

Full Length Research

The impact of customary laws on inheritance: A case study of widows in Urban Uganda

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This study explores the ways in which widows in Kampala, Uganda are deprived of homeownership upon the death of their husbands. Homeownership through inheritance usually means that widows have the authority to register the home in their names and have the power to use and sell the home upon the death of their husbands. This study, which is based on life story interviews with widows in the middle-income areas of Kampala, found that women are prevented from inheriting the matrimonial home due to customary laws and practices. According to customary law, women may not own property and hence, upon the death of the husband, the ownership of his home is passed on to a male member of his family. In terms of statutory law, the Succession Act dictates that the matrimonial home is inherited by the eldest son of the deceased. Although there have been successful legal challenges which have shown the intestate succession law to be unconstitutional parliament has yet to change this law. The research findings show that widows can only inherit the matrimonial home under the following circumstances. Firstly, if a widow is the joint owner of the home, there are no legal and social obstacles that prevent her from inheriting her husband's share of the home. Secondly, a widow can inherit the home if her husband stipulates it in his will. However, even if she is the sole beneficiary, unless the husband also appoints the wife as the sole executor of the will, the husband's family can conspire to prevent her from inheriting the home.

Key words: Gender, homeownership, inheritance, widowhood, life story, succession act, customary law, executor.

INTRODUCTION

In Uganda, as in many parts of Sub-Saharan Africa, statutory and patriarchal customary laws deprive widows of their matrimonial home (Nayaran et al., 2000). As a patriarchal society, most land in Uganda is usually registered in the name of the husband. Intestate succession law gives the matrimonial home to the first-born son of the deceased. So, if the husband does not leave a will bequeathing the matrimonial home to his wife, she is left with only user rights of the home. Although husbands who do leave wills usually bequeath the matrimonial home to the widow, the vast majority of husbands die intestate (Birabwa-Nsubuga, 2006). Consequently, the matrimonial home is almost always owned by the husband's family. Gender inequality

therefore comes about because widows only enjoy the use of the matrimonial home instead of owning it.

Although, there is adequate documentation on gender inequality in terms of the inheritance laws of Uganda (Kanabahita, 2006; Okumu-Wengi, 2001, 1997; Sebina-Zziwa, 1998), there is little evidence to show how this inequality comes about in practice. The objective of this study is therefore to present evidence on the ways in which widows in Uganda are deprived of inheritance by both statutory and customary laws and practices through the experiences of Ugandans widows as demonstrated through their life stories.

METHODOLOGY

Life history interviews were conducted from 2004 to 2007. In total we interviewed a total of 30 widows out of which 20 life stories were selected after realizing a general pattern in the way women were deprived of inheritance of the home. The main aim was to identify

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the different ways in which widows were unable to inherit the matrimonial home upon the death of their husbands. The important issue here was to make sure a saturation level of information was reached (Miller, 1981). This comes about when interviewing more people and does not add any new information. To make good use of the life history approach we need to identify the empirical boundaries of our respondents by defining the kind of respondents to interview. The group of respondents interviewed can be taken as a cohort whereby the people in that group are of the same age or belong to the same social structure; otherwise it becomes difficult to compare the life stories (Zolta'n Ka'rupa'ti, 1981).

In this paper a few life stories depicting the different ways in which widows are denied inheritance is presented. In addition, in-depth interviews with the Administrator General were conducted at different stages of the study to clarify on a number of legal issues concerning inheritance as well as to observe what actually took place at the Administrator General's office as family members of the deceased converged here to claim properties and death gratuities.

THE LAWS OF INHERITANCE

Like many countries in Africa, Uganda practices both customary and statutory laws of inheritance. It is therefore important critically to look at how each type of law impacts on the right of a widow to inherit the matrimonial home. Before British colonialism, inheritance of land in Uganda was governed by patriarchal customs in many communities. The custom dictated that the transfer of land to an individual had to be through a male relative. The allocation of land was in the hands of male heads of families or clan leaders. Even when the natal family gave land to a woman, she was not allowed to dispose it off to an outsider except the male clan leader (Birabwa-Nsubuga, 2006; Bikaako and Ssenkumba, 2003). As a result, it was impossible for many women to inherit or own land from their natal families or marital families because of this patriarchal custom. Thus, in most cases women had only user rights to land.

