

**EXAMINATION OF THE LEGAL FRAME WORK ON MATRIMONIAL  
PROPERTY**

**BY**

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**A DESERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL  
FULFILMENT OF THE REQUIREMENT FOR THE AWRD OF DIPLOMA  
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**DECLARATION**

I do hereby declare with truth that this project report is my original work and has never been presented to any academic institution for any award or certificate whatsoever. The Literature and creation from people's work have been duly referenced and acknowledged in the text and bibliography.

Signature.....

Name ... INJEIWE NODAH - O

Date.....12/AUG/2014

## APPROVAL

This is to certify that this study INJWELWE NORAH. O (DIL / 35878 / 133 / DF) has been carried out under the title “the law and its implementation on the protection of women’s rights to own property during marriage” has been under my supervision and project report is now ready for submission to the faculty of law with my approval.

Signed.....

Kiiza James

Supervisor

Date.....

12<sup>th</sup> August 2014.

## DEDICATION

I dedicate this project to my parents without whom my education would not have been a success. For all my loved ones and their encouragement moral support, and lastly to my dear brothers and sister, I love you all.

## ACKNOWLEDGEMENT

First I would like to acknowledge the divine presence of almighty God to whom this research study would not have been successful without his guidance, love, care and protection. All the glory belongs to him.

I would like to thank every individual who has played a role in one way or the other to the completion and success of this research Kiiza James. My sincere appreciation goes to my dear parents for all their support they have shown me through all hardships and struggles till this far. May the almighty grant you more strength to move on?

To Kiiza James the lecturer College of Diploma in law at Kampala International University. I appreciate your vision in leadership and sustaining an effective and focused academic environment.

## **LIST OF STATUTES**

### International Instruments.

The universal declaration on human rights (UDHR)

The international Covenant on Civil and Political Right I.C.C.P.R

The international Covenant on the elimination of forms of racial discrimination

The African Chapter on Human and People's Rights

### Ugandan legislations.

The Constitution of the Republic of Uganda 1995

The Succession Act Cap 162

The Land Act, Cap 227

The Customary Act, Cap 248

The Administrator General Act, Cap 157.

## LIST OF CASES

M vs. M High Court Divorce case no 3 /1998 (unreported)

In the matter estate of Sulaiman (1991) unreported.

Julius Rwabinumi Vs Hope Bahimbisomwe (civil appeal no 30 / 07)

Samson vs. Samson (1922) W L R 252

Law Advocacy for women in Uganda vs. Attorney General

Constitutional petitions no 13 / 05, 05 / 06 (2007 Uganda constitution al court.

## ABSTRACT

Women's property rights for a long time have been violated because of many factors including patriarchy. This is where men dominate all the affairs of the society and woman are left to watch things happen even when they are the ones who participate more but earn less. The gender stereotypes where women are seen as a weaker sex and they are made to believe that whatever the society thinks of them is true and live by it. The researcher looked at the rights of women to own property in marriage as provided for in the international instruments and the municipal laws as well as their implementations.

This research explores the extent to which the laws have protected women's rights to own property during marriage and the implementation therefore obstacles that women face while trying to achieve their rights to own property and ways of eliminating these obstacles.

The researcher used primary and secondary method of data collection. Under primary method questionnaires and interviews and under secondary method were published and unpublished articles. The researcher came out with 56% of the married women do not own property. With 24% of women do not own property long before this time women did not own property, with 24% in Kamwokya already realizing this right and sure the rest of the country will soon have the full right to own property and the advocacy to do away with the stereotypes that women cannot own property because they are weak is extensively done.



## ACRONYMS

UWONET:	Republic of Uganda Women's Network
U L A:	Uganda Land Alliance
FIDA-U:	The Uganda Association of Women Lawyers
FOWODE:	Forum for Women in Democracy
IRI:	International Republic Institution
DRB:	Domestic Relation Bill
IIED:	International Institute for Environment and Development
URA:	Uganda Revenue Authority
KCCA:	Kampala City Council Authority
LAW-U:	Law Advocates for Women in Uganda.
UDHR:	Universal Declaration of Human Rights.

