

# STAND FOR HER LAND

HER RIGHTS. HER LAND. A BETTER FUTURE FOR ALL.

## Analysis of the Matrimonial Property Clauses in the Marriage Bill, 2024



**Appreciation Note:**

We extend our deepest gratitude to the coalition members of the Stand for Her Land Campaign Uganda including grassroots women whose invaluable input shaped the analysis of the Marriage Bill, 2024, particularly the matrimonial property clauses. Your dedication, expertise and leadership have been pivotal in ensuring that the voices of women are heard and represented.

Together, we are making strides towards having a law that not only ensures justice and equality but also upholds women's property rights.

Thank you for your unwavering commitment to this cause.

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## INTRODUCTION

The Marriage Bill sets out to put in place a legal framework to reform and consolidate the law relating to marriage, separation and divorce; to provide for the types of recognized marriages in Uganda, marital rights and duties, grounds for breakdown of marriage, rights of parties on dissolution of marriage and for other connected purposes. The Marriage Bill, 2024, recognises that the family is the basic unit of organization in society. The family is an important institution of society because it is the cornerstone for the production and reproduction of the community. It is the institution where norms of society are instilled in the family individual and behaviours are shaped. Due to its importance in society the state and society guard it jealously hence the formal and legal regulations to protect and preserve it.

The Marriage Bill 2024, like its predecessors, seeks to, reform the archaic colonial laws on marriage and divorce and enact a consolidated piece of legislation that takes into account international best practice, our obligation to ratified international and regional human rights instruments, progressive precedents from the Courts of law, changes in the socio-economic contexts of families and our unique cultural contexts.

The Marriage Bill, 2024, currently under consideration in Uganda's Parliament, introduces significant reforms concerning matrimonial property rights. It can be argued that the most forward-looking provisions in regard to the realization of gender equality in marriage and its dissolution are the provisions on property rights as set out from clause 45 to clause 61.

Key provisions include:

<ul style="list-style-type: none"> <li>• <b>Equal Access to Matrimonial Property:</b></li> </ul>	The Bill ensures that both spouses have equal rights to use, occupy, and benefit from matrimonial property, regardless of their financial or non-financial contributions.
<ul style="list-style-type: none"> <li>• <b>Recognition of Non-Monetary Contributions:</b></li> </ul>	Acknowledging that domestic work, child-rearing, and other non-monetary efforts are as valuable as financial contributions to the acquisition, maintenance and improvement of property.
<ul style="list-style-type: none"> <li>• <b>Prenuptial and post-nuptial agreements:</b></li> </ul>	Allowing for intending married and those already in marriage to dictate how they will manage property acquired before and during the course of the marriage.
<ul style="list-style-type: none"> <li>• <b>Spousal Gifts:</b></li> </ul>	Any gifts exchanged between spouses during the marriage are presumed the sole property of the receiving spouse.
<ul style="list-style-type: none"> <li>• <b>Debts and Liabilities:</b></li> </ul>	Debts incurred for family necessities during the marriage, with the consent of both spouses, are considered joint liabilities. If incurred without consent, the debt remains the responsibility of the spouse who incurred it, unless agreed otherwise.

These provisions aim to create a more equitable framework for property rights within marriage and at its dissolution.

## NAVIGATING MATRIMONIAL PROPERTY RIGHTS IN UGANDA: A COMPLEX INTERPLAY OF LAW AND CUSTOM

The 1995 Constitution of Uganda sets the tone for the distribution of matrimonial property upon dissolution of marriage through several Articles that front equality between men and women and spouses during and at cessation of the marital relationship. However, customary laws, which often favour patrilineal inheritance and male ownership, continue to influence property distribution, especially in rural areas. Judicial decisions, such as the Supreme Court ruling in *Julius Rwabinumi v. Hope Bahimbisomwe* have attempted to define the scope of matrimonial property, recognizing both monetary and non-monetary contributions of spouses despite the inadequacy of the Marriage and Divorce Acts.