Widows did not inherit land from their spouses and neither did women inherit land from their male relatives. Hence widows acted as guardians of the land for the male minors until they grew up and inherited the land (Bikaako and Ssenkumba, 2003). This meant that widows with adult sons were more likely to have user rights over land than widows without sons. Because of her insecure position in the family, the widow with no sons would get married to her brother-in-law in order to continue having user rights to the home. Refusal to be 'inherited' by her brother-in-law meant that the widow lost her user rights to the land (Bikaako and Ssenkumba, 2003).

The colonial administrators did not change these patriarchal customs, but instead introduced new property ownership laws where an individual had the right to own land either by freehold or leasehold. As a result, the customary practice of giving land to a male heir was extended to these new forms of ownership whereby men acquired title deeds and, upon their deaths, their sons inherited the home. In this system, women did not have legal ownership rights. Upon the death of a husband the

title deed was transferred to the male heir. When land became a commodity to be bought and sold at market value, men were free to sell land because the title deeds were registered solely in their names. Hence women were further marginalized from homeownership (Bikaako and Ssenkumba, 2003). Although the new statutory law on land ownership could have benefited women, the colonial administrators did not change the patriarchal customary laws that prevented women from inheriting land. The commodification of land made women's user rights even more temporary than before because men now had title deeds, which they could use to get loans without consulting the women (Okumu-Wengi, 1997).

Today, Uganda is still largely a patrilineal society. Customary practices that place women in an inferior position continue to operate in many communities in spite of the statutory laws that condemn such practices. Under customary law, women do not inherit property on widowhood (Birabwa-Nsubuga, 2006; Okumu-Wengi, 1997). When a man dies, the clan immediately appoints an heir. The heir is usually the first son in the family. He inherits the property of the deceased and he is supposed to take care of everybody in the home. A widow only holds goods in trust for her sons until they are adults. The widow's right of access to the home and property within the home depends on whether she decides to remarry or not. Customary law puts a woman in an economically insecure position. She inherits no property despite the fact that she has contributed to it through her unpaid labour in the home. The widow is left at the mercy of her husband's line and his heir who controls what benefit she is allowed to get from the home. Many discriminatory cultures and traditions inherent in Ugandan society still undermine the status of women, especially through their control of property. As a result, women continue to be marginalized as far as property ownership is concerned. Women's inheritance rights therefore still depend on the decisions of men (Asiimwe, 2001).

If a father does not have a son, in most cases none of his daughters can become his heir but instead it is his nearest male relative who inherits the home (Kanabahita, 2006). Daughters can inherit the home, however, but only in exceptional circumstances where there is no suitable male heir (Okumu-Wengi, 1997; Guyer, 1987). Customary law does not recognize any financial contribution of a wife to matrimonial property. The family property is presumed to belong to the husband and therefore if a wife dies, even if she contributed financially to the matrimonial home, her widower will automatically inherit the home. Even if the woman left a will distributing her share of the matrimonial home (if jointly owned) it is very unlikely that her natal family would inherit a share. If a man dies however, the widow may never have full inheritance rights of the matrimonial home.

From the above discussion, we can agree that patriarchal customary law does not guarantee a widow inheritance rights. Since customary law is unwritten, the

custodians of the law who are mainly male, tend to apply the law as it suits them and in so doing they deny women their inheritance rights. When a married woman dies there is no property distributed because culturally the property is assumed to belong to her husband (Kanabahita, 2006; Asiimwe, 2001, 175 to 176). There are two national statutory laws that govern inheritance matters in Uganda, namely the 1995 constitution and the Succession Act (Amendment) Decree No. 22 of 1972. It is therefore necessary critically to look at each of these statutory laws and see how they translate themselves in guaranteeing the widow the right of ownership of the matrimonial home.

According to the current Constitution, a widow does have the right to inherit her husband's property. However, it is incumbent upon parliament to come up with a specific law that governs inheritance matters. For example, Article 31(2) of the constitution, which is pertinent to inheritance matters, states that 'Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses' (Uganda Law Development Centre 1995, clxx). Since the matrimonial home is not specifically mentioned it is presumed to be part of the estate. The Constitution gives general guidelines but does not deal with specific laws that govern inheritance matters. Hence, though the Constitution seems to guarantee the widow the right to inherit the matrimonial property, this right can only be extended to her through an Act of Parliament.

