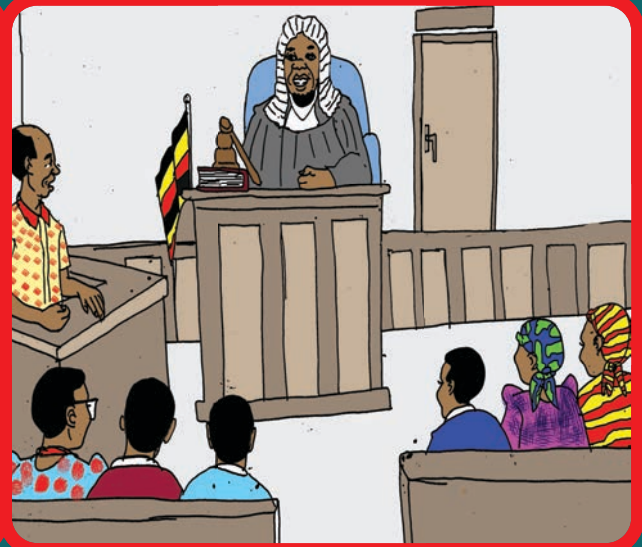
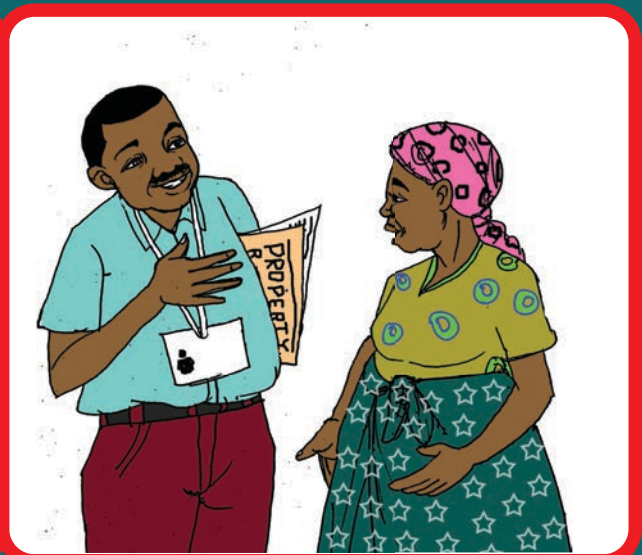


PROPERTY RIGHTS IN THE FAMILY

SIMPLIFIED BOOKLET



APPLICABLE IN UGANDA

A SIMPLIFIED BOOKLET ON

PROPERTY RIGHTS
IN THE FAMILY

APPLICABLE IN UGANDA

ACKNOWLEDGEMENTS

The United Religions Initiative – Great Lakes (URI-GL) is thankful to the Finnish Foreign Ministry and Filantropia, Finland for the financial support towards the publication of this booklet. URI-GL is also thankful to the team (Consultant and Staff) that contributed to the development of this simplified booklet which we are sure will go a long way in informing and educating communities and key actors on property rights especially for women in the family. We are further confident that this piece of information will greatly contribute to our objective where we are ensuring that women's access to justice and information on property rights issues is improved.

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INTRODUCTION

URI Great-Lakes (URI-GL) is an interfaith non-governmental grass roots network organization that cultivates peace and justice by engaging people to bridge religious and cultural differences and work together for the good of their communities and society. It is an affiliate of the world wide United Religions Initiative (URI) with its Global Support office in San Francisco, California. URI-GL works with the different organizations and individuals who are dedicated to non-violence, and the respect for life, situated mainly in Uganda and also harnesses the URI work in the great lakes countries namely, Kenya, Rwanda, Burundi, DRC and South Sudan.

URI-GL is implementing a project in Jinja and Mayuge districts on “Promoting Women’s Property Rights in Eastern Uganda” and it’s aimed at promoting gender equality for women’s property rights so that their implementation is supported in the project target districts of Jinja and Mayuge in Busoga region in Eastern Uganda.

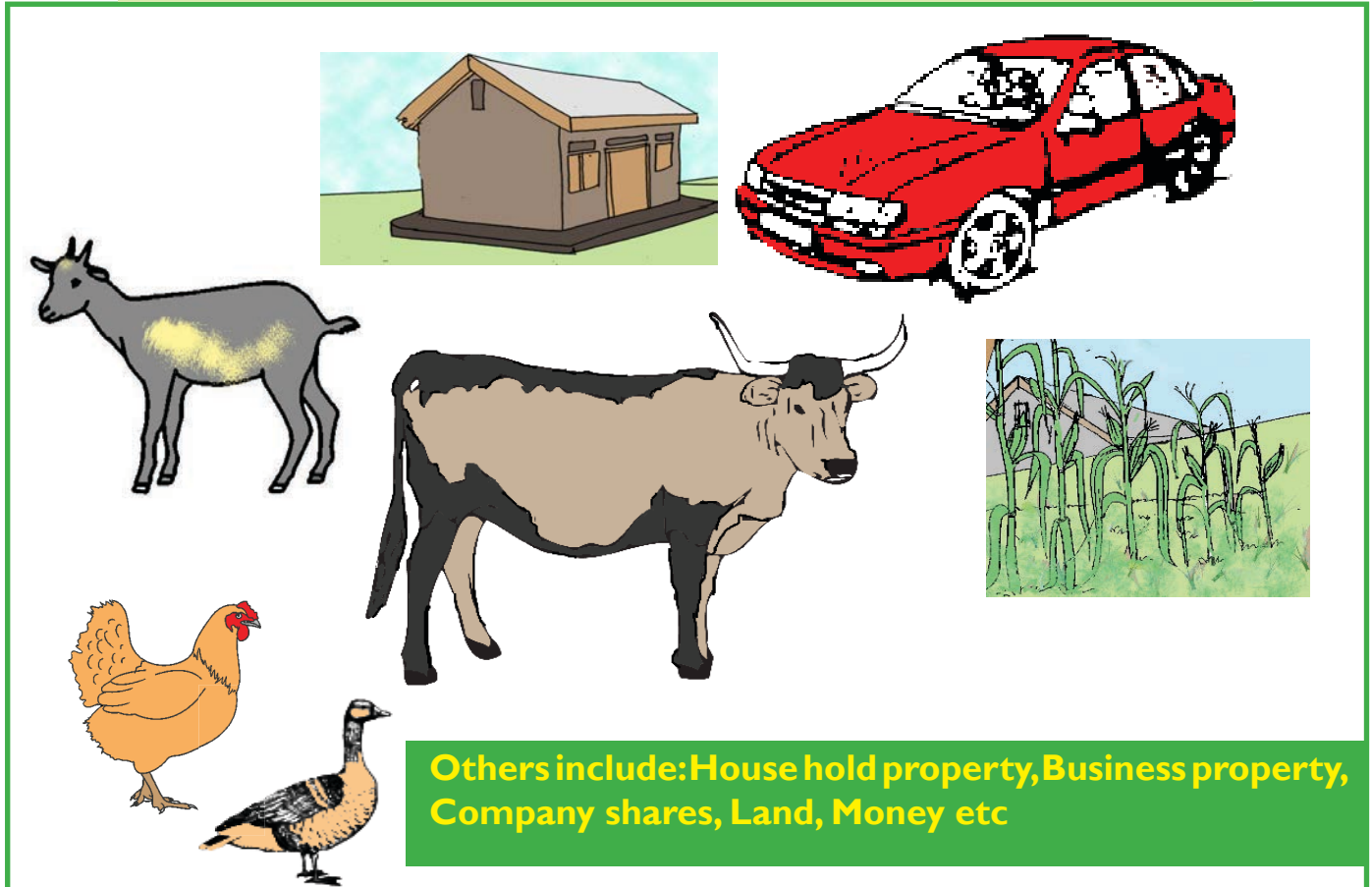
The project is among others attempting to address the oppressive cultural and traditional practices that deny women and girls equal human value to men or boys and to both genders as eligible property owners in Uganda. This was evident in a study that we conducted in the project districts where we discovered that women are in most cases recognized as mere witnesses to family land and other property while the men are able to control and benefit from the property even when such property was achieved through the hard work of women. Furthermore, in the study it was evident that there were very low knowledge levels on the laws pertaining to property among the communities and some key actors and thus the need to increase the knowledge through dissemination of information on the same among the communities and key actors hence this booklet.



