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Intestate Succession in Kenya, Uganda, and Tanzania
The Role of Customary Laws and the Influence of Colonialism

Doctoral Thesis Summary

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ABSTRACT

This study delves into the Intestate Succession in Kenya, Uganda, and Tanzania, explicitly focusing on the Role of Customary Laws and the Influence of Colonialism. It aims to understand the intestate succession laws in these East African countries and analyse how the colonial legal system has impacted customary inheritance patterns, particularly concerning gender and property rights. Various research methods are employed, including examining relevant legal frameworks. This investigation sheds light on the tensions and conflicts arising from the intersection of customary and colonial legal systems, providing insights into the ongoing significance and evolution of succession matters in the postcolonial era. The findings of this study hold significant implications for policymakers, legal practitioners, and researchers in the field of customary law, especially concerning the protection of women's rights and the preservation of cultural heritage. The thesis is organised into seven chapters, each serving a distinct purpose. Chapter 1 serves

as an introduction, outlining the research topic and providing an overview of the organisation of the study, including a statement of the problem, legal framework, research methodology, and chapter summary. Chapter 2 defines general terms and concepts in the customary law of intestate succession, laying the groundwork for the subsequent country-specific investigations. Chapter 3 delves into the Historical Impact of British Rule and the Development, Key Features, and Milestones in the Customary Succession Legal System of Kenya, Uganda, and Tanzania. Chapters 4, 5, and 6 examine the recognition, application, and development of the customary law of intestate succession in Kenya, Uganda, and Tanzania. Finally, Chapter 7 brings the thesis to a meaningful conclusion by critiquing the approaches taken by the three countries in dealing with customary intestate succession and women's rights within this legal framework. It also presents recommendations for enhancing women's rights in this discriminatory field of law.

Keywords: Customary law, succession, east Africa, Kenya, Uganda and Tanzania, England, colonialism

Chapters of the Thesis

Chapter 1: Introduces the research problem, discusses the legal framework, and outlines the research methodology.

Chapter 2: Explores fundamental concepts in customary law's intestate succession, laying the groundwork for understanding country-specific challenges.

Chapter 3: Examines the recognition, implementation, and evolution of intestate succession in Kenya, considering colonial influences on customary laws.

Chapter 4: Investigates the principles and laws of intestate succession in Uganda, analysing the impact of colonisation on traditional customs.

Chapter 5: Discuss current norms and legislation governing intestate succession in Tanzania, assessing colonial influences on customary laws.

Chapter 6: Summarizes the study's findings and implications.

Chapter 7: Conclusions and Recommendations

Bibliography

Chapter 1: INTRODUCTION, FRAMEWORK, AND OBJECTIVE OF THE STUDY

Within Western legal systems and African customary law, the distribution of a deceased individual's assets is a central concern in inheritance and succession. While Western systems emphasise property distribution, African customary law incorporates broader aspects of assuming the deceased's status and power. Legal systems in African states often involve a combination of indigenous/customary laws, religious laws, and received laws from colonial powers. Customary laws, though evolving, play a significant role in governing personal and familial matters, often raising concerns about gender discrimination.

This research focuses on intestate succession in Kenya, Uganda, and Tanzania, exploring the impact of colonial legal systems on traditional inheritance practices, particularly regarding gender dynamics and property rights. The study aims to unravel tensions arising from the intersection of customary and colonial legal systems through a comparative analysis. Key objectives include examining the features of customary and ordinary intestate succession

rules, reviewing the influence of written constitutions on customary laws, and assessing the effectiveness of existing regulations in eliminating discrimination. The study's scope is limited to these countries due to their colonial history, legal pluralism, and constitutional guarantees of equality.

Problem Statement The study addresses the systemic gender bias inherent in customary intestate succession laws, contrasting with more egalitarian Western legal systems. Despite constitutional guarantees of equality, discriminatory practices persist, particularly in East African countries influenced by British colonial laws.

Objectives of the Study: The study aims to:

1. Establish features of customary and ordinary intestate succession rules.
2. Review the jurisdiction and authority of courts in addressing succession issues.
3. Assess the influence of written constitutions on customary rules.
4. Examine the effectiveness of existing regulations in eliminating discrimination.
5. Investigate the impact of British and colonial laws on customary succession laws.