The Succession Act, like many laws in Uganda dates back to 1904 (Bond, 1998). The Succession Act replaced the Succession Ordinance of 1906, which was based on English common law. The Succession Act was a clear attempt to put in place a uniform law of succession that would apply to both intestate and testate succession (Okumu-Wengi, 1997; Wagubi, 2003, 2). The amendment of the Act was aimed at addressing gender issues and customary laws (Nanyenya, 1973). As a result, all succession matters shifted from the hands of clan leaders to the courts of law. Subsequently, new set of rules of inheritance that could neither be classified as custom or fully statutory was created.

The Succession Act is divided into two parts; one part deals with properties of persons who die having left a will (testate) and the second part deals with properties of persons who die without leaving will (intestate). It is important to look at each of these sets of laws in relation to the matrimonial home. Intestate inheritance refers to situations where a person dies without leaving behind a valid will disposing off his or her property. Although everyone above 18 years of age is allowed to make a will, the majority of Ugandans die intestate: only five out of every 100 cases reported to the Administrator General's office die testate (Kanabahita, 2006, 15; Okumu-Wengi, 1997, 41). The reasons include, among others, the superstition that writing a will hastens one's

death (Kanabahita, 2006, 15). Other reasons include the lack of awareness of the importance of writing a will and the lack of ability to write one. Since the majority of men with property die intestate, the law provides for the appointment of a personal representative of the deceased to administer and distribute the estate according to defined and fixed percentages.

According to the distribution schedule a widow acquires only 15% of the entire estate; the children acquire 75%; the legal heir 1% and the dependants acquire 9%. The personal representative of the deceased, referred to as the Administrator, acquires Letters of Administration before she or he can distribute the property according to the will¹. However, the matrimonial home, legally referred to as the principal residential holding, is not among the list of items for distribution according to law. This is because the home legally belongs to the legal heir who is usually the first male child of the deceased (Rukimirana and Bateson, 2000, 3805). As a result, a widow is denied a right to claim inheritance of the matrimonial home.

Lineal descent is that person who in a direct line of ancestry in an ascending line for example, a son and his father, grandfather, great-grandfather or in a direct descending line for example, between a man, his son, grandson, and great-grandson (Rukimirana and Bateson, 2000, 3803). The Act does not recognize the widow's financial contribution to the matrimonial home. The Law looks at a widow as a dependant and not as a contributor to the home. Since very few male Ugandans leave behind valid wills, the administration of most estates, which include the matrimonial home, is handled under the Act (Kanabahita, 2006). Since under intestate succession the matrimonial home is not among the items distributed, we can conclude that the majority of Ugandan widows are unlikely to inherit the matrimonial home unless there are special circumstances. What makes the law contentious is that it does not cater for matrimonial homes that are jointly owned by married women with their husbands.

The intestate succession law is also silent on who inherits when a married woman dies. The Act therefore assumes that the matrimonial home belongs solely to the husband and therefore upon the wife's death, the husband automatically inherits the home. Recently, the Law and Advocacy for Women in Uganda, one of the NGOs in Uganda, petitioned the Constitutional Court to declare a number of clauses in the Succession Act unconstitutional.² On April 5, 2007 the Constitutional Court declared certain provisions of the Succession Act to be unconstitutional. These were Section 27 of the Act, which guarantees a widow only 15% of the value of the estate, and Rule 8(a) of the second schedule that provides for a widow's right of occupancy of the matrimonial home only until she remarries. This ruling created an opportunity for lawyers to successfully argue their cases for widows. Although, the Constitutional Court declared these provisions in the Succession Act

unconstitutional, what remains to be seen is whether parliament will change the act itself. New legislation needs to be put in place to address the widow's percentages in the entire estate of her deceased husband and the inheritance of the matrimonial home.

The Constitutional Court only declared unconstitutional the occupation of the matrimonial home clause that states a married woman loses occupation if she remarries. But the clause that states that the matrimonial home should not be part of the estate to be distributed remains contentious. Questions on the widow's right to transfer the matrimonial home into her name after her husband's death remain unanswered. Since the widow is unable to transfer the title deed of the matrimonial home into her name, it becomes difficult for her to use her husband's title deed as collateral for a loan. For example, in a case where a husband leaves a large matrimonial home in a prime area, the widow may find it difficult to sell the large home and buy a smaller one and invest the remaining money in business ventures. Hence a widow's freedom to utilise the matrimonial home is curtailed. It is not surprising; therefore, that individuals and civil society groups have tried to urge parliament to approve the new Domestic Relations Bill in order to address gender inequalities in ownership rights.

