

Gender Dynamics and Homeownership in Kampala Trapped by Laws: A Sociological Perspective

Florence Akiiki Asiimwe

Department of Sociology, Makerere University, P.O. Box 7062 Kampala, Uganda

Abstract: In this study present the existing laws of Uganda and how these enable or inhibit married women, widows in or from owning a matrimonial home has been presented. The supreme law of Uganda (The Constitution) seems to be gender sensitive in regard to a number of aspects but is not specifically clear on matrimonial property like a home. The Intestate Succession Law, seems not to favour widows in as far as inheritance rights of the matrimonial home is concerned. The widow is only allowed to have user rights and keep the home for the male heir. What would save the widow is for a husband to bequeath the home to his wife. Unfortunately, very few men make wills and a few that make them really bequeath the matrimonial home to their wives apart from allowing them to occupy the home until she dies. This is regardless of whether the widow contributed to the home or not. Similarly, the divorce law is very silent on division of the matrimonial home upon divorce or separation. The decision is left with the Courts of law to decide. The Registration Act is supportive in as far as giving individuals a right to own property is concerned. However, there is no legal framework for couples to co-own the matrimonial home. The decision is left to individual couples.

Key words: Gender, homeownership, laws, sociological perspective

INTRODUCTION

It is reported that an estimated 80% of housing units in the country are owner occupied representing a stable, secure formal tenure^[1]. According to a study carried out by Makerere Institute of Social Research on the category of title holders by region, men only title holders account for 59% in Central Region, woman only account for 18% and joint (conjugal) owners account for 4%^[2]. According to the World Bank report, only 7% of women own land in Uganda^[3]. Lack of ownership of land could also point to lack of ownership of housing. The Uganda Government is at the forefront in addressing all sorts of gender inequalities in all sectors of the economy. To achieve this a number of affirmative action policies and statutory laws have been put in place. It is surprising however, to see that inspite of all these efforts gender inequality in homeownership is evident and persists. Today there is a debate in Parliament on co-ownership of land, but it has dragged on for such a long time forcing one to believe that this is a very tricky issue to decide on. What makes it tricky is the resistance of men and some women parliamentarians to accept co-ownership of property like land and housing. So while we talk of affirmative action policies, when it comes to ownership of land and housing, what we get are double standards. The Question then is what are the dynamics of ownership of property?

Statement of the problem: In societies, which ascribe to democratic principles, irrespective of ones marital and gender status, citizens who can afford to own houses, can

do so without any difficulties. In most countries there are no legal or cultural barriers that stop either women or men from owning property. Whilst in Uganda, the state policy states that every citizen has the right to own property, in particular houses, the general perception is that women tend to be users rather than owners. For example, although married women live in a house with their husband, they do not actually own the house but simply live in it. If a husband dies, his wife may not always have the right to inherit the house but instead it will be her sons who inherit it. Where a woman has no sons the house may be given to her brother-in-law or a male relative of the deceased. This means that women do not own the house but only have access to it. The gender inequality comes about because traditionally women only enjoy the use of a house but may not own it.

The other alternatives to home ownership that are most prevalent are direct purchase or ownership under a mortgage scheme and even here women are disadvantaged. Women are the least educated, the most illiterate and many times have the poorest paying jobs and thus are not able to buy land or buy a house like their male counterparts. Apart from the above inequalities, women face cultural taboos that are often associated with women owning land and housing. For example, those women who are known to own property tend to be given derogatory names and are not regarded in the same high social esteem as men. In some cultures it is said that a woman who owns land will not be respected and that woman with land are deemed to be big headed and difficult to manage and control.

While it is reported that in Kampala there has been an increase in homeownership little information is available on this ownership in terms of gender dynamics. Related to this there is also lack of information on the factors that inhibit the different categories of men and women owning houses in Kampala. Considering the heterogeneity between men and women the influence of these factors may vary greatly within each gender category. This research therefore will go a long way in filling this information gap.

The objective of this study is about gender inequality in homeownership in Kampala, Uganda. Its main objective is to look at factors that inhibit or enable women and men to own a matrimonial home.