Scope and Justification: The research focuses on intestate succession customs in Kenya, Uganda, and Tanzania due to their colonial history, legal pluralism, and constitutional provisions. These countries' diverse populations and legal frameworks offer compelling subjects for the analysis.

Legal Framework: The legal framework comprises various sources of law, including constitutions, legislation, case law, and customary law. Customary law, rooted in tradition and community practices, coexists with written laws but may be overridden if deemed inconsistent with constitutional rights.

Methodology: The study employs legal research methods, including literature review, case law analysis, legal comparison, and analysis of international law. These methods provide insights into intestate succession's legal complexities and illuminate potential reforms for policymakers and legal practitioners.

Theoretical Framework: Legal pluralism and centralism represent contrasting legal systems. Centralism, typified by state control over laws, faces criticism for its monopolistic tendencies. In contrast, legal pluralism recognises multiple legal orders that interact in complex ways. While legal pluralism allows for diverse legal practices, it also challenges

resolving conflicts between legal systems. This theory underpins the study, examining how various legal orders intersect in East African countries like Kenya, Uganda, and Tanzania.

Chapter 2: CONCEPT, TERMS, AND GENERAL RULES OF INTESTATE SUCCESSION

This chapter provides a detailed exploration of key concepts and principles relevant to the thesis, focusing on African inheritance laws, particularly regarding the custom of male primogeniture. The chapter emphasises the significance of customary laws, polygamous marriages, and the treatment of dependents in African societies.

The traditional African family structure, typically polygamous, is highlighted, contrasting with nuclear families in Western cultures. The family unit is central to African social organisation, with the patriarch playing a crucial role in property distribution and succession. Customary succession laws predating colonialism were disrupted by the imposition of colonial legal systems, leading to conflicts between indigenous customs and colonial practices, notably regarding land ownership and inheritance. Male primogeniture, a common practice in many African tribes, favoured the firstborn male heir in succession matters. However, constitutional reforms in post-colonial Africa aimed to address gender discrimination in inheritance laws, promoting gender equality and women's empowerment.

The chapter also discusses the communal living and solidarity within African families, where leadership roles were typically reserved for elder males, often appointed based on qualities beyond mere birth order. Despite its historical significance, male primogeniture has faced criticism for its discriminatory nature, especially against women. Modern societal changes, including urbanisation and legal reforms, have challenged traditional customs, aiming for more equitable inheritance practices.

The chapter concludes by highlighting the challenges faced by vulnerable family members, particularly during times of armed conflict, where dependence on male heads of households may exacerbate vulnerabilities.

The chapter overviews the intricate interplay between customary African laws, colonial legacies, and contemporary legal reforms concerning inheritance and succession.

The Application of Male Primogeniture Rule: Male primogeniture, the practice of eldest sons inheriting family property, has seen varied applications in East African courts. In Kenya, courts upheld it, citing customary law, as seen in the case of Eliud Maina Mwangi vs Margaret Wanjiru Gachangi. Uganda also kept it in cases like Vicent Tamukedde v Serunjogi, while Tanzania ruled against it in Chagula v. Chagula, deeming it discriminatory. Despite criticism, Zimbabwe and South Africa similarly faced challenges, with South Africa's Mthembu v Letsela case affirming male primogeniture.

Harmonisation of Indigenous African Laws and Common Law of Succession: Efforts have been made to harmonise customary and common laws in East Africa, recognising the importance of both. Traditional courts are upheld for dispute resolution, pushing for modernisation while preserving cultural practices. South Africa's Bhe v Magistrate case led to legislative reforms to accommodate customary laws, acknowledging the need for balance.

Safeguarding Cultural Practices and Equality Rights: Cultural practices are protected, but not at the expense of equality rights, as outlined in the Kenyan, Ugandan, and Tanzanian constitutions. Decisions like Bhe v Magistrate underscore the importance of aligning cultural practices with constitutional equality. Culture evolves, and reconciliation with equality rights is crucial.

Polygamy: Polygamy, prevalent in East Africa, is legally recognised in Kenya, Uganda, and Tanzania. It's viewed as a symbol of wealth and status but has faced criticism for gender inequalities. Polygyny is more common, with polyandry being rare. Colonial influence brought campaigns against polygamy.