Testate inheritance refers to a situation where a deceased person dies having written a will. In the will, a person expresses his/her wishes regarding the disposal of his/her property and other rights or obligations (Okumu-Wengi, 1997, 33). In the will the person making the will (testator) is expected to name an executor of the will and the beneficiaries of the estate. The main strength of the rules of testate succession in the Succession Act is that they allow a person to dispose of his/her property as he so wishes without following defined rules for distribution of the property (Rukimirana and Bateson, 2000, 3810). Hence a husband is free to bequeath the matrimonial home to his legal wife if he so wishes. Therefore, the testate statutory law makes provisions that are fair to a widow if a husband bequeaths the matrimonial home to her (Okumu-Wengi, 1997, 39; Rukimirana and Bateson, 2000, 3818). This therefore implies that in situations where the matrimonial home is not jointly owned, it is the way a husband writes the will that determines a widow's beneficial right in the matrimonial home.

There are different ways in which a husband may write a will and this determines how easy or difficult it might be for a widow to have any beneficial interest in the matrimonial home upon the death of her husband. A valid will may contain various provisions on how the estate should be managed and these include the following possibilities: A valid will where the deceased names the widow as both the beneficiary and the executor of the will. A valid will where the deceased names a brother or sister as the executor of the will and names the widow as the beneficiary; a valid will where the deceased names

the wife as the executor of the will but names only his children as beneficiaries; a valid will where the deceased names the Administrator General as the executor of the will; a will where the deceased names another person other than the widow to be the guardian of his offspring who are still dependants; and a will where the widow is not mentioned at all. Hence, while testate succession would be one way in which a widow would inherit the matrimonial home, she is at the mercy of her husband's intentions and wishes. What is debatable though is whether a husband names his wife as the sole beneficiary of the matrimonial home and as a sole executor.

Inheritance laws in practice

The life stories that follow present the different situations in which married women were denied inheritance rights upon the death of their husbands. The first concerns the experience of Evelyn Kalungi, who was unable to inherit the matrimonial home even when her husband died before he acquired the title deed. Evelyn Kalungi, aged 30 years, lives in two bed-roomed servants' quarters with her two daughters and a stepson, aged 12, 10 and 9, respectively. The house is made of bricks and a corrugated-iron roof. Electricity and plumbing are installed. After her husband's death, Evelyn moved out of the matrimonial home to live in the servant's quarters of the house. This allowed her to rent out the house to generate income to pay her children's school fees. Evelyn was born into a poor family in Mukono District. She had only six years of primary education due to lack of school fees. As a result she could not acquire any formal employment. Due to social problems in the rural village, Evelyn migrated to Kampala in search of any informal job. She rented a room in Kiwatule where she lived alone. She ran different kinds of informal businesses for a living and earned a reasonable income. It was at Kiwatule that she met Peter who was working with 'KK Car Cleaning Company'.

In 2000 Evelyn was married to Peter under customary law and they were blessed with two daughters. However, during their marriage, Peter produced a boy child from an outside relationship. By the time Evelyn was married to Peter, Peter had acquired a plot of land from his father but had not transferred it into his name. The couple first constructed the servant's quarters where they lived while they constructed the main house. Evelyn spent part of her own income from her business on building materials while Peter met other construction expenses. The couple later moved from the servant's quarters to the main house.

In 2005, Peter fell ill and died without leaving a will. Immediately upon his death Evelyn's in-laws demanded the car keys on the pretext that they needed to use the car for the funeral preparations. After the funeral Evelyn

was surprised to learn that her in-laws had sold off Peter's car purportedly to raise money in order to pay for his children's school fees. In the end, her in-laws never paid the school fees. Judging from the behaviour of her in-laws regarding Peter's car, Evelyn did not bother to ask them about inheriting the matrimonial home. She later learnt from the neighbours that her in-laws had transferred the title deed of the matrimonial home into her children's names including her husband's son from the adulterous relationship.

The in-law's quick action to register the home in their grandchildren's names was aimed at deterring Evelyn from claiming inheritance rights to the home. Evelyn's in-laws preferred to register the home in their grandchildren's names because the property would then remain in the male line. To register the matrimonial home in Evelyn's name would be transferring the family property to Evelyn's line. Although Peter died intestate before he processed the title deed, Evelyn could not process the title deed into her name although she had an opportunity to do so. This is simply because the matrimonial home was built on land that was still registered in her father-in-law's name. Therefore, Evelyn could not process the title deed of the matrimonial home in her name because she needed the consent of the previous owner, her father in-law, to sign the transfer forms in her favour and he would not give it.