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## CHAPTER ONE

### 1.0 Introduction

The Universal Declaration of Human Rights during its 5<sup>th</sup> anniversary of the world conference on Human Rights in Vienna at which women and girls' human rights were declared part of the universal rights. All forms of violation of the rights of women and all forms of exploitation of such were declared incompatible with human dignity and their elimination was demanded.

This study was intended to enlighten and advance the understanding of the women property rights in marriage as provided for in the laws. The researcher intended to observe critically the apparent injustice against women in particular the denial of women's right to own property during marriage.

The researcher took keen interest in this area (Kamwokya) because for so many times, this place has been repeatedly mentioned on the radios and televisions on violence issues especially against women.

### 1.1 Background of the study

For decades the society has been controlled by patrilineal customary system. Women were taken to be property that can be bought and sold at a man's will. This therefore made men superior to women and since customary laws emphasize the same, it has been so hard for women to get out of this kind of treatment and because the women themselves are aware of the different cultural norms that expect them to always treat a man as a head of the family even if he is unable to perform as the head of a family.

The written laws in Uganda came into force with the adoption of colonialism. Before that, cultural practices and customs prevailed where by each society embarked on its own cultural practices. This with colonialism in place, laws applicable in England became applicable in Uganda by virtue of the order in council.<sup>1</sup>

The English law defines the role of wife as '**feme covert**' emphasizing her

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<sup>1</sup>1902 East African Order in council

subordination to her husband and putting her under the protection and influence of the husband, her baron, or lord upon marriage, the husband and will become one person under the law, as the property of the wife was surrendered to her husband, and her legal identity ceased to exist. Any personal property acquired by the wife during marriage, unless specified that it was for her own separate use, automatically would be for her husband. If a women writer had a copy right before marriage the copy right would pass to the husband after wards, for instance, further married women were unable to write wills or dispose of any property without her husband consent.<sup>2</sup>

In the famous case of *Rex vAmkeyo*,<sup>3</sup>the trial judge held that, according to the customs and for lack of a better word, in African marriage, women are chattels that can be taken anywhere of a man's wishes after marriage. This has made it hard to change the mentality of men because they see a lot of support on their side than women. It is so unfortunate that this support is from both men and women and there are those women who see no way out so they sit and say "we have nothing to do". In that way, some women have conceded defeat and this means they are comfortable. In some cultures, for example, the Acholi, Lango.Itesot, Lugwara among others, up to now women are property and they say "*how can property own itself?*" This is because men have failed to embrace the fact that some cultural beliefs have lost value and should be changed or done away with. Instead, men have dressed up themselves in the attires of Chinese proverb which says

*"What is mine is mine and what is yours is mine". They own everything.* This has encouraged some women to stay and not think of acquiring any property if they cannot own.

However, it was also noted that with respect to the law concerning women's right to property, the 1882 Married Women Property Act of England became applicable in Uganda by precedent thus the East African case of *I v I*,<sup>4</sup> which stated inter alia that Married Women Property Act was a statute of general application and therefore applicable in Uganda. The same principle was expounded in the case of *Karanja v Karanja*,<sup>5</sup>where it was held inter alia that the married women property Act of 1882 is

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<sup>2</sup>[http://Wikipedia.org/wiki/Married Women's Property Act 1882](http://Wikipedia.org/wiki/Married_Women's_Property_Act_1882) 01/03/2012 "(1917)KLR

<sup>3</sup>(1917) KLR 14

<sup>4</sup> (1917) EA 237

<sup>5</sup>(1976) KLR 307

applicable in Kenya and customary law is subjected to any written law.

It is also important to note that discriminatory tendencies started way back during the colonial period where for instance, the married women property Act was only applicable to non-Africans. This was premised on the reasoning that customary law already applied to the Africans. It was until the advent of independence that this act became part of the laws of Uganda.

The customary laws remained valid subject to the repugnancy test.<sup>6</sup> Various laws came into place that allowed women to own property; these include the 1955 constitution, succession Act cap 162, laws of Uganda, among others.