WHAT IS A PROPERTY?

A property is anything that is owned by a person or an entity. It can be either movable or immovable.

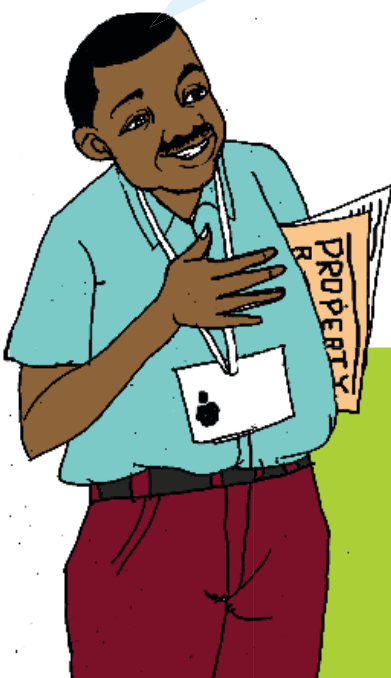
Examples of some properties you can own as a person or entity



Others include: House hold property, Business property, Company shares, Land, Money etc

Did you know that a Woman is not your property?

Wife



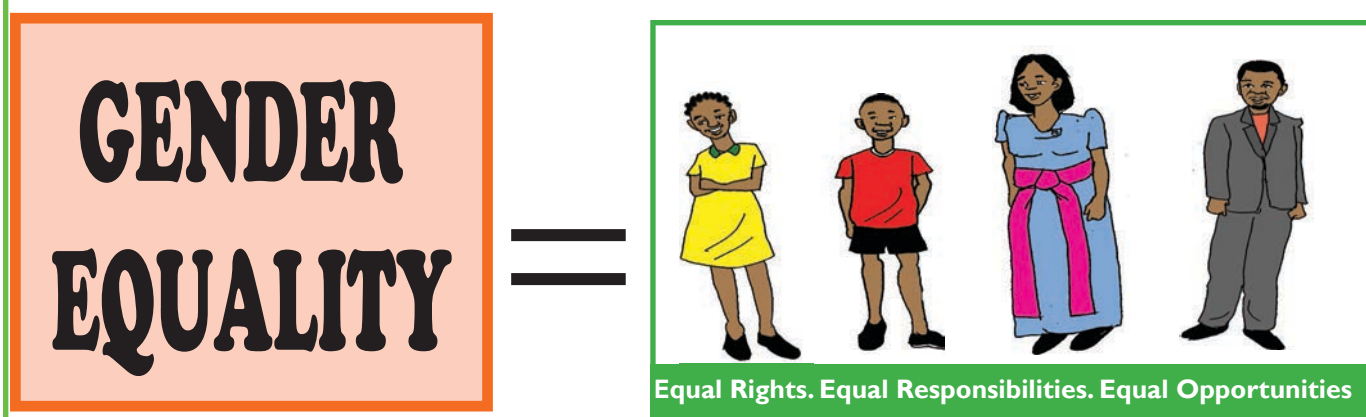
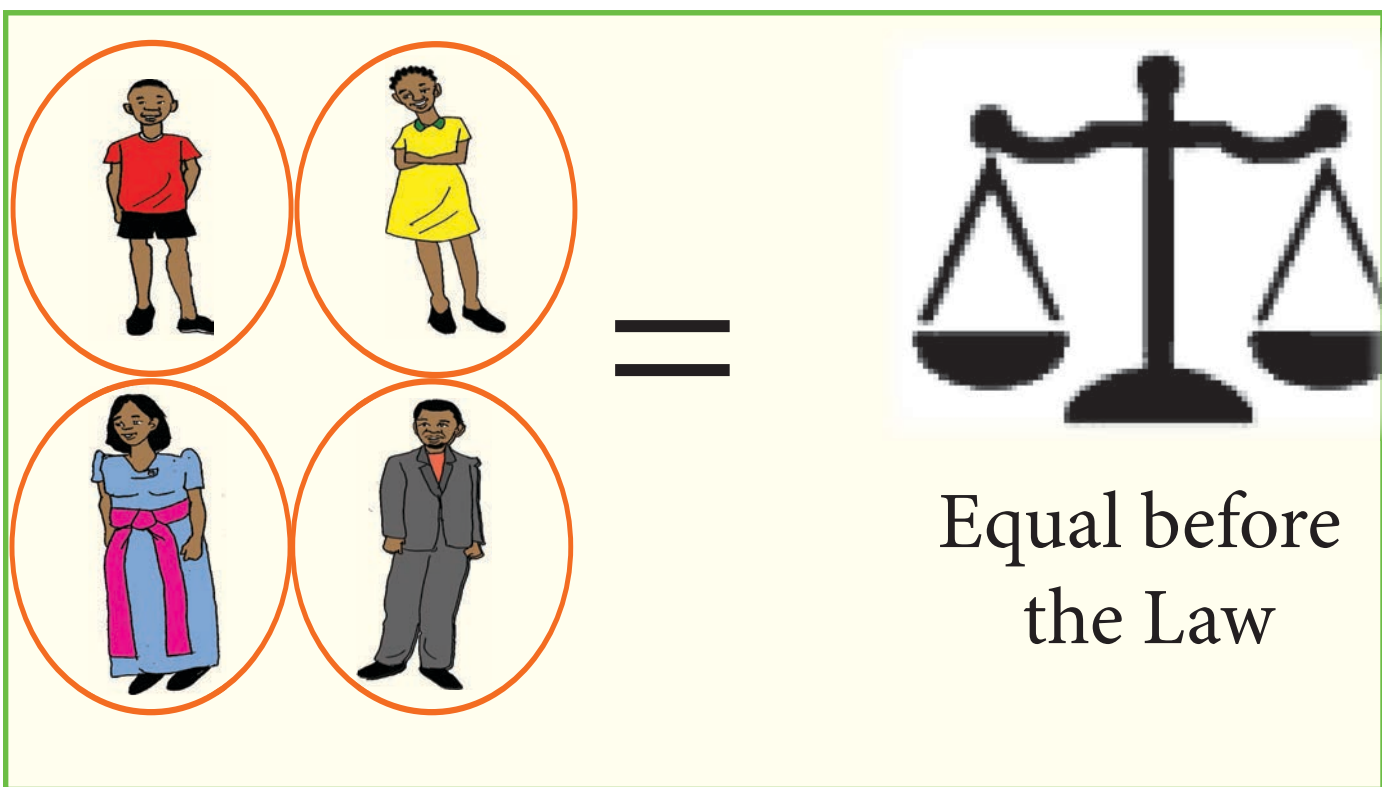
Treating a Woman and girls as property is violating their
RIGHTS