The Head of the Family: Traditionally, the head of the family in Africa was tasked with providing for and managing the family estate. Property was categorised into house, personal, and general, with rules of intestate succession aimed at preserving family property. The head of the family had significant responsibilities and was expected to be respected by other family members.

Succession and Property Devolution in African Customary Law: Gender, family structure, and cultural traditions influence the traditional laws governing succession in Africa. While these laws have evolved, they continue to shape inheritance practices in many African societies.

Gender and Inheritance: Historically, succession was reserved for men, with women having limited rights to inherit property. However, constitutional reforms have brought about changes, ensuring equal inheritance rights regardless of gender.

Family Class and Hierarchy: In polygamous families, the order of succession is determined by the hierarchy of marriages and the status of the wives. The children of the first or "great" wife typically have priority in inheritance.

Special and General Succession: A distinction is made between special and general succession, with the former about inheritance within specific households and the latter encompassing the entire family estate.

Responsibilities of the Successor: Upon succession, the heir assumes various responsibilities, including managing family debts, supporting dependents, and performing rituals. These duties vary based on whether it's a general or special succession.

Order of Succession: In monogamous marriages, succession follows a set order, prioritising sons and other male relatives. Polygamous marriages introduce complexities, with succession influenced by factors like marriage rank and the status of the wives.

Care of Heirless Successors: In cases where successors are unavailable, customary practices allow for alternatives such as sororate, levirate, or adoption to ensure lineage continuity.

Inter Vivos Asset Disposition: The head of the family may distribute assets before death, adhering to customary laws and ensuring fairness among heirs.

Disinheritance of a Son: Sons may be disinherited under certain circumstances, such as criminal behaviour or disobedience. However, customary procedures must be followed, and sons have avenues for appeal.

Chapter 3: HISTORICAL IMPACT OF BRITISH RULE AND THE DEVELOPMENT, KEY FEATURES, AND MILESTONES IN THE CUSTOMARY SUCCESSION LEGAL SYSTEM OF KENYA, UGANDA, AND TANZANIA

Chapter 3 delves into the historical impact of British rule on Kenya, Uganda, and Tanzania's legal systems, mainly focusing on customary succession laws. Upon gaining independence, these nations adopted legal frameworks influenced by English and regional

customary laws. British rule introduced English legal principles through Orders in Council, establishing High Courts and magistrates' courts to administer English law alongside native courts for customary law. Despite the imposition of English law, customary laws persisted, administered through native courts.

The chapter discusses the historical evolution of succession laws, particularly in England, and its influence on East Africa. Property distribution upon death in England initially favoured male heirs, with widows receiving limited entitlements. However, successive legislative changes in England, such as the Administration of Estates Act of 1925, gradually expanded inheritance rights, abolishing primogeniture and granting equal rights to widows and children. In East Africa, the integration of court systems post-independence aimed to eliminate racial divisions, leading to the abolition of native courts. However, challenges remained in reconciling English law with customary practices, particularly in family and succession matters. The chapter outlines reform efforts in Uganda and Kenya to rationalise marriage, divorce, and succession laws, aiming for a unified legal framework that respects both English and customary laws. Despite these efforts, the dual legal system persists in East Africa.

In conclusion, East Africa's legal landscape reflects a complex interplay between English-derived law and customary practices. While post-independence reforms aim for a unified legal system, challenges persist in reconciling divergent legal traditions.

Chapter 4: INTESTATE SUCCESSION IN KENYA: THE ROLE OF CUSTOMARY LAWS AND THE INFLUENCE OF COLONIALISM

This chapter delves into the intricate landscape of intestate succession in Kenya, exploring its historical evolution and the influence of colonisation on customary laws. A complex interplay of cultural, historical, and legal factors shapes Kenya's inheritance laws. The chapter also examines the recognition, implementation, and evolution of intestate succession in Kenya, considering the influence of colonisation on customary laws. Kenya's inheritance laws are marked by their complexity and diversity, rooted in the rich tapestry of its cultural and historical background. This chapter delves into the multifaceted nature of inheritance laws in Kenya, highlighting their historical evolution and the role of Indigenous

customs alongside colonial influences. It also explores the constitutional recognition of African customary laws and their impact on succession matters.