In addition, before Peter died, his father had not given him an allocation letter for the plot of land on which he built the matrimonial home, as required by the Kiganda custom. According to Evelyn, in Kiganda custom when a parent gives a plot of land to his child, he or she is supposed to put the allocation in writing. This agreement enables the child to register the land in his or her name in cases where the land is untitled. In Peter's case, there was no such agreement and therefore when he died the land automatically reverted to his father, who then registered the land in their grandchildren's names. Had there been an agreement between Peter and his father, Evelyn believes she could have used the agreement to process the title deed in her name. However, she was quick to add that she would most likely have met resistance from her father in-law. Evelyn now regrets having spent her money on a home that does not belong to her. Since the plot of land on which the matrimonial home is built is registered in the children's names, the matrimonial home legally belongs to the children and Evelyn can only exercise user rights over it.

When Peter died, she could not longer support her children because of her reduced income. She therefore moved out of the matrimonial home and rented it out to tenants in order to generate the income to pay school fees for her children. She consoles herself that at least her children will benefit from her contribution to the home. She has, for example, built a roof for one of the houses that her husband left uncompleted. Although she has continued to put up new structures on her husband's

land, she plans to acquire her own land where she can build her own home.

In summary, Evelyn was unable to exercise inheritance rights over the matrimonial home she contributed to, even in a situation where her husband died before he acquired the title deed, because the plot of land on which the matrimonial home was built was still registered in her in-laws' names. Because of her in-laws protective and possessive behaviour over their son's estate Evelyn could not even consider processing the title deed in her favour. Her in-laws transferred ownership rights to their grandchildren to ensure that the property remained in the male line. Because the Registration of Titles Act does not differentiate between the land and house, Evelyn's contribution to the house cannot be recognized and therefore, legally the matrimonial home belongs to her children. Evelyn's story demonstrates that a widow deprived of the matrimonial home even when her husband dies before he acquired the title deed. This happens when the land on which the home is built belongs to the woman's in-laws.

The second life story demonstrates the way a widow can be deprived of the matrimonial home even when her husband died testate. Jennifer Namirembe was unable to inherit the matrimonial home because her husband did not make her the sole beneficiary as well as the sole executor of his will. Jennifer Namirembe is 54 years of age. She lives in Kiwatule in her own three bed-roomed house with six of her children. The house is made of bricks and mortar, with a corrugated-iron roof. Electricity and water have been installed. Born in Luwero, some 50 miles from Kampala, Jennifer grew up in a poor family in Katikamu. Jennifer has four children, two from relationships with married men and two from her husband. Jennifer studied at Katikamu senior secondary where she completed seven years of education until 1966 when she dropped out of school due to pregnancy.

After her first pregnancy Jennifer lived with her sister in Gombe and, with the help of her brother in-law, she upgraded to an eighth year of study. She later joined Ishaka Hospital where she undertook a first aid nursing course and qualified as a nurse aid. In the 1970s she went to Kendu in Kenya and completed a three-year nursing course, qualifying as a nurse. She then returned to Uganda and worked in Gombe Hospital. At Gombe she became pregnant again with her second child. Jennifer later left Gombe for Kampala and worked at a private clinic for one year.

In 1974 Jennifer undertook a course in midwifery at Mengo Hospital, which she completed a year later. In the mean time she became pregnant with her third child. She then acquired a job with the Muslim Supreme Council as a nurse. Her employer gave her a rent-free house on South Street in Kampala city centre. She later moved to a house provided by her employer where she stayed for five years. In 1980s, Jennifer met her fourth man Jamaine, who was a civil servant and a divorcee with

three children. She married him the following year and, as a married woman, was no longer permitted to work at the Muslim Supreme Council. She then moved to live in Jamaine's house in Kiwatule. In their nine years of marriage, the couple lived in Jaimane's home whose title deed was registered solely in his name. The couple was blessed with two children one boy and one girl now aged 19 and 24 years. Jennifer used her qualification as a midwife to start a clinic at the matrimonial home. Had Jennifer not had any qualification, she would most likely have depended on Jamaine for financial support. Under Ugandan law, her qualification as a midwife allowed her to run a medical practice. She jointly opened a pharmacy and a clinic in Ntinda with Jamaine. Although Jamaine invested more money in the pharmacy and the clinic than Jennifer, Jennifer's medical experience was obviously a critical asset to the business.