How Property Rights are related to Human Rights/ Gender Equality.

Human Rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. They cannot be taken away by others or even government. These are elaborated under Chapter 4 of the 1995 Constitution. The right to own property is also safeguarded in this Chapter under Article 26 which says *Every person has a right to own property either individually or in association with others.*

Gender Equality refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. This is emphasized under Article 21 of the Constitution (Which says *All persons are equal before the law in all spheres political, economic, social, cultural life and every other respects*) and Article 33 (Which says *Women shall be accorded full and equal dignity of the person with men.*)



Property Rights and the related Laws

I. The 1995 Constitution.

As already mentioned above, the right to own property is safeguarded under Article 26 of our Constitution.



Article 26 Every person has a right to own property either individually or in association with others.

A constitution is a set of fundamental principles or set established precedents according to which state or other organization is governed.

II. THE SUCCESSION ACT CAP. 162

There is a close relationship between property rights and succession or inheritance rights. While property rights are derived from different laws/acts (e.g. *land rights which are derived from the Land Act*), Inheritance rights are derived from the Succession Act and they arise in a situation where a person has died (deceased) and has left behind properties.

These properties can be distributed by a Will left by the deceased which is referred to as Testate Succession and if he/she has not left a **Will** which is referred to as Intestate Succession.

(a) Testate Succession.



According to the Succession Act, testate succession will arise where the deceased has left a valid Will and when this happens all his or her properties will be distributed according to his or her Will.



FACT

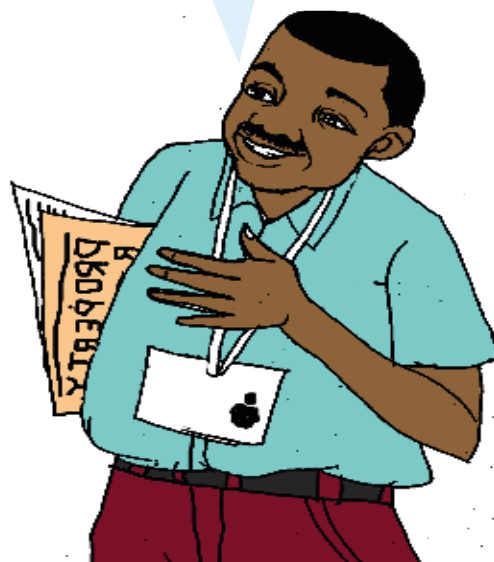
When the deceased leaves a **Legal Will**, the family follows what is written in the Will to distribute the property

UNDERSTANDING A LEGAL WILL

What is a will?



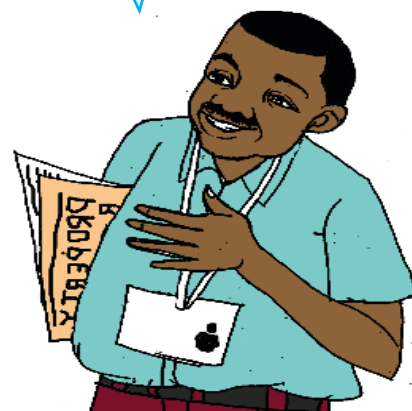
A Will is a legal document stating the ownership and distribution of properties/estate of the owner and to whom it will be entrusted upon his death.



Can a woman write a Will?



We all have a responsibility to write a Will .



FACT:

A person making a Will must be of sound mind and must have attained 21 years of age.

No person can therefore make a Will while he or she is in such a state of drunkenness or from illness or from any other cause that the person does not know what he or she is doing.

Key Message

Make a Will today protect your family!

Your will should have the following to be valid.



Signature or mark of the Will maker (The Will maker has to sign on each page of the Will) and date should be indicated.



Signatures or marks of two witnesses, their names, addresses and occupations and the date.



Name and address of the person making the Will (Must indicate that he/she has made the Will when of sound mind and at will)



Name (s) and address (es) of the wife/ wives/ husband of the person making the Will (A wife or husband is one with whom you are legally married to in accordance with the law).



Name of guardian or guardians for the young children (This person(s) plays more of the parenting role after the death of the Will maker.)

Names of persons who are given specific properties/ gifts in the Will (The properties can be money, land or other property but they must belong to the Will maker. The Will maker must not give away properties that do not belong to him/her.) (The persons to be given properties must include ones children, wife/ wives/husband and other dependents) (If you have not given anything to any of these people, you need to explain why.) (The Will maker can however give property to any other person if he or she so wishes)



Name(s) of the executor(s) (An executor is one who will implement your Will. It can be one person or more than one person)



Names and ages of the children of the person making the Will (Here you have to include all your children even those born out of wedlock/ marriage)

Benefits of Making a Will

- It enables distribution of your possession according to your wish.

- Writing a Will allows one to decide who will oversee and manage the distribution of your property or estate.

- It is in a Will that you can specify your funeral wishes. This reduces stress of loved ones and means that your body shall be treated in a manner you wished



- Reduces stress and heartache for loved ones; if a Will clearly outlines your funeral arrangements and property distribution.

Safe Guarding your Will

Where can I keep a Will?

You can keep your Will in court, Chief registrar, your lawyer, your bank, religious leaders or a trusted friend.



Can I update a Will ?

Your will can be updated at any time if the testator decides. Or can also make a new Will.

When you decide to update or make a new Will, make sure you withdraw the old one.



TIP:

Avoid making two contradicting wills.



If the testate leaves more than one will, the law considers the will written last.



A good will is not be based on bias and don't show discrimination

(b) Intestate Succession.