Succession, the transfer of property rights, varies across communities and is shaped by cultural norms. In Kenya, inheritance laws reflect diverse cultural practices, where a girl's right to inherit may hinge on marital status. Kenya lacks a singular inheritance law, with various laws stemming from tribal customs and colonial influences. British categorising laws as "old" or "new" persisted post-independence, perpetuating legal diversity.

Before colonialism, Kenya had established customary laws, coexisting with British common law upon colonisation. The colonial government imposed various statutes, including the Administration of Estates Act of 1902 and the Wills and Intestacy (Amendment) Ordinance of 1928. Until the 1981 Succession Act, Kenya's succession laws operated under four legal regimes: European, Islamic, Hindu, and African.

The Constitution of Kenya recognises and integrates customary laws, promoting alternative dispute resolution mechanisms. Indigenous laws coexist with statutory law, subject to constitutional compliance. The Succession Act of 1981 acknowledges customary law's application under specific circumstances, particularly concerning pre-existing property arrangements.

Indigenous customs often favoured men over women in inheritance, influenced by patrilineal or matrilineal structures. Land, a primary measure of wealth, belonged communally to tribes and was managed by male family heads. Oral wills were common, executed by elders or muramatis, with widows' rights contingent on marital type. In polygamous marriages, property division favoured all wives equally. Kenya's succession laws embody its cultural diversity and colonial legacy, continually evolving to balance tradition and modernity. The Constitution's recognition of customary law underscores the nation's commitment to pluralism and justice, albeit with limitations to safeguard individual rights.

The legal framework governing succession in Kenya reflects diverse religious and customary practices, each with its laws and principles.

Under Islamic law, recognised in Kenya since independence, inheritance is governed by Sharia principles, with estates exclusively managed by Muslim law. The Quran's teachings guide inheritance distribution, favouring blood relations and male heirs over females, with a

limit on a testator's ability to distribute assets freely. For Hindus, customary laws continue to operate, with legal frameworks introduced later to govern marital and succession matters. Hindu succession laws prioritise family and communal property ownership, with distinctions based on gender and marital status.

During colonial rule, common law influenced succession, especially among Europeans, granting absolute rights to testators and favouring blood relatives in intestate cases. However, conflicts arose between customary laws and imposed regulations, particularly regarding polygamous marriages and communal land ownership among Africans. After independence, Kenya enacted the Succession Act in 1972 to provide a unified legal framework for succession, but subsequent amendments in 1981 and 1990 excluded Muslims from its application, prompting criticism for favouritism. Despite efforts to promote equality, gender-based discrimination persists in succession laws.

Capacity to Make a Will: The Kenyan Succession Act of 1981 sets out criteria for testators' capacity to make a valid will. According to Section 6, individuals must be of sound mind and at least 18 years old or married. "Sound mind" implies understanding the nature of making a will, one's property, and the claims of potential heirs. Courts have affirmed this requirement, emphasising the testator's mental capacity and voluntary action in making the will free from undue influence or coercion.

Dependants and Inheritance: The Act recognises various dependants entitled to claim provisions from the deceased's estate, including spouses, children, parents, and extended family. Section 26 allows dependants left out of a will to petition the court for provision. Despite historical biases favouring male heirs, the Act aims for gender-neutral inheritance laws.

Void and Voidable Wills: Wills may be declared void if the testator lacked capacity, proper formalities weren't followed, or there was undue influence. Voidable will appear valid but may be challenged due to fraud, mistake, or misrepresentation.

Intestate Succession: When a person dies without a will, intestate succession rules govern the distribution of their estate. The Act considers blood relations as heirs, with spouses entitled to specific estate portions. However, cohabitees are not recognised as heirs. Customary laws may apply in certain regions exempted from the Act's jurisdiction.

Amendments and Challenges: The Act has undergone amendments to address lacunae and ensure equitable inheritance rights. Legal challenges and court cases have clarified interpretations of the Act, particularly regarding exemptions for specific regions and the inclusion of dependants in inheritance disputes.