### THE CONSTITUTION

Article 26 of the Constitution of Uganda guarantees every person the right to own property, either individually or jointly. It prohibits the compulsory deprivation of property or any interest in property except under strict conditions: such deprivation is allowed only if it is necessary for public use or in the interest of defence, public safety, public order, public morality, or public health, and only when it is carried out under a law that provides for two critical safeguards.

The Constitution of Uganda enshrines the principles of equality between men and women, particularly concerning marriage and family life. Key provisions include:

- **Article 21** all persons are equal before the law in all spheres of political, economic, social and cultural life and in every other aspect and shall enjoy equal protection of the law.
- **Article 31 (1)** of the Constitution entitles women and men to equal rights during and after marriage.
- **Article 32** of the Constitution provides for affirmative action in favour of groups marginalized on the basis of gender or any other reason created by history, tradition or custom.
- **Article 33 (4)** the state shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.

## INTERNATIONAL INSTRUMENTS

Uganda is also a party to several international treaties that enshrine rights to property or possessions. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) addresses women's property rights and aims to eliminate discrimination against women in property matters in both legal and familial contexts. Article 16 obliges states to eliminate discrimination against women in all matters related to marriage and family. It calls for states to ensure equal rights for both spouses regarding the ownership, acquisition, management, administration, enjoyment, and disposition of property.

The African Charter on Human and Peoples' Rights (ACHPR) addresses property rights in Article 14, stating:

*"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."*

While the ACHPR guarantees the right to property, it does not explicitly address the property rights of women. To bridge this gap, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol, was adopted in 2003. This protocol provides more detailed provisions regarding women's property rights:

- **Article 6(j):** Mandates that states ensure "that during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.
- **Article 7(d):** Ensures that in cases of separation, divorce, or annulment, "women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

## THE LAND ACT CAP 227

The Land Act provides for protection of family land. Family Land refers to land where the family normally resides and derives sustenance and is treated as family land according to the norms, culture, customs, traditions or religion of the family. (Section 38 of the Land Amendment Act 2004). Both spouses have the right to use and live on family land as long as the parties are both still married to each other.

Unlike the Marriage Bill, 2024, the Land Act recognises that spouses acquire an interest in property that falls within the confines of family even without the requirement to have made any kind of contribution. Section 38A grants a spouse the right to security of occupancy on family land. This means that a spouse is entitled to live on and use the family land during the subsistence of the marriage.

In fact, so strong is this interest that any transaction involving family land such as sale, mortgage, or lease requires the prior written consent of the spouse. This provision ensures that one spouse cannot unilaterally make decisions that affect the family's primary residence or livelihood. (Section 39) Indeed, transactions undertaken on family land without written consent of a spouse are deemed null and void.

Although The Marriage Bill, 2024 defines matrimonial property more broadly beyond family land, careful consideration needs to be taken to ensure security of occupancy beyond marriage especially for the (ex) spouse that retains the children.

## CASE LAW

In Uganda, the division of matrimonial property upon the dissolution of marriage has been shaped by several landmark court decisions. These decisions underscore the Ugandan judiciary's commitment to fair and just resolutions in matrimonial property disputes, balancing legal principles with the realities of marital contributions.

In *Julius Rwabinumi v. Hope Bahimbisomwe*<sup>1</sup>, the parties were married on 30 August 2003 at Our Lady of Africa Mbuya Catholic Church. Prior to the wedding, they had already cohabited and had a son (born 28 March 2003). However, within a short period—by 30 July 2004—the marriage broke down when the appellant allegedly chased the respondent (and the child) out of their matrimonial home. The respondent then filed for divorce on grounds including adultery and cruelty, while the appellant cross-petitioned for divorce on different grounds (such as allegations of the respondent's adultery, witchcraft, and irretrievable breakdown). After a trial where the trial judge made detailed orders concerning the division of the parties' property, the appellant appealed from the High Court's decision via the Court of Appeal. Dissatisfied with the Court of Appeal's findings, he ultimately brought the matter before the Supreme Court.

The Supreme Court's review focused primarily on two interconnected issues:

### **1. Automatic Conversion of Individual Property:**

Whether all property solely acquired by the appellant especially property owned before the marriage automatically became joint matrimonial property upon the exchange of marriage vows (i.e. simply by virtue of the religious ceremony).