According to the Succession Act, intestate succession will arise where the deceased has left no Will. When this happens the wife (wives) are entitled to 15 percent of the property of their late husband. Where there are two or more wives they all share the 15 percent amongst themselves.



The distribution of a deceased person's property is as hereunder in the different circumstances according to section 27 of the Succession Act. All the properties of the deceased is assumed to be 100% and is distributed in the following manner in a situation where a deceased is a man:-

Situation

1

Deceased



**NO WILL
LEFT**

The Succession act instructs us to share as follows;

If deceased (he) left behind a wife/wives, children, dependent relatives!?

- Children 75%
- Wife or wives 15%
- Dependent relatives 9%
- Heir 1 %



Reminder:

If the man left behind more than one wife, all the wives share amongst themselves the 15% allocated to them.

Situation

2

Deceased

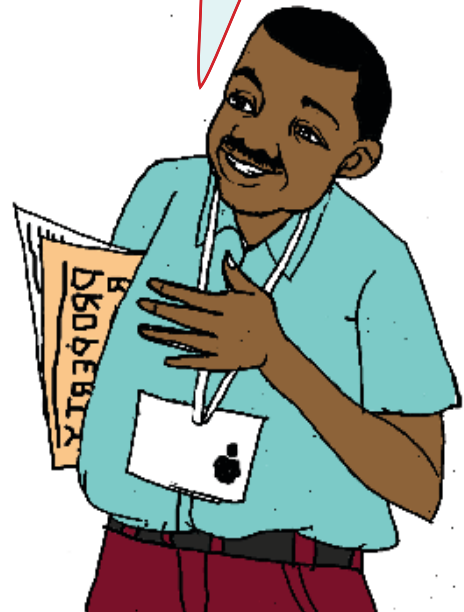


**NO WILL
LEFT**

The Succession act instructs us to share as follows;

If the deceased (he) left no children, what do we do?

- Wife or wives 50%
- Dependent relatives 49%
- Heir 1%



Reminder

Remember that if the man left behind more than one wife, all the wives share amongst themselves the 50% allocated to them.

**Key
Message**

Make a Will fulfill your wishes!

Situation

3

Deceased

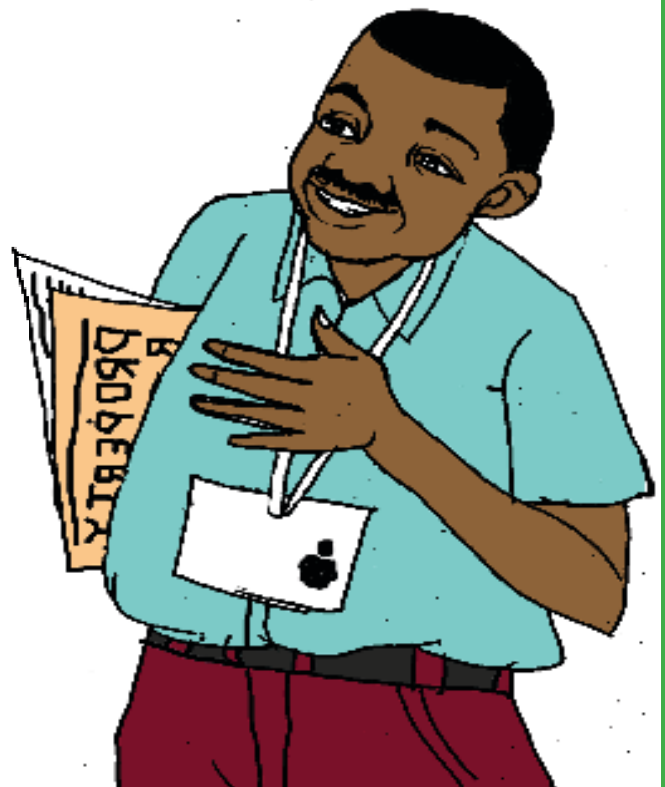
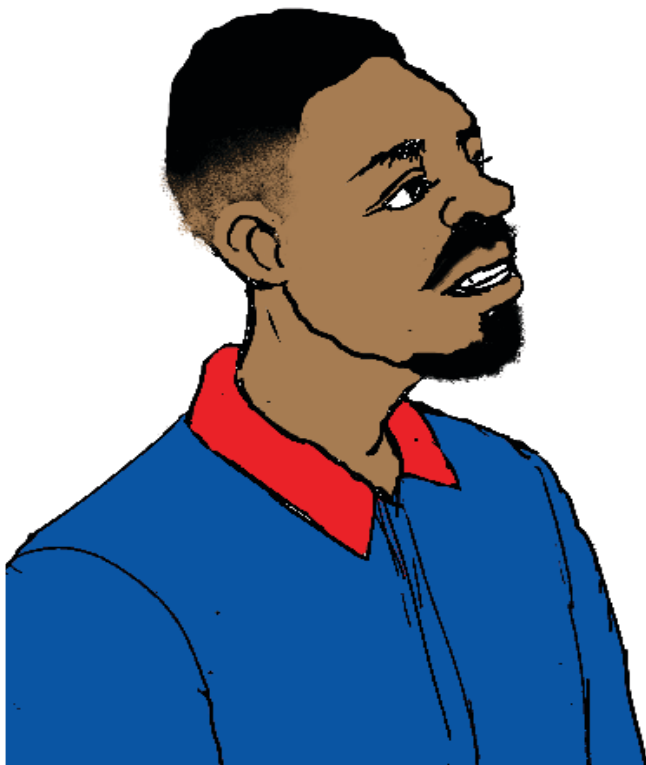


**NO WILL
LEFT**

The Succession act instructs us to share as follows;

If the deceased (he) left no children and wife, what do we do?

- Independent relatives 90%
- Heir 1%



TIP:

Making a Will is not fear for death but a sign of responsibility.

Situation

4

Deceased

NO WILL
LEFT

The Succession act instructs us to share as follows;

If the deceased (he) left no children and dependant relatives, what do we do?

- Wife 99%
- Heir 1%



Reminder:

If more than one wife was left, all wives share the 99% amongst themselves.

Deceased**NO WILL
LEFT****Situation****5**

The Succession act instructs us to share as follows;

If he left no wife or
dependant relative

Their share will go
to the deceased's
children.



**Key
Message**

**To safeguard your interests in family
property, legalise your marriage.**

DECEASED PERSONS HOME.

The Residential holding (which is the home that the deceased person was occupying prior to his death including all the properties therein) continues to be occupied by the wife/ husband, any children under 18 years if male or under 21 years of age and unmarried if female, who were normally resident in this home.



This home is not supposed to be distributed to any deceased's beneficially during the distribution of the deceased's property as it remains to benefit the above mentioned deceased's family members.

**Wife/ husband,
stay**



**Under 21
years of
age and
unmarried if
female stay**

**Children under 18 years if
male stay**

KEY BENEFICIARIES IN FAMILY PROPERTY

A *beneficiary* is one who is entitled to a share in the property of a deceased person in accordance with the laws relating to succession.