It is important to note that the legal regime embraced different changes after promulgation of the 1995 constitution of Uganda. This constitution, unlike the previous ones, that is the 1962 and the 1967 specifically gives every Ugandan the right to own property.<sup>7</sup>

Having noted that the Constitution is the Supreme Law of the Land, other existing laws in Uganda have to conform to the Constitutional Provisions.<sup>8</sup> Thus it is a long argument of conformity with the constitution therefore; this study was to help find out whether these other existing laws are not discriminatory.

**Articles 21, 26, 31 and 33** inter alia of the constitution came to address the injustices which were done to women. **Article 21** is to the effect that all persons should be treated equally before and under the law in all spheres.

**Article 26** addresses the main problem which the property right that women had never dreamt of since all was assumed to belong to men. It provides that everyone has a right to own property individually or in association with others. This includes women

**Article 31(l)(b)** provides for equal rights in marriage, both the consent of a man and a woman should be considered. As a result of the promulgation of the 1995 constitution other subsidiary legislation were enacted in order to give effect to Article 31(l)(b) of the constitution. For example Registration of Titles Act, Cap 230, and Land Act cap 227, among others and **Article 33** accords women with full and equal rights with men. This was seen in the case of *Uganda v Jenina kyanda*<sup>9</sup>, where it was held that a wife is capable of holding property just like men do.

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<sup>6</sup> Section 8 of the judicature Act 1967 ' Article 26 of

<sup>7</sup> Article 26 of the 1995 constitution

<sup>8</sup> Article 2 *ibid*

<sup>9</sup> High Court Bulletin (1977) 111

## 1.2 Statement of the problem

Before the promulgation of the 1995 Constitution of Uganda women's right to own property was not recognized. Women lived under the oppression of men where they were taken as property once they get married. A man would say he paid his dowry and a woman must obey him. On the other side before marriage, her father would say a girl cannot own property since she will get married to another family.

In case of inheritance, widows were left without property; relatives to the husband would grab all she is left with unless she accepts to be inherited by one of the husband's brothers but even then, she is given only user rights not ownership.

However, with the promulgation of 1995 Constitution of the Republic of Uganda and other International Conventions which Uganda ratified, give protection to women from all kinds of discrimination including discrimination against property ownership although the implementation is still lacking. For example in Lango culture where up to now, the majority of women do not own property and neither do they know they have the right to.

Most women still have user rights; they only own movable property such as kitchen utensils among others.

The study was carried out as a result of observation of the injustice against women particularly the denial of the right to own property during marriage based on mainly cultural norms.

The researcher came to know about this through her interaction with some few women from **Kamwokya**.

The researcher also carried out a pilot study in order to know more about this area and hence this research. The researcher asked her friend who lives in Kamwokya to take her through the area so she could survey before her research commences.

### **1.3 Objectives of the study**

1. To explore the extent at which the law has protected women's right to own property during marriage and implementation thereof
2. To identify obstacles that women face in exercising their right to own property during marriage.
3. To find out ways of eliminating or minimizing these obstacles that hinder women from attaining their rights to property ownership during marriage
4. To formulate strategies aimed at deepening women understanding to legal cultural, political and economic consequences of operation as regards women's property rights during marriage.

### **1.4 Scope of the Research**

The laws on property rights of women are rather broad. This study was conducted on the property acquired by a woman before marriage and the marital property (property acquired during marriage). The study was carried out in Kampala district, Kamwokya. This is a small suburb in the urban town of Kampala district, located about 5 kilometers from the city centre Kiira Road. This study targeted only married women.

### **1.5 Hypothesis**

1. There are laws that protect women's property right during marriage.
2. Women are aware of their rights to own property
3. The laws that protect women's right to property during marriage are not widely implemented.
4. There are obstacles that hinder women from achieving their right to own property and there ways of minimizing these obstacles.

### **1.6 Research Questions**

1. Are there laws that protect women's property rights in marriage?
2. Are the women themselves are aware of their right to own property in marriage?