### **2. Interpretation of Constitutional Equality Provisions:**

Whether the Court of Appeal erred in applying Article 31 of the 1995 Constitution to require an automatic equal (50/50) division of property that was individually owned, without considering each party's actual contributions (both direct and indirect) to the acquisition or development of the property.

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<sup>1</sup> *Julius Rwabinumi v. Hope Bahimbisomwe*, Civil Appeal No. 10 of 2009 [2013] UGSC 5 (20 March 2013)



## DECISION

The Supreme Court clarified several guiding principles regarding matrimonial property rights in Uganda:

### 1. No Automatic Joint Ownership from Vows Alone:

- The court held that the mere exchange of religious marriage vows does not by itself convert property owned individually prior to the marriage into jointly owned matrimonial property. In other words, an appellant's pre-marital assets remain his own unless there is evidence that they were contributed to jointly or transferred by clear intention.
- This distinguishes between property acquired before the marriage and property acquired during the marriage through joint efforts.

### 2. Separate Versus Joint Property:

- The decision emphasized the need to differentiate between "individual property" and "matrimonial property." Although the Constitution (notably Article 31) requires equality in marriage and at its dissolution, it does not mandate that every asset automatically becomes joint property.
- The court reaffirmed that a spouse's right to own property separately is preserved (in line with Article 26 of the Constitution), and only those assets to which both parties have contributed – whether directly (financially) or indirectly (through domestic work, care, and other non-monetary contributions) – may be deemed joint and subject to equal division.

### 3. Contribution as the Basis for Sharing:

- When determining a fair division of assets on divorce, courts should consider the actual contributions of each spouse. This includes both monetary and non-monetary (indirect) contributions to the acquisition and maintenance of the matrimonial property.
- The court noted that invoking equitable doctrines such as proprietary estoppel or establishing a constructive trust is appropriate where there is proof that one spouse's contributions enhanced the value or acquisition of property during the marriage.

### 4. Constitutional Interpretation and Limitations:

- Although Article 31 of the 1995 Constitution guarantees equality in marriage and at its dissolution, the Supreme Court clarified that this provision does not imply an absolute rule of equal sharing of all property. Instead, the court must consider the specific facts of each case.
- The Court of Appeal's interpretation—treating all individually acquired property as automatically joint and subject to equal division—was found to be an overextension of Article 31's objective, ignoring the separate property rights protected by the Constitution.

## CONCLUSION

In summary, the Supreme Court in *Julius Rwabinumi v. Hope Bahimbisomwe* reaffirmed that:

- Property acquired by one spouse before marriage does not automatically convert into joint matrimonial property simply because of the marriage ceremony or the exchange of vows.
- For property to be divided as joint property upon divorce, there must be evidence of a joint contribution (whether direct or indirect).
- The interpretation of constitutional equality does not override the individual's right to own separate property; rather, the division of matrimonial assets must be determined on a casebycase basis, taking into account the nature and extent of both spouses'

**In the case of *Ambayo v. Aserua*<sup>2</sup>**, the court emphasized that the ownership of matrimonial property is determined by the contributions of both parties, whether directly or indirectly. Direct contributions could include financial input towards acquiring property, while indirect contributions may involve domestic labour, childcare, or other non-financial efforts that support the family unit. Other key legal principles highlighted in this decision include:

- **Joint Efforts Doctrine:**

The principle of joint efforts applies when dividing matrimonial property. If both parties contribute (either financially or through domestic roles) to the acquisition or development of the property, they both have a stake in that property, irrespective of whose name the property is registered under. The court aims to recognize non-monetary contributions such as home-making or caring for children.

- **Presumption of Joint Ownership:**

In cases of divorce or separation, there is a presumption that property acquired during the marriage is jointly owned by both parties, especially if the property is matrimonial in nature, such as a family home. This presumption is rebuttable, meaning the person opposing joint ownership must provide evidence showing otherwise.

- **Customary and Legal Marriages:**

The case also addressed issues related to customary marriages and the rights of parties within such unions. Even in non-formalized or customary marriages, the contributions of each party to the relationship and property may be recognized under the law, similar to formal marriages.