The following are beneficiaries:

Heir:

This is a person recognized by the rites and customs of the tribe or community of a deceased person as being the customary heir of that person.

Children:

Children include legitimate, illegitimate and adopted children.

Dependant relatives:

These include wife, husband, a son or daughter under eighteen years of age or daughter or son above eighteen years of age who is wholly substantially dependant on the deceased.

Wife or Husband

The details of a legal wife or husband is in next page

FACT:

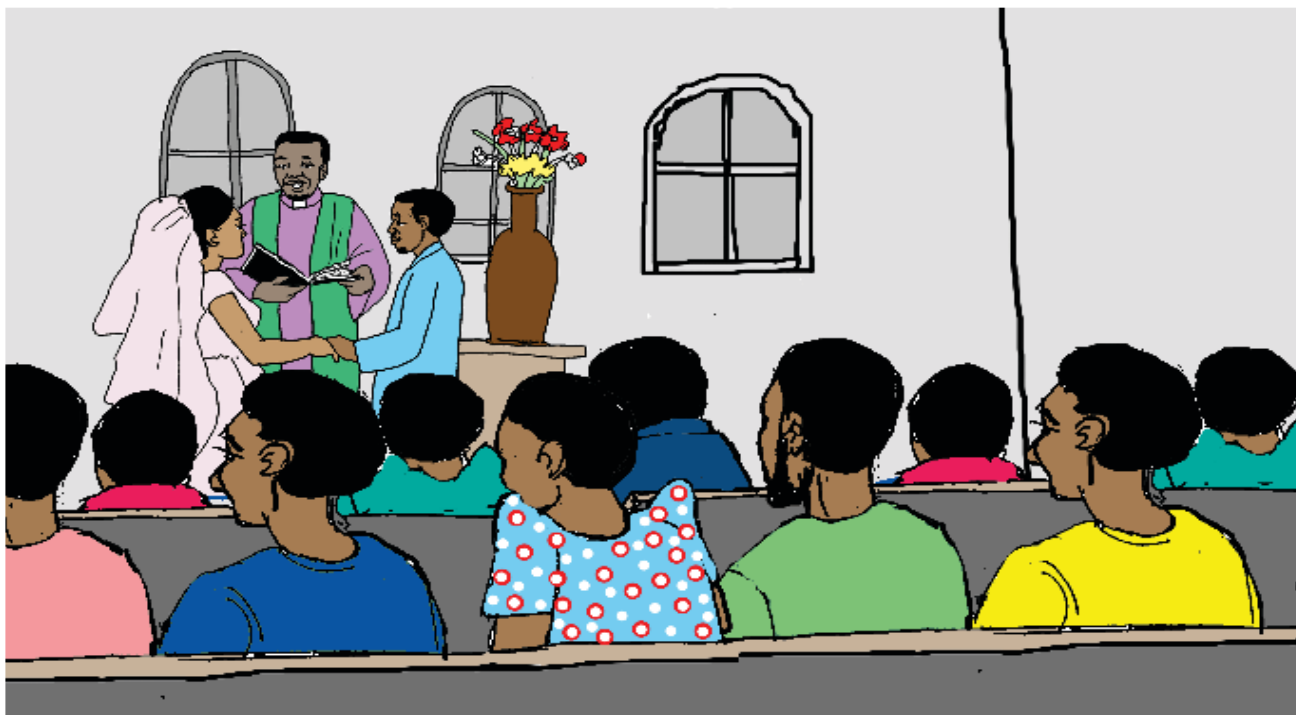
When the deceased is a man, the wife is a beneficiary and when the deceased is woman the husband is also a beneficiary.

A legal wife or husband

It is only a person who was legally married to a deceased that is entitled to claim an interest in his or her properties as a wife or husband. A legal wife of husband is one who is married under the law. The various types of marriage recognized under the law in Uganda are namely: -

(a)

Church marriage



It is the voluntary union of one man and one woman for life to the exclusion of all others.

It must be carried out by a person authorized by law.

It is a union of one-man one woman.

The parties should not be within the prohibited degree of affinity or hindered – for example they should not be closely related e.g. child, grandchild, niece, nephew, brother, sister, etc.

Both the man and woman must be single i.e. not party to any existing marriage.

The parties must consent to the marriage.

Characteristics and essentials of a Church marriage

What happens if the above are not observed?

FACT

The marriage is nonexistent. That is the marriage is regarded as having not taken place.

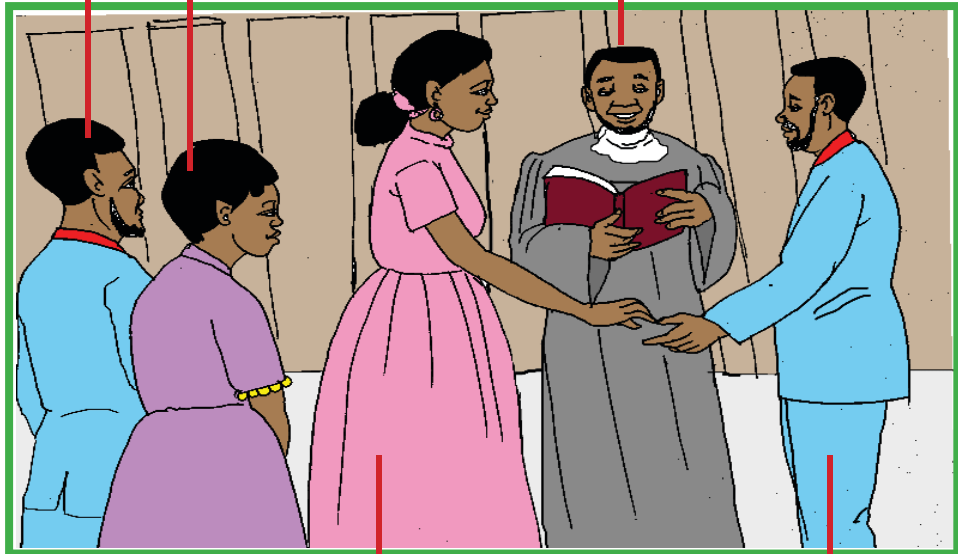
(b)

Civil marriage

This is done by the Chief Administrative Officer

There should be witnesses while this marriage is performed.

The Chief Administrative Officer has the authority to perform this type of marriage. Thereafter, a marriage Certificate is issued to the couple fully signed accordingly



Only one man and one woman are allowed for life unless divorced by court.

Characteristics and essentials of a civil marriage.

This is the type of marriage conducted by the Chief Administrative Officer.

The essential requirements of this marriage are basically similar to those governing a church marriage and if not followed, the implications are the same.

Contrary to the common belief i.e. it is not a contract for a given number of years.