In 1990 Jamaine died testate. In his will Jamaine made Jennifer one of the beneficiaries of the home. She was allowed to live in the matrimonial home with her two children until she died or remarried. Her husband also made Jennifer one of the executors together with two of his male relatives. While Jaimaine had the right to freely bequeath the matrimonial home to Jennifer as a sole beneficiary and sole executor, he preferred to include two other male executors. Jamaine's action to include two male executors in the will is a clear indication that he wanted his property to remain in the male line. Had Jaimaine made Jennifer the sole executor as well as the sole beneficiary, she would be at liberty to transfer the home into her name. Therefore, to make Jennifer a sole executor and sole beneficiary would have meant losing the family property to her and her clan. After the funeral, Jennifer and the other three executors transferred the title deed from Jamaine's name to their own names.

The existence of the two male executors on the title deed limited Jennifer's inheritance rights. As a businesswoman, Jennifer could not use the title deed as collateral to borrow money from a financial institution because the other two executors would not grant her permission to do so. Hence, although Jamaine left a valid will and made Jennifer one of the beneficiaries of the home, Jennifer did not inherit the matrimonial home. She could only exercise user rights to the home because she needed the consent of the two executors to sell or mortgage the home, or use it to acquire a loan from any financial institution.

In 1995, Jennifer, 'a woman of loans' as she described herself, bought her own plot of land and registered it solely in her name. With this property, Jennifer was able to acquire a loan from a financial institution, which she used to build her own home. She converted the matrimonial home into a health centre and moved to live in her own house. Jennifer is proud to have a home of her own, as she puts it, 'a woman's house'.

In conclusion, although Jennifer's husband died testate, the will did not guarantee her outright inheritance rights.

Jennifer was unable to inherit the matrimonial home because her husband did not make her the sole executor as well as the sole beneficiary of the will. Jennifer's life story demonstrates that the way a husband writes the will determines the widow's inheritance rights to the home. Hence husbands can deny their wives inheritance rights if they do not make their wives sole beneficiaries as well as sole executors. Jennifer's husband kept his home in the male line by including two of his male relatives as executors in the will. The above discussion shows that homeownership through inheritance is not guaranteed due patriarchal beliefs and practices. Although Evelyn's husband died before he acquired the title deed of the home and she would have used this opportunity to register the home in her sole name, she was unable to do so because the land on which the matrimonial home was built belonged to her in-laws. The above life stories demonstrate that widows in Uganda do not automatically inherit the matrimonial home even when they are the sole beneficiaries of their husband's will. This therefore implies that widows inherit the matrimonial home under special circumstances.

The life stories that follow demonstrate the particular conditions under which widows inherited the matrimonial home. Namatovu Prossy is a widow who inherited the matrimonial home even though her husband died intestate. Namatovu, aged 56 years, was born into a large family of 15 siblings in Bugerere Mukono District. She lives in Kiwatule in a four-bedroomed home with her three children aged 24, 28 and 30 years. The house is built with cement blocks and has a corrugated-iron roof. It has two sitting rooms, two bathrooms, two toilets, and has electricity and running water. Namatovu studied at Nagalama primary school from 1952 to 1960, before she joined Namagunga secondary school in 1961 where she completed her eleventh year of education in 1964. She then joined Nsambya Nursing School for a three-year course in nursing, qualifying as a nurse in 1969. Namatovu then joined World Health Organization based in Mbale from 1969 to 1972. In 1972 she joined Mulago School of nursing and completed an advanced course in nursing in 1974.

In 1976, Namatovu married Saul, a police officer employed at the Criminal Investigation Department. They were blessed with three children, one boy and two girls aged 30, 28 and 24 years respectively. However, her husband had three other children, two girls and one boy, from other relationships. From 1974 Namatovu worked at Mulago hospital as a registered nurse until 1986. She remained at home as a housewife until she left for the United States in 1988. While in the United States, she attended a course in paediatrics. In 1991, Namatovu returned to Uganda and joined Saul who was by then living in a government-owned house. Saul later bought a quarter of an acre plot of land in Kiwatule. He made building plans in his name and constructed a home on the untitled kibanja³ land. In 1995 Saul died intestate,

before he acquired the title deed for the plot of land on which he built the matrimonial home.