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<sup>2</sup> Civil Appeal No 100 of 2015 ) 2022 UGCA 272 (15 November 2022)

- **Equitable Division:**

Upon the dissolution of a marriage or separation, the principle of equitable division of property comes into play. The division is not necessarily equal but is based on fairness, considering each party's contributions. The court will assess both monetary and non-monetary contributions to ensure fairness.

- **Gender Equality in Property Rights:**

The court reinforced the constitutional principle of gender equality, particularly in relation to property rights within marriage. Women's domestic contributions are valued in the same way as men's financial contributions when determining the division of property.

## AN ANALYSIS OF PROPERTY CLAUSES IN THE MARRIAGE BILL, 2024

CLAUSE IN THE BILL	RECOMMENDATION
<b>C L A U S E    4 5</b>	
<p><b>Types of matrimonial property</b></p> <p>Matrimonial property shall include-</p> <ul style="list-style-type: none"> <li>(a) the matrimonial home;</li> <li>(b) household property in the matrimonial home;</li> <li>(c) any other property either immovable or movable acquired before or during the subsistence of a marriage, deemed to be matrimonial property by express agreement of the parties to the marriage;</li> <li>(d) property which was individual property but which a spouse has made a contribution towards, except where the property relates to the sale of family land; and</li> <li>(e) seed funding provided by a spouse for the establishment of a business.</li> </ul>	<p>Clause 45 is mostly clear and does not contravene the existing constitutional and legal framework on the right to property.</p> <p>However, Clause 45(c) that allows for matrimonial property to include that by express agreement should be amended</p> <p>What amounts to express agreement must be defined in the Bill and should ideally be written and informed consent.</p> <p><b>Justification</b></p> <p>Owing to the sensitivity of the nature of agreement and power dynamics that are often at play in marital relationships, the law should ensure that parties fully grasp the terms of this agreement before being bound by it. For consent to be informed, it's not enough for information to exist, it must be presented in a way that parties can reasonably understand and given to them in a way that ensures they actually see it.</p> <p>A written agreement on the other hand provides better evidential value because it provides a clear, tangible record of the parties' intentions and terms.</p>

## CLAUSE 46

### Matrimonial property to be owned in common

Matrimonial property, as defined in section 45, shall be owned in common by the spouses.

Clause 46 is okay however, it could be improved and amended by allowing for the spouse the first option to purchase when the other party is ready to sell or transfer their share.

#### Justification

Ownership in common allows for alienable and transferable shares in the property. Each co-owner can independently sell, transfer, or mortgage their share without the consent of the other co-owners. This means an owner can decide to sell their portion at any time.

## CLAUSE 47

### Prenuptial and post-nuptial agreements

- 1) Two persons in contemplation of a marriage may, before or during the subsistence of a marriage, execute a prenuptial or post nuptial agreement to provide for ownership of property-
  - (a) Individually acquired before or during marriage;
  - (b) jointly acquired during marriage; or
  - (c) the distribution of matrimonial property.
- 2) The agreement in subsection (1) may make provision for the settlement of any differences that may arise regarding property acquisition, development and ownership by the persons, before or during marriage.
- 3) The agreement in subsection (1) shall be witnessed by not less than two people chosen by the persons contemplating marriage.

We are in full agreement with the proposals under Clause 47.

#### Justification

Prenuptial and Postnuptial agreements allow individuals to safeguard personal assets acquired before and during marriage, ensuring they remain separate property in the event of a divorce. This is particularly important for those with significant personal wealth, businesses, or inheritances.

By outlining property arrangements in advance and during the union, these agreements provide a clear framework for asset division, potentially reducing conflicts and legal disputes during the marriage and at its cessation.