Like the Christian marriage it is monogamous, that is one man and one woman for life or until divorce by court.

What happens if the above are not observed?

FACT

If any of the requirements is not satisfied, then no valid civil marriage exists.



This is a potentially polygamous union where the man can marry wives under customary practices, provided he fulfills each woman's customary requirements.

The woman must be single but the man may be marrying more women provided he has not undergone a previous civil or church marriage with another woman.

Characteristics and essentials of a customary marriage.

Formalities of a customary marriage depend on the customs of the tribe or community concerned. Most customs require that a prior introduction ceremony is performed before the marriage.

Parties who are closely related (i.e. blood relatives are prohibited to marry).

The parties must be 18 years and above.

FACT

The only legal way to claim deceased's property is when you are legally married

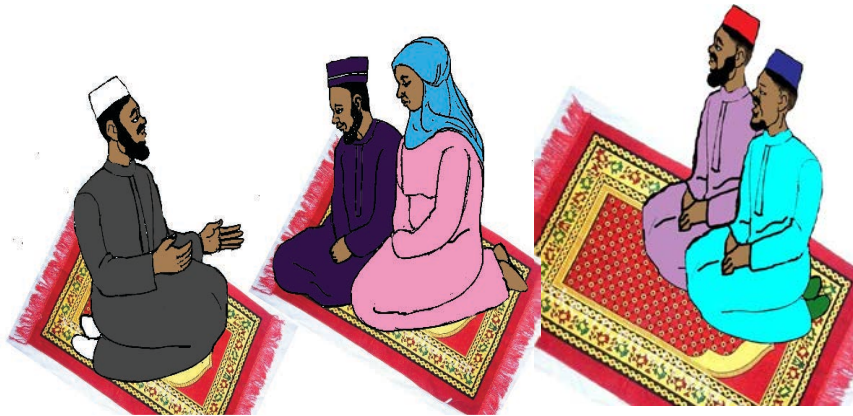
What happens if the above are not observed?

FACT

If any of the requirements is not satisfied, then no valid customary marriage exists.

(d)

An Islamic or Mohammedan marriage



Characteristics and essentials of an Islamic or Mohammedan marriage

The marriage is entered into by an offer and acceptance between the groom and his representatives and the guardian or a representative of the bride groom in the presence of at least 2 witnesses.

A man can marry up to 4 wives provided that he can treat them equally in all ways e.g. love, material possessions and sexual intercourse.

This is a potentially polygamous union. Under this type of marriage, a man can only marry up to four wives.

A divorced woman cannot remarry during “Eda” that is the three months waiting after divorce on death of her husband.

The parties must consent to the marriage.

The ceremony is usually performed before a “Mwalimu” in the place of choice, either at home or in the Mosque.

Marriage to close relatives i.e. brothers, sisters, etc is not allowed.

The man must give the woman “Mahari” which is property of a certain value as consideration for marrying him. The value she sets is not subject to bargain.

The man and the woman’s “Wali” and at least two witnesses must be present at the ceremony. The “Wali” is the woman’s trustees and must be a male.

What happens if the above are not observed?

FACT

If any of the requirements is not satisfied, then no valid Islamic marriage exists.



Characteristics and essentials of Hindu marriage.

This marriage may be solemnized in accordance with the customary rites and ceremonies of either party to the marriage.

(a) Saptapadi (taking of seven steps by the bridegroom and the bride jointly before the sacred fire). Each is accompanied by a prayer and seven vows. This is when marriage becomes recognized by the state.

The first vow is for food

The second vow is for strength

The third vow for prosperity

The fourth for wisdom

The fifth for progeny

The sixth for health

The seventh for friendship

(b) Anand Karaj (going around the Gurti Sahib by the bride and bridegroom four times).

What happens if the above are not observed?

FACT

If any of the requirements is not satisfied, then no valid marriage exists.

A WIFE OR HUSBAND'S RIGHT TO INHERIT PROPERTY IN CASES OF DIVORCE

What happens to a wife or husband's right to inherit property in cases of divorce?



In the case of divorce, the property is divided equally between the husband and wife. After such, neither party is entitled to their former spouse's property upon death as the marriage that had originally brought them together had been terminated.



The Succession Act provides that if a deceased has left no Will, no wife or husband of such a person shall take any interest in the deceased's property if at the time of death of the deceased; he or she was separated from the deceased as a member of the same household unless he or she is attending an approved course of study, or for other reasons as determined by court.

This means that a wife or a husband of one who dies without a legal Will cannot benefit from the deceased property if at the time of death he or she was separated as a member of the same household. Therefore the one who voluntarily abandons his or her spouse cannot benefit from the property upon death.

FACT:

On the other hand court may decide that this doesn't apply to a wife or husband for a particular reason.

ADMINISTRATION OF THE DECEASED'S PROPERTY WHERE NO WILL WAS LEFT

Grant of Letters of Administration.

Where a person dies intestate an administrator or administrators are agreed upon by the deceased's closest family members who are supposed to apply for letters of administration in Court.

Letters of administration can be granted by either the High Court or the Magistrates Court depending on the value of the property left behind by the deceased person.

Step1



Close family members agree upon who should apply for letters of administration.

Step2

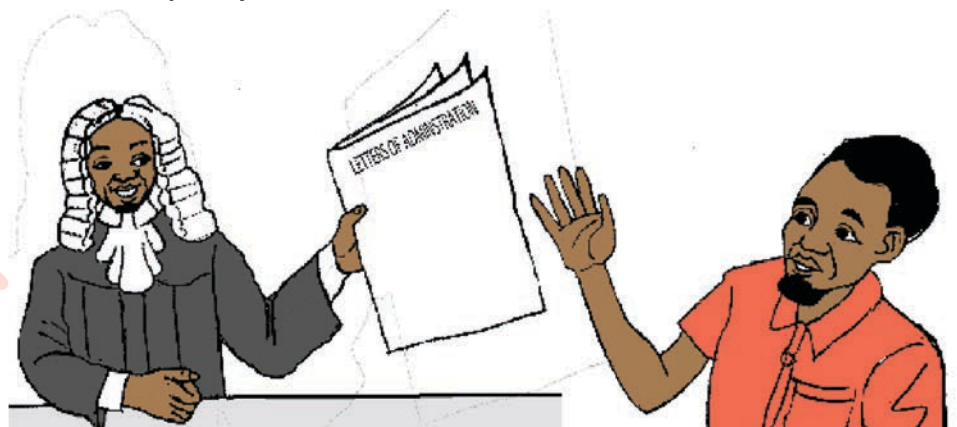


Member agreed upon by deceased's family applies for letters of administration in court.

Effect of Letters of Administration

Letters of Administration entitle the administrator to all rights belonging to the deceased as effectually as if the administration has been granted at the moment after his or her death. This therefore means that the administrator has the authority to carry out any relevant dealings related to the deceased's property for the benefit of all his or her legal beneficiaries for example wife/husband, children or other dependents and is accountable for whatever he/she does in his/her capacity as administrator.

