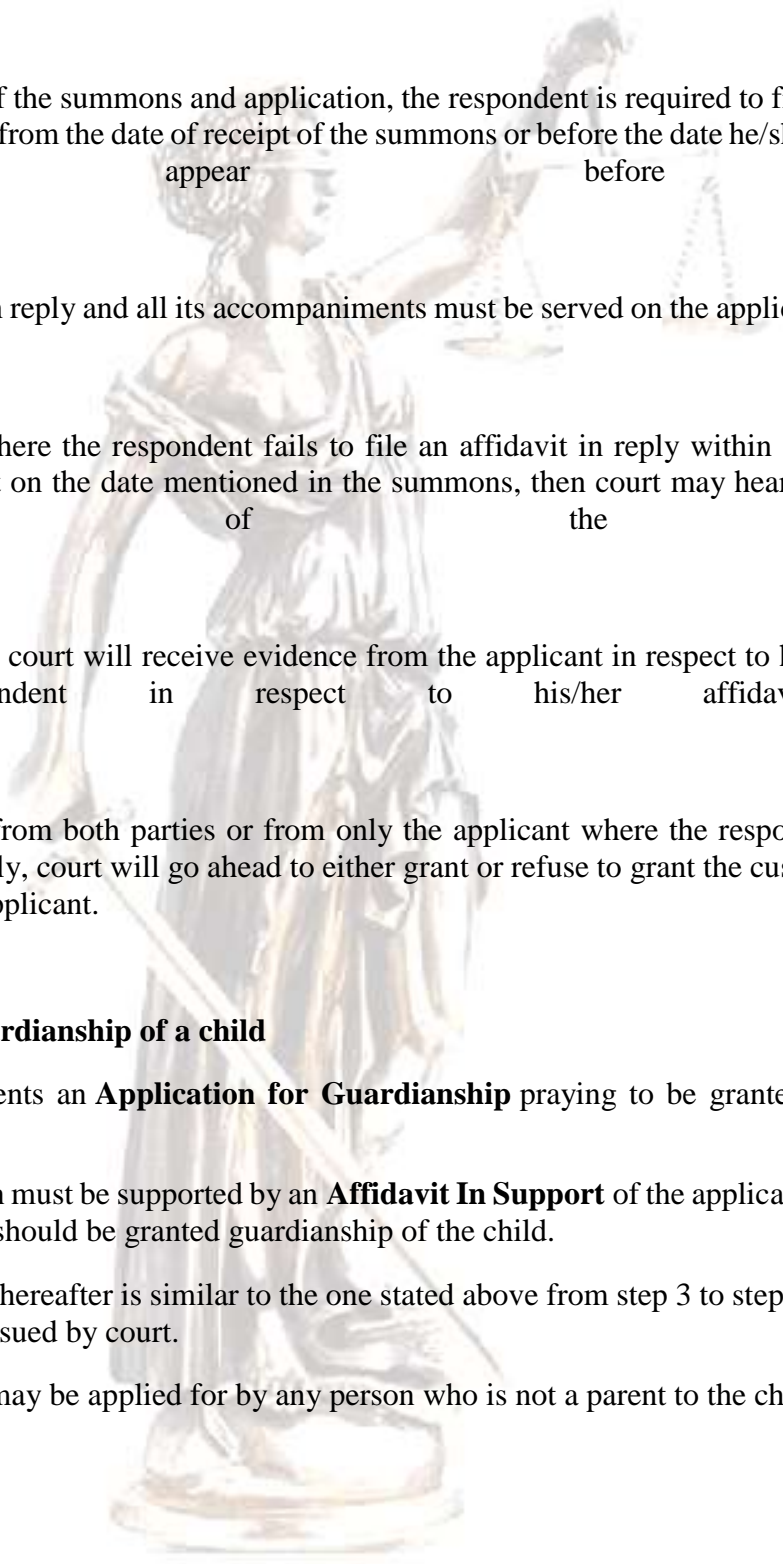
- A parent or guardian of the child
- An institution or organization

Against whom may this application be made?

- Against a father, mother or guardian of the child

How to apply for child Custody / Maintenance.

1. A person presents an Application for Custody praying to be granted custody and obtain maintenance orders for the child. A person who applies for custody/maintenance is called an applicant while the party against whom the application is brought is called a respondent.
2. The application must be supported by an Affidavit in Support stating the reasons why he or she should be granted custody and/or maintenance orders for the child.
3. When filing the application in court, the requisite filing fees (UGX 6,000) must be paid in the bank and evidence of payment attached to the application.
4. Applicant then extracts a summons from court requiring the respondent to either file an affidavit in reply or to appear in court on a day specified therein and serves it together with the application, on the respondent within 21 days after court issues the summons.

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5. Once the summons is served on the respondent, the applicant must file an Affidavit of Service in court clearly stating how he/she served it on the respondent.
 6. Upon receipt of the summons and application, the respondent is required to file an affidavit in reply within 15 days from the date of receipt of the summons or before the date he/she has been summoned to appear before court.
 7. The affidavit in reply and all its accompaniments must be served on the applicant by the respondent.
 8. In scenarios where the respondent fails to file an affidavit in reply within the 15 days or fails to appear in court on the date mentioned in the summons, then court may hear the application in the absence of the respondent.
 9. At the hearing, court will receive evidence from the applicant in respect to his/her application and the respondent in respect to his/her affidavit in reply.
 10. After hearing from both parties or from only the applicant where the respondent does not file an affidavit in reply, court will go ahead to either grant or refuse to grant the custody and maintenance orders to the applicant.

GUARDIANSHIP

How to apply for guardianship of a child

1. A person presents an **Application for Guardianship** praying to be granted guardianship of the child.
2. The application must be supported by an **Affidavit In Support** of the application stating the reasons why he or she should be granted guardianship of the child.
3. The procedure hereafter is similar to the one stated above from step 3 to step 10 and a guardianship order will be issued by court.
4. Guardianship may be applied for by any person who is not a parent to the child.



ABOUT THE BOOK

"Objection My Lord" is a phrase often used in court. This book covers all the nitty-gritty for one to practice law in the best and legal way possible within limits of good conduct and professionalism. Charles Dickens in "The Old Curiosity Shop" has spoken this of lawyers. "If there were no bad people, there would be no good lawyers." I have already listed how the good lawyers conduct themselves in my former book, "Professional Malpractice In Uganda;" this book will thence equip the reader with the practical tools of the legal profession, making them grasp these basic skills in addition to mastering legal professionalism.

This is a package to my Learned Friends, to know the must know and learn to practice within the legal limits and more so, discover the legal exceptions and present such in a legal manner; to distinguish precedents tactically and persuade intellectually where no such exist. It is a summary of legal principles requisite for one to properly establish their case before court. This book is a one stop masterpiece for a reader to grasp the other more practical duties of a lawyer apart from litigation and drawing deeds. By training consistency yet with honest dealings, this book navigates along the professional to the moral and most practical situations encountered by a lawyer while furnishing one with the gist and nothing less. It is a training for every "officer of court" to make use of their greatest tool "the tongue" to not only persuade but also assist court and the state in ensuring justice.

Be blessed to find all you seek and be gifted a package, so much more than you expect in this book.

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