## C L A U S E 4 8

**Capacity to acquire individual property**

- 1) A spouse in any form of marriage recognized under this Act shall have the capacity to acquire his or her own individual property during the subsistence of the marriage.
- 2) Individually owned property shall not be taken into account for the purpose of the distribution of matrimonial property under this Act unless there is an agreement to the contrary.
- 3) subsection (2) shall not apply where a spouse proves that he or she made a contribution to acquisition, development or maintenance of the individually owned property.
- 4) Individual property shall include-
  - (a) independently acquired property and the proceeds and profits from that property;
  - (b) property acquired before marriage or property acquired by bequest, inheritance or gift from a person other than the spouse;
  - (a) property that was acquired by gift or inheritance from a third party after the date of the marriage;
  - (b) Income from property referred to in paragraph (c) where the giver or testator has expressly stated that it is to be excluded from the spouses matrimonial property;
  - (c) damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages;
  - (d) proceeds or right to proceeds of an insurance policy payable on the death of the insured person;
  - (e) property which the spouses by agreement regard as individual property;
  - (f) trust property; and
  - (g) any other property that a spouse can prove is individual property

Clause 48 (3) that allows for a spouse to lay claim to individually owned property by virtue of contribution specifically through maintenance needs to be clarified.

We propose that maintenance of property is either defined in the definition clause of the Bill or a non-exhaustive list is provided to give guidance

**Justification**

Let as is, clause 48(3) may allow for unjust enrichment where one party unfairly benefits at the expense of the other.

## CLAUSE 49

### Equal access

- 1) Spouses shall be entitled to equal access to matrimonial property.
- 2) Equal access includes the right to use, occupy, benefit from, enter the property and to dispose of the property unless there is an agreement between the spouses to the contrary.

Clause 49 (2) that allows for equal access to disposal should be buttressed with need to provide written and informed consent allowing for any such disposal. Similar restrictions should be applied for leases and mortgages.

The Bill could borrow the wording of Section 39 of the Land Act that mandates that both spouses must provide written consent before (among other transactions) disposal of family land can occur.

### Justification

Although this provision is in line with legal principles that govern ownership of property in common, caution should be taken when it comes to the disposal of property specifically the matrimonial home.

The spousal consent to disposal clause is intended to protect especially women's rights over matrimonial property, to accord them security of tenure and an uninterrupted livelihood.

## CLAUSE 50

### Property acquired before marriage.

Notwithstanding section 45, the interest of a person in any property acquired before a marriage shall not be affected by the marriage.

Clause 50 is okay.

## CLAUSE 51

### Liability incurred before marriage.

- 1) Liability incurred by a spouse before marriage relating to property shall after the marriage remain the liability of the spouse who incurred it.
- 2) Where the property in subsection (1) becomes matrimonial property, the liability may be shared by the spouses.

Clause 51 (2) ought to clearly state that when such property becomes matrimonial property, it should only become a liability of both parties if there was express agreement to this by both parties.

### Justification

Whichever party that incurred this liability should be charged with the responsibility of declaring to the other party about such liability before. This prevents spouses from becoming liable for debts that they neither participated in getting nor benefited from.

## CLAUSE 52

### Contribution to property acquired before and during marriage

- 1) Where a spouse acquires property before or during the marriage and the property does not fall within matrimonial property as defined in section 45, but his or her spouse makes a contribution towards the improvement of that property, be it monetary or in kind, the spouse without the interest shall acquire a beneficial interest equivalent to the contribution she or he made.
- 2) The property referred to in subsection (1), excludes ancestral property.

The exemption in clause 52(2) needs to subject to the values and principles of the Constitution on non-discrimination (Art.21) and affirmative action for marginalised groups (Art. 32)

#### Justification

Many women especially from a rural setting are likely going to contribute to the development and maintenance of ancestral property. They too should be able to acquire a beneficial interest in such property.

The need to protect the rights of future generations to community and ancestral land should be balanced against the need to undo cultural and historical patriarchal practices that discriminate women's access to land/property.

## CLAUSE 54

### Spousal gift

Where a spouse gifts property to the other spouse during the subsistence of a marriage, there is a rebuttable presumption that the property belongs to the receiving spouse.

In agreement with the proposals made in Clause 54.

