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Legal Alert: Key Decision in Family Law in Uganda

NEW! ALP Family Law News

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High Court's Family Division outlaws practice of husbands bequeathing matrimonial property to an heir and, in effect, upholds a woman's equal rights during and after marriage. Crucially, the Court also affirmed as defective a will that sought to bequeath matrimonial property or property not forming part of the deceased's estate.

A wife's right to matrimonial property trumps over a will seeking to bequeath such property to an heir

Background

Matrimonial property remains a thorny area of family law particularly in Uganda given the contextualization of family law in the customs and cultures of its ethnic communities. The latest iteration of the law on matrimonial property is in a landmark decision delivered by the Family Division of the High Court in *Herbert Kolya v Erikiya Mawemuko Kolya*, Civil Suit No. 150/2016. The decision by His Lordship Judge Godfrey Namundi, delivered on July 3, 2020, touches on other aspects of family law relating to wills and administration of estates.

The background of the Plaintiff's claim against the Defendant is that his grandfather, Israel Kikomeko Kolya, died testate in 1997 and, in 2000, the Defendant obtained letters of administration to the estate of her deceased husband without annexing the will which the late Israel Kikomeko Kolya had made prior to his death. In his will, the deceased bequeathed the matrimonial property comprised in LRV 1139 Folio 1 Kibuga Block 10 Plot 864, being land at Namirembe, to his heir, Herbert Lukanga Kolya, the Plaintiff's late father. The Defendant was however allowed to stay in the property until she died or remarried and thereafter the heir would take over the property. It was the Plaintiff's case that the Defendant concealed the will, purported the estate of the deceased as smaller than it was, refused or failed to distribute the entire estate and, without a justifiable cause, failed to make a full and true inventory.

In her defence, the Defendant admitted that her deceased husband had left a will which bequeathed the land at Namirembe to his heir, with the bequest to take effect upon her death or remarriage. Further, she stated that the family agreed to dispense with the will since it was defective insofar as it disposed of matrimonial property and yet there was a surviving spouse. As regards the failure to distribute the entire estate, the Defendant stated that the estate only comprised of land at Butega, the deceased's personal motor vehicle, and money in his account. Further, she stated that the land in Makindye the deceased had bequeathed was in her name and therefore that bequest was void.

The issues that High Court resolved to reach the decision are as follows:

- (i) Whether the Plaintiff, as an administrator of the estate of the late Herbert Kolya, is entitled to the property at Namirembe subject to the occupation rights of the defendants.
- (ii) Whether it was right and lawful for the Defendant to apply for letters of administration to administer the estate of the deceased without annexing the will.
- (iii) Whether the Defendant discharged her statutory obligation in respect of the above letters of administration.

Summary of the decision

1. The property at Namirembe comprised matrimonial property. In that regard, it therefore followed that the decision by

the Defendant's deceased husband to bequeath the property to his heir was unconstitutional, as offending Articles 21(2) and 32(2) of the Constitution of Uganda, 1995 and Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 since it was a cultural practice that offended the dignity of women and further discriminatory on the ground of sex.

2. Pursuant to Article 31(1) of the Constitution which entitled men and women to equal rights in marriage, during marriage and at its dissolution, the Defendant was entitled to deal with the matrimonial property as she so pleased including disposing of it.
3. The inclusion of property in a will which did not, at the time of the making of the will, form part of the estate of the testator would invalidate the will. In this case, the property in Makindye belonged to the Defendant so its inclusion therein invalidated the will.
4. The Defendant was justified in applying for letters of administration without the will annexed since the will was defective on two grounds—firstly, in bequeathing matrimonial property to an heir and, secondly, bequeathing property which did not form part of the estate of the deceased. In such instances, the Court could not sever the will by separating the bequests which are genuine from those which are contested. The void bequests invalidated the entire will.
5. Letters of administration cannot be revoked for want of jurisdiction if during the administration of the estate, it is subsequently discovered that the value of the estate is greater than the value declared in the application for letters of administration, unless the Court is satisfied that the interests of the beneficiaries are prejudiced.
6. The administration of the estate commences with the grant of the letters

of administration and ends when the last asset has been distributed and an inventory filed.

Implications of the decision

1. The decision marks a landmark precedent regarding the issue of wives inheriting their spouse's property. In most cultures, women are alienated upon a husband's demise and all property is taken by the husband's relatives or they purport hold it in trust for her. With this decision, the High Court affirms the wife's right to own the property and deal with it as she pleases.
2. The decision also provides a landmark ruling as regards what happens when property not belonging to the deceased is included in a will. The Court affirms that this has the effect of invalidating the will.
3. The decision also clarifies the instances in which letters of administration can be issued without a will being annexed in situations where the deceased has died testate. Such an instance is where the will is legally defective. In effect, the decision upholds the provisions of the Succession Act that provide for the requirements a will must satisfy before it can be considered valid.
4. The decision also confirmed that letters of administration which are not in consonance with the size of the estate cannot be cancelled unless the beneficiaries can prove that their interests shall be prejudiced. The Court has therefore cleared the hitherto *lacuna* in the law in regard to this anomaly.

Concluding remarks

This is a welcome decision given it especially settles the rights of women to exclusively own matrimonial property and deal with it without any external influence. What remains to be seen is whether its rationale shall be respected and upheld in light of the strong cultural practices that shun the rights of women, especially in the event of demise of the husband.

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