Probate and Letter of Grant: The Succession Act 1981 empowers the high court to handle probate matters. Testamentary succession involves a testator writing a Will and appointing an executor. The executor's primary duty is to execute the deceased's wishes as per the Will, settle debts, and distribute the estate. The Will needs court certification for probate issuance, which the executor facilitates by filing in the High Court. If the executor declines, the court appoints an administrator. In intestate succession, heirs, creditors, and public trust can petition for an administrator and letter of administration, which is limited to four individuals. Administrators perform duties akin to executors. Both undergo an oath and a 30-day notice period for objections. Executors/administrators distribute the estate post-letter confirmation and fulfil various responsibilities outlined in the Act.

Critique of the Law of Succession: The Act exhibits bias against widows, depriving them of property rights upon remarriage while widowers retain rights. This leads to financial reliance and unequal footing upon subsequent marriage, impacting economic and non-economic aspects. Sections 35 and 36 of the Act, allowing discrimination, contradict constitutional provisions ensuring marriage equality. Article 45(3) of the Constitution mandates equal rights, suggesting parity in life interest duration post-dissolution regardless of gender. Reforms are crucial to rectify this inconsistency and ensure widows' equal rights.

Recommendation: The 29-year gap between the Succession Act and the Constitution necessitates comprehensive review and alignment to ensure compliance. Proposed amendments advocate for equal entitlement to property devolution, granting widows absolute control over essential needs. Courts play a vital role in gender-sensitive law implementation. Severability tests can declare inconsistency without compromising the Act's purpose. Automatic ownership of marital property for surviving spouses is proposed to safeguard widows' rights and meet international equality standards.

Conclusion: Kenya's succession law faces challenges due to customary practices and colonial legacies, impacting uniformity and equality. Customary norms, while integrated, may

conflict with statutory law, leading to discrimination in inheritance. As Kenya evolves, its legal system must recognise and reconcile customary rules with broader legal structures to ensure fair and equitable inheritance practices. Recognising the impact of colonisation, Kenya can work towards a more just legal system that respects diverse cultural traditions while upholding universal principles of fairness and equality.

Chapter 5: INTESTATE SUCCESSION IN UGANDA

This chapter examines Uganda's customary law of intestate succession and its shortcomings in offering adequate protection to widows. It also investigates the impact of received laws from England on Uganda's traditional legal systems. The chapter overviews the legal and cultural landscape of intestate succession in Uganda, highlighting the coexistence of African customary law, religious laws, and English law. It delves into the complexities of succession based on cultural and tribal factors.

Intestate succession, the transfer of property from a deceased person to their living relatives without a will, presents significant challenges for widows in Uganda. Customary laws, deeply rooted in tribal traditions, often disadvantage women, particularly in property ownership. This study explores how these customs fail to protect widows adequately and investigates the influence of English laws on Ugandan traditions.

Uganda's legal landscape comprises customary, religious, and British laws, but conflicts often arise between customary practices and statutory regulations. Historically, women faced discrimination in inheritance, where they were relegated to the mercy of male relatives. Weak enforcement mechanisms exacerbate this situation, leaving widows vulnerable to exploitation.

Customary laws in Uganda define family inclusively, encompassing patrilineal and matrilineal descent. However, women's inheritance rights vary depending on tribal customs, often restricting their access to property. Patriarchal norms dominate, dispossessing widows and their children, perpetuating their marginalisation.

Colonial influence further entrenched discriminatory practices, with successive legal frameworks failing to address gender inequalities adequately. The 1995 Constitution attempts

to rectify these injustices, outlawing discrimination and affirming women's rights to property. Despite these provisions, customary practices continue to undermine widows' rights.

The 1972 Succession Act aimed to protect widows and end discriminatory customs but fell short of its objectives. While it shifted succession authority from clan elders to courts, it upheld patriarchal norms, favouring male heirs over widows. Widows receive only a user right to marital property, while male relatives inherit ownership. Uganda's succession laws prioritise male heirs, relegating widows to dependent status and disregarding their contributions to marital property. The lack of clarity in inheritance laws exacerbates widows' vulnerability, perpetuating gender disparities in property rights. Efforts to reform succession laws must prioritise gender equality and widows' rights. Addressing discriminatory customs and ensuring equitable distribution of property are essential steps toward empowering Ugandan women and promoting social justice.