After the burial, Namatovu moved from the government owned house to the unfinished and untitled house in Kiwatule. Her in-laws granted her permission to solely administer Saul's estate. Namatovu then obtained letters of administration to enable her to claim Saul's death gratuity and pension. Although Namatovu benefited from Saul's pension and death gratuity, the amount was inadequate to pay her children's school fees and complete the matrimonial home. Apart from paying school fees Namatovu used part of Saul's death gratuity to start a clinic at home, which she was able to do because she had a nursing qualification. If she was not qualified, Namatovu would have had to depend on Saul's death gratuity for her income.

With income from the clinic Namatovu was able to build more rooms for lease to tenants and to expand her medical service business. She also rented a house in Ntinda where she started another clinic. Because of the enormous financial demands of completing the matrimonial home, Namatovu realized the need to borrow larger loans from financial institutions. In order to do so, she needed a title deed in her own name. Namatovu then contacted the local council officials to introduce her to the landowner of Saul's plot of land. Because the local council officials already knew her as one of their residents they introduced her to the landowner and convinced him to sign the transfer forms in her favour. For the price of about 3,000 dollars, Namatovu became a homeowner.

Namatovu registered the plot of land on which Saul built the matrimonial home solely in her name and acquired the title deed in 2005. Namatovu was able to beat the inheritance system and its patriarchal laws because, firstly, Saul died before he acquired the title deed and secondly her in-laws did not bother to follow up matters concerning their son's home. Thirdly, the land was registered in the names of an independent landowner. Namatovu's in-laws were liberal and good-natured judging from their willingness to allow her to administer Saul's estate. This is reflected in Namatovu's words after further probing as to how she succeeded in registering the plot of land in her name after her husband died intestate. 'My in-laws did not conflict with me at all and even when I received the death gratuity money they never insisted on sharing it. My in-laws did not bother me with the money or attempt to evict me because they are naturally good people. I observed their good behaviour before whereby all the women who have been married in this family after losing their husbands are left with their property. The only complaint I have with my in-laws is their failure to assist me to pay the children's school fees'.

Although letters of administration do not legally permit an administrator to register the plot of land in the widow's name, especially when her husband dies intestate,

Namatovu managed to manipulate the inheritance system with the assistance of local council officials. With the help of local leaders, she convinced the landowner to sign the transfer forms in her favour, knowing that her in-laws would never question her actions because of their good nature. Had her in-laws been possessive of their son's estate, Namatovu would not have dared to register the plot of land solely in her name.

Conclusion

This study has advanced the debate on gender inequality in homeownership by specifying some of the gender dynamics of inheritance in Uganda. In developed countries, widows are usually guaranteed inheritance rights of the matrimonial home upon the death of their husbands even when the husband dies intestate. By contrast, statutory and customary law in Uganda does not allow the widow automatically to inherit the matrimonial home from her husband. Instead, intestate inheritance practices are patrilineal, in which property is passed on from father to son, bypassing the widow. Since the vast majority of husbands die intestate, it is the first-born boy child of the deceased, and not his wife, who usually inherits the matrimonial home.

There is a loophole in the law that a widow can exploit, however. Should a husband die after he has purchased the property and before he has put the title deed in his name, the widow can gain ownership by putting her name on the title deed of the property. However, this strategy does require the widow to pay for this administrative procedure and to have the cooperation of both municipal officials and the previous owner of the property. As we have shown, if the previous owner is the husband's family, they can successfully prevent the widow from transferring the title deed into her name.

A widow can also inherit the matrimonial home if she is the sole beneficiary of her husband's will. Even under this condition, however, a widow can be deprived of full ownership of the home if her husband does not also appoint her as the sole executor of the estate. Should he appoint his family members as joint executors, they will usually act in the interests of the male line and prevent the widow from inheriting the matrimonial home.

Endnotes

1. Letters of Administration are legal documents that the High Court gives to the person chosen by the deceased's family to administer the estate. They are usually given in cases where the deceased died intestate (Nanyenya, 1973, 20).
2. Constitutional Petition No.05 of 2006, Law and Advocacy for Women in Uganda: Petitioner versus the Attorney General.