When you receive letters of administration you have the duty.



FACT:

Administration of the deceased's property does not mean ownership.

Some of the duties of the Executor or Administrator

It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his or her condition, if the deceased has left property sufficient for the purpose.

An Executor or administrator has to within six months and one year from the grant of probate or letters of administration or with in such further time as the court which granted the probate or letters of administration may decide exhibit in that court an account on all the properties of the deceased.

Wages for services rendered to the deceased three months prior to his or her death are paid next and then other debts of the deceased.

The funeral expenses to a reasonable amount according to the degree and quality of the deceased and deathbed charges including fees for medical attendance are to be paid before all debts.

If the executor or administrator on being required by the court to exhibit and account intentionally refuses to do so or exhibits a false account he or she commits an offence and can be punished under the law.

The executor or administrator has to collect all the properties of the deceased and the debts that were due to him or her at the time of death.

The expenses for of obtaining probate or letters of administration including cost incurred for or in respect of any judicial proceedings that may be necessary for administering the properties are paid next after the funeral expenses and deathbed charges.

Grant of Probate

Before proceeding to do anything with the deceased's property, the executor/executors named in the deceased person's Will are supposed to apply for probate in a competent court. Probate means seeking authority to administer the deceased person's estate/ property. When probate is granted to several executors and one of them dies the authority to administer the deceased's property remains with the surviving executor/executors.

The executor/executors are supposed to administer the properties of the deceased for the benefit of all his or her legal beneficiaries for example wife/husband, children or other dependents and are accountable for whatever they do in their capacity as executors. Like in the case of Letters of administration, probate can also be granted by either the High Court or the Magistrates Court depending on the value of the property left behind by the deceased person.

Intermeddling

A person who intermeddles or does any other act which belongs to the office of the executor or administrator in relation to the property of the deceased while there is no rightful executor or administrator in existence for no justifiable reason as per the law is bound to be held liable or accountable for his actions.

III. THE LAND ACT CAP. 227

Land happens to be a fundamental property in every body's life and therefore all its transactions are mainly governed by the land act.

Section 27 specifically protects the rights of women, children and persons with disability regarding customary land. It emphasizes that customs, traditions and practices should not deny them access to ownership, occupation and use of any land.

Section 38A of the Land Act as introduced by section 19 of the Land Amendment Act of 2004 defines family land and provides protection to all spouses as below:-

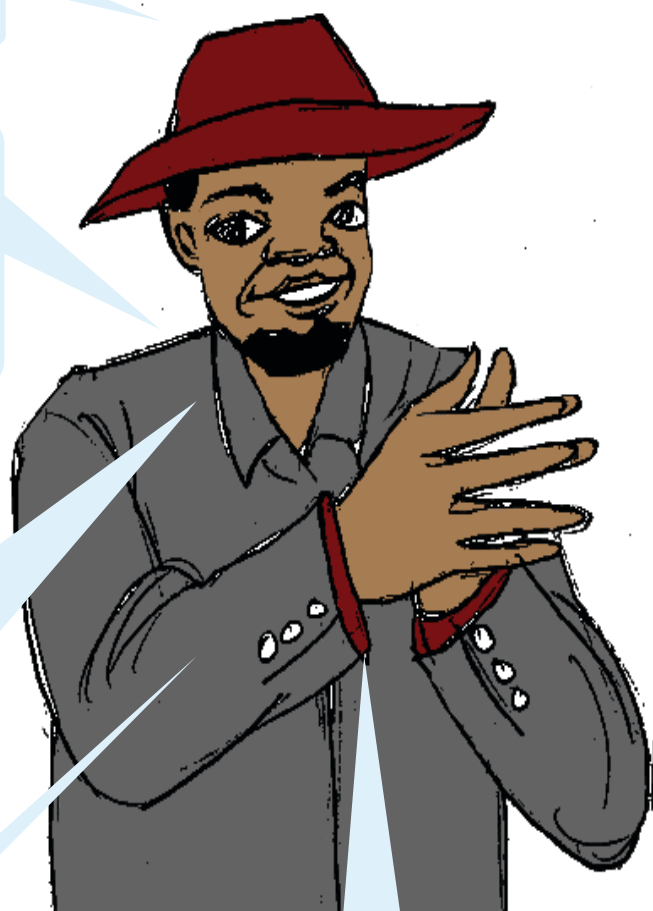
Every spouse enjoys security of occupancy on family land.

The said security of occupancy means a right to have access to and live on family land therefore the spouse in every case has a right to use the family land and give or withhold his or her consent to any transaction which may affect his or her rights.

According to the same law "family land" is defined as land on which (1) is situated at the ordinary residence of a family (2) on which is situated the ordinary residence of the family and from which the family derives sustenance (3) which the family freely and voluntarily agrees shall be treated to qualify as family land in (1) and (2) or which is treated as family land according to the norms, culture, customs, traditions or religion of the family.

The "land from which a family derives sustenance" is defined as land which the family farms; or land which the family treats as the principal place which provides the livelihood of the family; or land which the family freely and voluntarily agrees, shall be treated as the family's principal place or source of income for food.

On the other hand "ordinary residence" is defined as the place where a person resides with some degree of continuity apart from accidental or temporary absences; and a person is ordinarily resident in a place when he or she intends to make that place his or her home for an indefinite period



Section 39 of the Land Act as amended by **Section 20** of the Land Amendment Act of 2004 also goes ahead to provide further protection of spouses through restriction of transactions regarding family land without the consent of wife or husband. It says that a spouse should not do the following without the prior consent of the other spouse.

- Sell, exchange, transfer, pledge, mortgage or lease any family land;
- Enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any family land; or Give away any family land or enter into any other transaction in respect of family land. It goes on to make further explanations as follows:-

- The said consent required shall be in the manner prescribed by law for example it should be in writing.

- This law does not apply to any transfer of land by the mortgagee in exercise of powers under the mortgage.

- Where any transaction is entered into by a purchaser in good faith and for value without notice that the transaction shall be invalid but the purchaser shall have the right to claim from any person with whom he or she entered into the transaction, any money paid or any consideration given by him or her in respect of the transaction.

- The said consent shall not be unreasonably withheld.

- Where the consent is withheld, a person aggrieved by the withholding of the consent may appeal to court which shall require the spouse to show cause why he or she cannot give consent and may, in its discretion, dispense with the consent.

- A spouse, not being the owner of the said family land may lodge a caveat on the certificate of title, certificate of occupancy or certificate of customary ownership of the person who is the owner of the land to indicate that the property is subject to the requirement of consent under the law.



✓ Every spouse enjoys security of occupancy on family land.

- ✓ Right to have access to and live on family land.
- ✓ Right to use the family land for sustenance
- ✓ Right to consent to any transaction which may affect his or her rights

ACCESSING FAMILY PROPERTY JUSTICE IN UGANDA

The formal and informal remedies available to access property justice.