Recent disputes in Ugandan intestate succession law have highlighted discriminatory practices against widows, with certain sections of the Succession Act being deemed unconstitutional by the Constitutional Court in 2007. These sections limited widows' inheritance to 15% of the estate and imposed restrictions on property inheritance upon remarriage or death. Although the court's decision aimed to promote equality, parliament has yet to align the law with this ruling, leaving widows without complete protection. One notable case involving Evelyn Kalungi exemplifies the challenges faced by widows, mainly when denied access to matrimonial property after their husbands' deaths. Despite contributing to the construction of the family home, Evelyn was relegated to servant quarters following her husband's death, with in-laws transferring the property to her male children's names, leaving her homeless and vulnerable.

Customary patriarchal laws also play a significant role in inheritance practices, favouring male heirs and often disregarding women's rights. However, the Recognition of Customary Marriages Act of 1998 and the Succession Act of 1965 provide a legal framework for customary law. For Muslim communities, succession laws are governed by Sharia, which, while allowing for inheritance, can be seen as discriminatory towards women, granting them smaller shares compared to male heirs and limiting the portion that can be bequeathed.

Efforts to address these injustices have been made through legislative measures, such as the Administrator General Act, which seeks to protect the rights of widows and beneficiaries, and judicial interventions, which have ruled against discriminatory customs and practices. However, despite legal safeguards, cultural norms, flaws in legal structures, and religious practices continue to perpetuate the marginalisation of widows in inheritance matters, highlighting the ongoing struggle for gender equality and the need for comprehensive legal reform to ensure equitable succession rights for all Ugandans.

The succession laws in Uganda often lead to unjust outcomes, particularly for widows and their children. Despite constitutional protections, traditional customs and outdated laws result in discriminatory practices, leaving women vulnerable to being disinherited and deprived of their rightful share of property. Interference in intestate estates by relatives, particularly male relatives, exacerbates these issues, leaving widows and children destitute or subject to forced marriages. The lack of awareness about will-writing exacerbates the problem of intestacy, leaving many estates unresolved and vulnerable to interference. Additionally, limited economic opportunities for women further compound their difficulties, perpetuating gender-based economic disparities.

Various agencies, including the Ministry of Gender, Labour, and Social Development, the judiciary, local councils, the police force, religious leaders, and cultural elders, play roles in addressing these issues. Still, challenges such as corruption, patriarchal biases, and inadequate resources hinder their effectiveness. Non-governmental organisations (NGOs) like the Uganda Association of Women Lawyers (FIDA) have raised awareness, provided legal assistance, and advocated for policy changes to promote widows' rights to inheritance.

Recommendations include amending the Succession Act to align it with the Constitution, introducing provisions for gender equality, nullifying discriminatory clauses, and establishing clear guidelines for evaluating applications by excluded spouses. Additionally, measures to recognise cohabiting partners and restrict testamentary freedom in favour of spouses and children are proposed to address these injustices. Ultimately, promoting gender equality and ensuring fair distribution of property inheritance are crucial steps toward creating a more just and equitable society in Uganda.

Chapter 6: INTESTATE SUCCESSION IN TANZANIA

The chapter introduces Tanzania, highlighting its diverse population, consisting of over 120 tribes with distinct languages, cultures, and customs. It discusses the dominant tribes, religious demographics, and the historical background of British colonisation. The British rule, characterised by exploitation, brought significant changes to the economy and social structure, including forced labour and land alienation. Tanzania gained independence in 1961, with Julius Nyerere as its first president, advocating socialism and communal land ownership. The focus shifts to intestate succession under customary law, detailing the Tanzanian 2008 Law of Succession Act and the recognition of customary and Islamic laws in inheritance matters. The chapter explores the role of family in Tanzanian society, emphasising patriarchal structures and the significance of inheritance governed by customary law.

Tanzania's Matrilineal and patrilineal succession systems are examined, with examples of tribes practising each. Matrilineal succession, found mainly in tribes like Chaga, Kaguru, and Zaramo, prioritises female inheritance. Conversely, patrilineal succession, prevalent among tribes like Sukuma and Nyamwezi, favours male heirs. The order of inheritance and practices within these systems are discussed, highlighting the complexity of property distribution.