3. Ekibanja is a plot of land managed by a de facto owner, while it belongs to a de jure landowner. Often, though not always, it applies to tenants on mailo or freehold land (Nabwire 2003, 213).

REFERENCES

- Asiimwe J (2005). 'One step forward, two steps back: The women's movement and law reform in Uganda from 1985-2000'. In Bond, J (ed.) *Voices of African women: Women's rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press.
- Asiimwe J (2001). Making women's land rights a reality in Uganda: Advocacy for co-ownership by spouses. *Yale Human Rights and Develop. Law J.*, 4: 173-189.
- Bikaako W, Ssenkumba J (2003). Gender, land and rights: Contemporary contestations in law, policy and practice in Uganda. In *Women and land in Africa: Culture, religion, and realizing women's rights*. Edited by L. Muthoni-Wanyeki. London: Zed Books.
- Birabwa-Nsubuga C (2006). Women under customary marriage in Uganda: A critical look at their property rights at dissolution. Copenhagen: The Danish Institute for Human Rights.
- Chirayath L, Sage C, Woolcock M (2005). Customary law and policy reform: Engaging with the plurality of justice systems. A paper prepared as a background for the World Development Report: Equity and Development, Washington.
- Constitution of the Republic of Uganda (1995). Kampala: Law Development Centre.
- Guyer J (1987). Women and the state in Africa: Marriage law, inheritance, and resettlement. *Working Papers in African Studies* No.129. Boston: African Studies Centre, Boston University.
- Kameri-Mbote P (2001). Gender dimension of law, colonialism and inheritance in East Africa: Kenyan women's experiences. Geneva: International Environmental Law Research Centre.
- Kanabahita D (2006). Report on intestate succession. Kampala: Law and Advocacy for Women in Uganda.
- Larsson A, Schlyter A (1995). Changing gender contracts and housing conflicts. In Sithole-Fundire, S; Zhou, A; Larsson, A and A. Schlyter (eds.) *Gender research on urbanization, planning, housing and everyday life*, Harare: Zimbabwe Women's Resource Centre and Network.
- Mirafatab F (2001). Risks and opportunities in gender gaps to access shelter: a platform for intervention. *Int. J. Politics, Cult. Soc.*, 15: 143-160.
- Munalula M (1995). Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property. In Gruphel, Phase One, *Gender Research on Urbanization, Planning, Housing and Everyday Life*, Zimbabwe Women's Resource Centre and Network, Harare.
- Nabwire S (2003). The impact of health user fees on women's role in household health care decision-making in Mukono District, Uganda: A gender analysis. Ph.D. diss., Queen Margaret University College, London.
- Nanyenya P (1973). A simple guide to the law of succession in Uganda. Kampala: Law Development Centre.
- Okumu-Wengi J (1997). Women's law and grass roots justice in Uganda. Kampala: Uganda Law Watch Centre.
- Okumu-Wengi J (2001). 'Women and the law of inheritance'. In Tuhaise, P; Matovu, V; Madrama, C; Mbaaga, F; Mugisha, J; and Okumu-Wengi, J, *Women and law in East Africa*, Kampala: Law Development Centre.
- Owen M (1996). A world of widows. London: Zed Books.
- Rukimirana, V., and A. Bateson. (2000). Laws of the Republic of Uganda. Kampala: Uganda Law Reform Commission.
- Sebina-Zziwa A (1998). The paradox of tradition: Gender, land and inheritance rights among the Baganda, Ph.D diss., University of Copenhagen, Copenhagen.
- Matere-Lieb T (1995). Basotho women's role in urban housing: The case of Maseru. In *Gender Research on Urbanization, Planning, Housing and Everyday Life*, edited by S. Sithole-Fundire, A. Zhou, A. Larsson and A. Schlyter. Harare: Zimbabwe Women's Resource Centre and Network.
- Wagubi A (2003). The legal and institutional framework governing inheritance in Uganda: A critique of the law and institutions. LL.M diss., Makerere University, Kampala.
- White S, Kamanga D, Kachika T, Chweza A, Chidyaonga F (2002). Dispossessing the widow: Gender based violence in Malawi. Blantyre: Christian Literature Association in Malawi.
- Zolta'n Ka'rupa'ti (1981). 'The methodological use of the life History Approach in a Hungarian survey on mobility and urbanization. In. Bertaux, D., 'Introduction', D. Bertaux (ed.), *Biography and Society: The life history approach in the social sciences* (Sage, Beverly Hills).