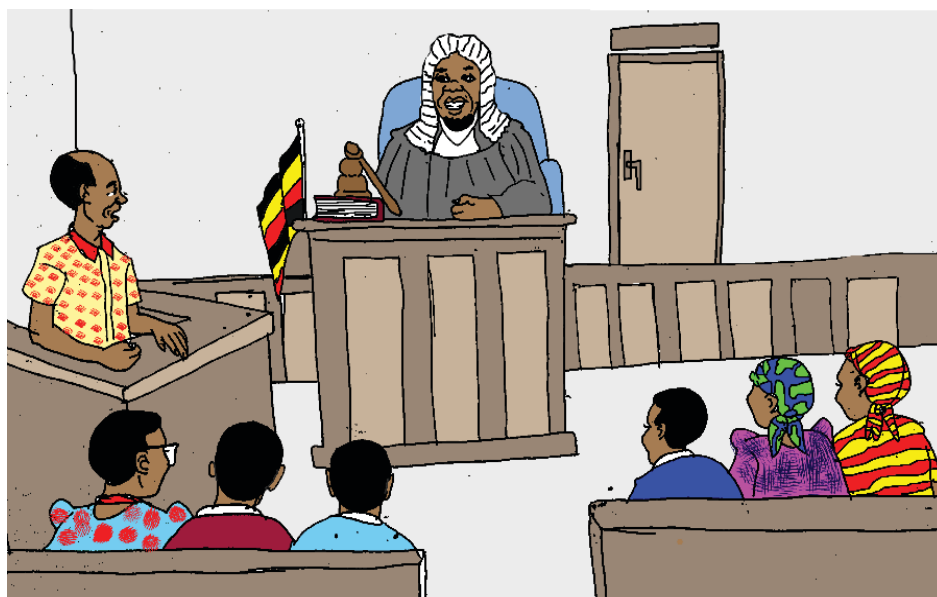
There is a range of dispute resolution mechanisms or institutions to address property related cases. Often the nature and extent of the matter determine which institution is suited to address the matter. These are formal and informal in nature.

FORMAL STRUCTURES

These are mandated by law and include:-

The Administrator General's Office in matters involving properties of the deceased.

Courts of law and include Local Council Courts, Magistrates Courts, High Courts, Court of Appeal, and Supreme Court among others.



INFORMAL STRUCTURES

These are not mandated by law but provide Alternative Dispute Resolution such as mediation and reconciliation in property matters. They may include:-

Religious Leaders.

It's my responsibility to sensitize the community about property laws related families in our society



As an Imam, its important to talk about family property issues in my community



I will make sure that when families have disputes about family property related disputes, I encourage families to reconcile.



TIP:

In case family members have failed to agree on matters related to family property, they can make use of the religious leaders for advise and guidance.

Clan Leaders.



Community leaders.



TIP:

Clan and community leaders are the closet avenues that you can seek advise and guidance in case you have family property related disputes.

Non-Government Organizations.



Key roles of informal structure leaders

- ✓ Mediate between families with family property related disputes.
- ✓ Sensitizing families on family property disputes and how to handle them.
- ✓ Helping in reconciliation of families with family property disputes.

TIP:

You should make use informal structures as your first option to resolve family property disputes because:

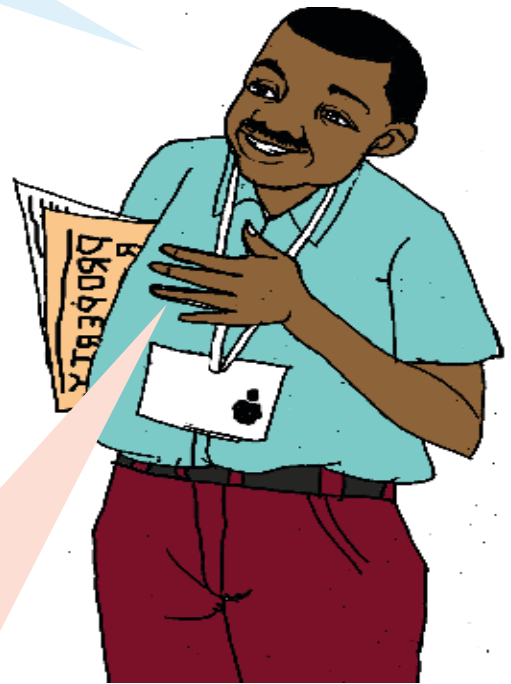
Its not time wasting, You avoid court expenses, and the formal structures are reconciliatory in nature.

Property Agreement

Property agreement is a document that lays out the terms of transaction of goods and services.

It should have the following:

- Two parties – A seller and a buyer
- Goods and property to sale and its description
- Transfer of ownership/property
- Price – in terms of money and payment details
- Warrants of ownership from the seller
- Date and duration
- Confirmation by signatures of both seller and buyer
- Witnesses of the transaction



Remember:

To be a legal property owner, you must sign on the agreement as a purchaser and not as a witness because being a witness in a purchase transaction does not give you ownership rights to property. If you are purchasing property jointly as spouses or husband and wife it is therefore important for both of you to sign as purchasers on any property agreement that way you will be taken to be co-owners of that particular property you have purchased.

See sample property agreement on the next page

AGREEMENT TO SELL PERSONAL PROPERTY

Purchase and Sell Agreement is made on thisday of20.....
 betweenof(Seller), Age.....Tel/
 NIN.....andof.....
 .(Buyer/Purchaser),Age.....Tel/NIN:.....

WHEREAS, for good consideration the parties mutually agree that:

I. Seller agrees to sell, and Buyer agrees to buy the following described property:

.....

2. Buyer agrees to pay to Seller and Seller agrees to accept as total purchase price the sum of UGX....., payable either by cash, direct deposit bank, cheque, mobile money. Upon the agreed terms, below:

.....
the buyer may pay in installment and in such case the seller will only transfer absolutely legal rights to the buyer after the completion of the payment.

3. The parties agree to transfer property/title on....., 20....., at the address to the buyer.

4. Seller warrants he/she is a rightful legal owner to the said property.

5. The seller has good and legal title to said property, full authority to sell said property, and that said property shall be sold without encumbrances, liabilities and any adverse claims of every nature and description whatsoever.

6. Said property is sold in "AS IS" condition reasonable wear and tear expected.

7. The seller undertakes to compensate the purchaser for any loss, costs and expenses that the purchaser may have incurred in case of any reason third party claims.

8. This agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and signature the day and year first above written.

**SIGNED By the within
 Named SELLER:**

.....
NAME & SIGNATURE OF THE SELLER

In the presence of:

**SIGNED By the within
 named PURCHASER:**

.....
NAME & SIGNATURE OF THE PURCHASER

In the presence of:

For More Information Contact



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