Customary Law Inheritance Responsibilities in Tanzania: In Tanzania, customary law dictates the obligations and rights of heirs, varying across regions and tribes. Primarily, heirs inherit property and titles, often favouring sons over daughters. Responsibilities of heirs include arranging a proper burial, caring for dependents, and providing for the deceased's children, ensuring their well-being, education, and protection from harm. Legal cases such as *Kilinda v. Kilinda* and *Nyanduga v. Nyanduga* reinforce these obligations.

Duties Towards Surviving Spouses: Surviving spouses must be treated fairly, with access to necessary resources like family land and financial assets. Heirs protect them from harm and ensure their rightful inheritance, as highlighted in legal cases such as *Mawazo v. Mawazo* and *Ngamita v. Sabato*.

Successor's Liability for Debts: Under customary law, successors are liable for the deceased's unpaid debts, even if incurred without their knowledge or consent. Legal precedents

like *Lugumi v. Mfaume* and *Ndesamburo v. Njiku* affirm this principle, emphasising the successor's duty to honour these obligations.

Disinheritance Under Customary Law: Heirs risk disinheritance of severe breaches of customary law or actions against family/community interests, such as neglecting family members or immoral behaviour. Legal cases like *Salehe v. Mwasubila* and *Mwakabuta v. Mwakalobo* illustrate grounds for disinheritance.

Evolution of Intestate Succession Laws: Before colonisation, Tanzania's intestate succession was governed by diverse customary laws favouring patrilineal succession. Colonial interventions introduced uniform succession laws, aiming to eradicate gender discrimination. Post-independence, the Succession Act of 1963 was enacted to ensure equitable distribution of estates, regardless of gender or birth order, with subsequent amendments reflecting societal changes.

Marriage Act and Succession: The Marriage Act of 1971 regulates marriage procedures and dissolution, impacting intestate succession by identifying legal spouses entitled to inheritance. Despite criticisms for promoting gender discrimination and inadequately protecting widows, the Act has improved spousal rights and equalised inheritance between genders. Legal precedents like *About Juma v. Marhema About Juma* and *Juliana Ng'wena v. Theresia Fissoo* demonstrate the courts' efforts to rectify discriminatory practices in succession. While facing criticisms, the Marriage Act has positively transformed inheritance dynamics, granting spouses equal inheritance rights and challenging traditional gender biases in succession.

Effect of the Courts Act on Intestate Succession in Tanzania: The Tanzanian Courts Act of 1984 governs court procedures, particularly in cases of intestate succession. The Act empowers the High Court to resolve disputes and distribute estates of those who died without a will. It provides a framework for fair distribution of assets according to the Law of Succession Act and other relevant laws.

Intestate Succession Law: The Intestate Succession Act of 1971 replaced previous laws, including discriminatory customary practices, ensuring fair distribution of assets. It grants specific shares to surviving spouses and children, regardless of gender or birth status.

Amendments address issues such as polygamous marriages and the rights of spouses and children.

Order of Succession: The 2008 amendments to the Succession Act established a hierarchy for distributing estates in cases of intestacy. Priority is given to immediate family, extended family, and finally, the state if no relatives exist. Legal precedents illustrate the application of these laws in specific cases.

Criticism of the Intestate Succession Act: Despite promoting gender equality, the Act has faced criticism for various reasons. Section 3(1) has been accused of perpetuating gender stereotypes and disregarding women's contributions to property. Critics argue that the Act's rigidity fails to consider individual needs and circumstances. Challenges include reconciling customary and formal legal systems, especially concerning gender biases.

Constitutional Framework and Intestate Succession: The Tanzanian Constitution recognises customary law as a source of law, protecting its application and establishing customary law courts. Constitutional provisions safeguard property rights and ensure equal treatment under the law.

Criticism of the Tanzanian Constitution: Widows often face challenges in claiming their inheritance rights despite constitutional guarantees. Cultural norms and inadequate legal frameworks contribute to these challenges. Calls for government action include strengthening laws, empowering executives, and raising awareness among women.

Conclusion: While Tanzanian laws and the Constitution provide a legal framework for intestate succession and property rights, there are ongoing challenges, particularly regarding gender equality and the protection of widows' rights. Addressing these issues will be crucial for advancing justice and equality in Tanzania. The Matrimonial Property Act in Tanzania, governed primarily by the Law of Marriage Act since 1971, defines matrimonial property as assets acquired during marriage, including those obtained before marriage if used for family benefit. Upon a spouse's death, the surviving spouse is entitled to a share determined by the court, considering the needs of the surviving spouse and children and each spouse's contributions to property acquisition.