3. Are these laws that protect women's right to own property during marriage widely implemented?
4. Are there ways to minimize the obstacles (if any) to women's property rights?

### **1.7 Significance of the study**

1. The researcher formed basis for further research on the law and the protection of women's property rights in marriage.
2. The study will assist the legislators, policy makers and the women themselves to ensure that women's right to own property is worked upon.
3. The study was done to help the researcher to fulfil the requirement for the award and in academic development.
4. The study will help other researchers to make reference in line with the study..
5. The study will assist in identifying the gaps in our laws in reference to women's property rights and identify recommendations.

## **1.8 Literature Review**

### **1.8.1 Introduction**

This chapter gives the legal frame work, under international instruments relating to women's rights to property. Before we look at the current international instruments it is prudent to look at the struggle of women to property rights in England since it was no different to what women are undergoing here in Uganda especially in the 19<sup>th</sup> century, in England where our law originated, the difference between the struggle of, women in Uganda and England is that in England it was marked on individual struggle of women who were educated and tired of men oppression.<sup>10</sup> The property rights of women during most of the nineteenth century were dependent upon their marital status. Once women married, their property rights were governed by English common law, which required that the property women took into marriage, or acquired subsequently, be legally

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<sup>10</sup> [www.dd-rd.ca/Site/publications/index.php?id=2208&page=5&subsection=catalogue](http://www.dd-rd.ca/Site/publications/index.php?id=2208&page=5&subsection=catalogue)

absorbed by their husbands. Furthermore, married women could not make wills or dispose of any property without their husband's consent.<sup>11</sup>

Marital separation, whether initiated by the husband or wife, usually left the women economically destitute, as the law offered them no rights to marital property.<sup>12</sup> Once married, the only legal avenue through which women could reclaim property was widowhood. Women who never married maintain control over all their property, including their inheritance.<sup>13</sup> These women could own freehold land and had complete control of property disposal. The notoriety of the 1836 Caroline Norton Case highlighted the injustice of women's property rights and influenced parliamentary debates to reform property law<sup>14</sup>. The women's movement generated the support which eventually resulted in the passage of the Married Women's Property Law in 1882. England's mid- nineteenth century focuses on married women's property rights culminated in the transformation of the subordinate legal status of married women.

The property owned by women in Victorian England was usually inherited from fathers. To protect the status of their daughters, most fathers included them in the distribution of the patrimony, however, the type of property inherited by Sons and daughters differed.

Amy Louise Erickson in his book<sup>15</sup> notes that "Fathers normally gave their daughters shares comparable in value with, those of their brothers; although girls usually inherited personal property and boys more often inherited real property". The more valuable real property inherited by the sons refers to freehold land, which is the actual land. Personal property referred to copyhold land, which was usually a mansion and its land held by a lord at will, and leasehold land, which was leased to individuals for life. Therefore, copyhold and leasehold land were legally secured for the life of the tenant or longer, depending on the agreement. Real property also included clothing, jewellery, household furniture, food, and all movable goods. However, social customs held that household property and equipment belonged to the women. According to Susan Staves<sup>16</sup>, the personal property inherited by women was more vulnerable to loss in contrast to the more secure land holdings inherited by men.

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<sup>11</sup> [www.unifem.org/attchments/product/womenslandproperty-rights.pdf](http://www.unifem.org/attchments/product/womenslandproperty-rights.pdf)

<sup>12</sup> [www.lab-lib.utoronto.ca/Diana/whrr/display](http://www.lab-lib.utoronto.ca/Diana/whrr/display)

<sup>13</sup> Dicken, Charles. *Great Expectations*. Ed. Janice Carisle. Boston: Bedford, 1996.

<sup>14</sup> [www.unhibital.org/downloadlords/docs/1556-72513-C5Dwomen.pdf](http://www.unhibital.org/downloadlords/docs/1556-72513-C5Dwomen.pdf)

<sup>15</sup> *Women and property in Early Modern England*, London: Routledge, 1996

<sup>16</sup> *The married women's separate property in England, 1660-1833*. London: Harvard up, 1990.