## CLAUSE 55

### Debt of spouse incurred during marriage

Where during the subsistence of a marriage, a debt is incurred for the necessities of life for the immediate family;

- (a) with the consent of the other spouse, the debt shall become a family liability to be borne by both spouses equally; or
- (b) without the consent of the other spouses, the debt shall be borne by the spouse who incurred the debt, unless agreed otherwise by the spouses.

Delete clause 55

#### Justification

In agreement with the marriage bill coalition, this provision greatly underplays the power dynamics, that are often at play, at the family level, by assuming that, spouses disclose to each other their financial liability and also that women often understand the documents that their husbands sign on, especially when they are not the providers in the home, which is most often not the case and may led to financial abuse.

It is also very difficult to prove that consent was not coerced and if the proceeds from the debt were properly utilised.



## CLAUSE 56

### Presumptions as to property acquired during marriage

Where, during the subsistence of a marriage, any property is acquired in the names of the spouses jointly, there shall be a rebuttable presumption that the beneficial interests of the spouses are equal.

In agreement with the proposals made in Clause 56.

## CLAUSE 57

### Court to set aside prenuptial and post-nuptial agreement

Where a party to an agreement alleges that a prenuptial or post nuptial agreement was entered into under-

- (a) duress;
- (b) undue influence;
- (c) fraud;
- (d) misrepresentation;
- (e) illegality;
- (f) mistake; or
- (g) any other factors that would vitiate a contract the court may set aside the agreement and make another order for the distribution of the matrimonial property.

In agreement with the proposals made in Clause 57.

#### Justification

The Court should be in position to examine the circumstances under which pre ad post nuptial agreements were made. This is crucial for ensuring that they are fair, voluntary, and legally binding.

## CLAUSE 58

### Court's powers to divide matrimonial property

- 1) Where a decree absolute has been granted dissolving a marriage, the court may proceed to divide any matrimonial property between the parties to the dissolved marriage, subject to any pre or post nuptial agreements the parties may have made relating to division of property.
- 2) The court may, instead of dividing the matrimonial property between the parties, require one party to compensate the other part for the value of that party's interest in the matrimonial property.

In complete agreement with the proposals made in clause 58.

## C L A U S E   5 9

### Distribution of property

- 1) Where a marriage is in the process of being dissolved, the court that determines the property rights of the spouses may make an order as to the distribution of property acquired during the marriage without regard to the reasons for the breakdown of the marriage.
- 2) In distributing matrimonial property, the court shall take into account the following-
  - (a) the length of marriage;
  - (b) age of spouses;
  - (c) the best interest of a child(ren) of the spouses if any;
  - (d) the contribution of each spouse to the acquisition, maintenance or improvement of the property including the contribution of a spouse towards the upkeep or maintenance of the property in cash or kind;
  - (e) domestic work and management of the home;
  - (f) the contribution of the immediate family or any contribution to the maintenance of the matrimonial home or which facilitates the acquisition of the property or matrimonial home by a spouse;
  - (g) the economic circumstances of each spouse at the time of the distribution of the property, including the desirability to award the matrimonial home to a particular spouse or the right of a spouse who has custody of a child to live in the matrimonial home for a reasonable period of time;
  - (h) the need to make reasonable provision for other spouses and their children as regards matrimonial property where the marriage is polygamous;
  - (i) whether there is an agreement related to the ownership and distribution of the property in the best interest of the vulnerable spouse;
  - (j) financial misconduct or the wasting of assets; and
  - (k) any other fact which, in the opinion of the court requires consideration.
- 3) For the purpose of this section, a monetary contribution shall not be presumed to be of greater value than a non-monetary contribution.
- 4) The non-monetary contribution shall not be proved in monetary terms.

Delete clause 59 (2) (b)

### Justification

The reason for including age of spouses (Clause 59 (b) as a criteria for distribution of matrimonial property is unclear.

**C L A U S E 6 0****Property settlement**

- 1) In proceedings related to property, the court may make an order to alter the interest of either spouse in the property including an order-
  - (a) for settlement of property in substitution for an interest in the property; and
  - (b) requiring either or both spouses to make, for the benefit of either or both spouses, settlement or transfer of property determined by the court.
- 3) Where the court makes an order under subsection (1), it shall have regard to-
  - (a) the effect of the proposed order on the earning capacity of either spouse; and
  - (b) any other order that has been made under this Act in respect of a spouse.