Regarding widow's inheritance rights, the Law of Succession Act of 2008 outlines entitlements. Widows share the estate with children, with the widow receiving 30% and

children the remaining 70%, though factors like the number of living children, estate value, and widow's needs influence the distribution. Additionally, the 1999 Land Act guarantees widows land ownership and inheritance rights.

Despite legal provisions, Tanzanian women face inheritance challenges due to discriminatory customary laws, lack of awareness, cultural beliefs, weak legal systems, and limited economic opportunities. Colonial influence shaped intestate succession laws, integrating German and British legal elements to establish a unified inheritance system. While Tanzania has made legislative strides toward gender equality in inheritance, challenges persist, prompting calls for enhanced legal protections. Proposed bills aim to bolster women's and children's rights, but their passage remains pending, highlighting the ongoing struggle to fully realise equality in the implementation of inheritance law.

Chapter 7: CONCLUSION

The customary law of inheritance in Africa, particularly when someone dies without a will, has long been criticised for its discriminatory nature. To address this issue, Kenya, Uganda, and Tanzania have implemented legislative measures aimed at easing challenges faced by individuals in these situations. The Succession Act of 1981 in Kenya, the reversal of the 1906 Succession Act in Uganda in 2000, and the enactment of the Succession Law 81 of 1987 in Tanzania mark significant steps in enhancing equal rights regarding intestate property. This paper evaluates the effectiveness of these legal measures and their impact on women's lives in these countries.

Revolutionising the Conventional Idea of the African Household: Across Africa, the family holds a central position in society, traditionally structured around extended family units. However, legislative laws in Kenya, Uganda, and Tanzania have adopted a more nuclear family-centric approach, potentially influenced by colonial legacies. These changes have faced opposition from some indigenous communities, highlighting the tension between traditional practices and modern legal frameworks.

The Neglect of the Communal Nature of African Societies: African customary law, deeply rooted in society, emphasises communal rights over individual ones. Efforts to reconcile

group cultural practices with individual rights, particularly for women, have led to legal amendments and court rulings recognising the importance of customary law. However, the challenge remains in balancing cultural preservation with individual liberties.

Common Law Overtakes Customary Law: Legislative approaches often favour replacing customary law with received or common law, which risks eroding traditional customs. A shift towards a more legitimate advancement of customary law, rather than outright substitution, is recommended to align legal reforms with community values better.

Individuals Need to Gain Knowledge About Legal Matters: Traditional communities in rural areas often lack legal education and access to legal information, leading to conflicts with formal legal systems. Efforts to bridge this gap and promote understanding between traditional communities and the legal system are crucial for fostering equity and justice.

The Changing Role of Women in African Societies and Their Rights to Inheritance: Women in Kenya, Uganda, and Tanzania have made significant strides in recent years, with increased participation in politics and efforts to challenge discriminatory inheritance practices. Legislative reforms have aimed to ensure gender-neutral inheritance laws, although implementation challenges persist.

The question of whether implementing new regulations can effectively enhance the inheritance entitlements of women in African societies is explored in this thesis. Despite the introduction of updated rules governing property distribution for those who die without a will, minimal progress has been observed in Tanzania, Kenya, and Uganda regarding women's inheritance rights. The enforcement of these laws remains a significant challenge due to resource constraints, lack of political will, and cultural resistance. Cultural norms favouring male inheritance further hinder the impact of these laws. While international agreements like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provide a framework for promoting women's rights, their application in national law varies. Kenya, Uganda, and Tanzania have tried implementing CEDAW, but challenges persist in fully realising its objectives. The International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) emphasise equality and property rights. At the same time, the African Charter on Human and People's Rights of Women in Africa aims to eliminate harmful cultural practices. However, the application of these

international provisions in national law requires improvement. While all three countries have ratified relevant treaties and enacted laws related to intestate succession, more efforts are needed to ensure effective implementation and enforcement, ultimately advancing women's inheritance rights in African societies.

PUBLICATIONS ON THE SUBJECT OF THE THESIS

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