In agreement with the proposals made in Clause 60.

**C L A U S E 6 1****Presumption of marriage for maintenance of children and property rights**

- 1) The court shall, upon application by either a man or a woman, presume a marriage under this Act, for purposes of determination of maintenance of children and property rights accruing to the parties from a relationship.
- 2) A court, in determining the property rights of parties under subsection (1), shall have regard to-
  - (a) the nature and extent of their common residence;
  - (b) whether there was sexual relationship between the parties;
  - (c) the degree of financial dependence or interdependence and any agreement or arrangement for financial support between the Parties;
  - (d) the mode of ownership, use and acquisition of property;
  - (e) the existence and number of children of the relationship; and
  - (f) the reputation and public view of the relationship.
- 3) The court, in determining the rights of a child under subsection (1), shall follow the principle of the best interest of a child under the Children Act.
- 4) For the avoidance of doubt, the relationship under this part shall not be categorized as a marriage under this Act.

In agreement with the proposals made in clause 61.

## CLAU SE 6 9

### **No division of matrimonial property on separation**

- 1) There shall be no division of matrimonial property upon separation of the spouses, except that court may order the sharing of any income that may accrue from the property.
- 2) Property that is individually acquired by either spouse during the period of separation shall remain the property of the spouse who acquired it unless the parties agree to jointly own it.

In agreement with the proposals made in clause 69.

## GENERAL RECOMMENDATIONS

The Bill excludes ancestral land from the definition of matrimonial property. This means that such property is not subject to division upon dissolution of the marriage. This has raised concerns about the potential impact on spouses, particularly women, who have contributed to the maintenance and development of such property. These proposals must be made in light of existing protections already in statutory law. For example, Section 27 stipulates that any decision regarding land held under customary tenure must align with the customs, traditions, and practices of the community. However, it explicitly states that any decision denying women, children, or persons with disabilities access to ownership, occupation, or use of land, or imposing conditions that violate constitutional principles, is null and void.

## CONCLUSION

The division of matrimonial property in Uganda has undergone significant evolution, shaped by constitutional mandates and landmark judicial decisions. The 1995 Constitution as the grund norm enshrines the principle of equality between men and women, asserting that both parties are entitled to equal rights during marriage and at its dissolution. This foundational principle has been pivotal in guiding courts toward more equitable considerations in matrimonial property disputes.

However, judicial decisions regarding the division of matrimonial property have exhibited inconsistencies, leading to an evolving legal landscape. In the landmark case of *Julius Rwabinumi v. Hope Bahimbisomwe* (2009), the Supreme Court emphasized that only property jointly acquired during the marriage is subject to division, with each party's share reflecting their contribution. However, subsequent cases have demonstrated varying interpretations. These discrepancies highlight the absence of a consistent legislative framework, resulting in courts exercising broad discretion. The implications for jurisprudence include unpredictability in legal outcomes and potential perceptions of judicial bias, underscoring the need for comprehensive legislative guidelines to ensure uniformity and fairness in matrimonial property divisions.

The Marriage Bill, 2024 is a comprehensive legislation that clearly defines matrimonial property and provides detailed guidelines for its division. With modification to a few clauses highlighted above, it would offer consistency and predictability in judicial decisions, ensuring that all forms of contributions are fairly assessed.

# STAND FOR HER LAND

HER RIGHTS, HER LAND, A BETTER FUTURE FOR ALL.

This is a publication of the Stand for Her Land Campaign Uganda

## ABOUT US

The Stand for Her Land (S4HL) campaign is a civil society led global collaborative campaign with a mission to strengthen and advance women's land rights through collective advocacy that aims to close the implementation gap between law and practice.

In Uganda, the campaign is coordinated by Uganda Community Based Association for Women and Children Welfare (UCOBAC) under the auspices of the National Land Coalition comprising of civil society organizations at the national, sub-national and grassroots level.

The five-year campaign is implemented in partnership with Landesa with financial support from BMZ.

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