Research questions

- Do customary and statutory laws influence homeownership?
- Does income inequality between men and women influence home ownership?
- Does the level of education influence ownership in Kampala?

MATERIALS AND METHODS

This study was premised on qualitative research methods. This is because qualitative data with their emphasis on peoples lived experiences are fundamentally well suited for locating the meaning and experience people place on their lives and for connecting these meanings to the social world around them^[4]. Qualitative method allows in-depth exploration of the issues and it captures the richness of peoples' experiences in their own terms.

Data collection methods: The researcher employed three techniques of data collection, which are all qualitative. These will included

- In-depth interviews
- Life history interviews
- Reviewing of secondary sources

In-depth interviews were used to capture information from key informants. Life histories were purely used to acquire information from the respondents. Data from governments, NGOs, parliamentary debates, Government policy papers, Acts of Parliament formed part of the secondary data.

Area and population of the study: The Study was carried out in Nakawa one of the middle-income communities in the suburbs of Kampala the Capital City of Uganda. The researcher was interested in middle income areas because

of the legal aspect of ownership. As noted in the literature having a title deed indicates ownership. In many low-income communities the legality of ownership is questionable or does not exist at all. The Nakawa division has been selected because of the land tenure system that exists here. Nakawa is one of the few divisions where land is held under leasehold and freehold systems.

Selection of respondents: The key respondents comprised of married men, married women and widows. These were purposively selected from households that had legal home ownership. The aim was to get the perceptions, experience, views of each group so as to compare these views, attitudes, perceptions and thus draw possible conclusions from their perceptions to various issues of the study. The researcher interviewed ten married women and ten married men.

Data analysis: The researcher transcribed the life stories verbatim and summarized them in a chronological order. The transcribed information was analyzed using either thematic/ content analysis. The Analysis was done on the basis of the research questions of the study. Themes emerging from the data and other forms of categorization were used to discern various patterns from the data. The process of looking at the emerging patterns and themes, clustering or sorting the information and finding relationships then followed.

Secondary data analysis: Secondary data sources mainly official policy documents were looked at and analyzed for contextual information in order to get more insight on the issue.

Ethical considerations: Since the issue of property ownership is very sensitive the researcher conducted the study with a lot responsibility and care. To avert peoples' fears at every beginning of an interview the researcher would inform the respondents about the broad objective of the study. Care was taken to ensure confidentiality and anonymity through out the study by using Pseudonyms.

The law and ownership: In this study I focus my discussion on how inheritance law impact on widows ownership rights to a home and what happens in practice. The existing statutory laws include, Inheritance laws, Divorce laws, Marriage laws.

Inheritance laws: One of the ways in which a widow could possibly own a matrimonial home in Kampala is through inheritance. There are two statutory laws that govern inheritance matters in Uganda namely the 1995 Constitution and the Succession Act (Amendment) Decree No. 22/1972.

The Succession Act (Amendment) Decree No. 22/1972:

The Succession Act (Amendment) Decree No. 22/1972 is divided into two parts; one part deals with properties of persons who die having left wills (testate) and the second part deals with properties of persons who die without leaving wills (intestate). Therefore, the widow's right to inherit the matrimonial home depends on whether her husband died having made a will (testate) or having died without leaving a will (intestate).

DOES THE SUCCESSION LAW GUARANTEE A WIDOW'S RIGHTS OF OWNERSHIP?

Intestate succession: In a situation where the deceased died without leaving a will (intestate) the law specifies that the widow gets only 15% of the deceased's estate but the matrimonial home belongs to the heir who is the eldest son of the deceased. The matrimonial home is not among the distributable assets in the home. The reason for leaving out the matrimonial home to be distributed is to ensure continuity of the family^[5]. The widow is however entitled to live in the matrimonial home under certain preconditions set out in the law. It can be agreed therefore that under intestate succession, the widow is not guaranteed ownership of the matrimonial home but only user rights per-se because the legal heir inherits the matrimonial home. The widow is legally allowed to continue staying in the matrimonial home so long as she keeps it safe and tidy and she does not re-marry. Intestate succession rules may on the surface appear to be fair in providing appropriate rules to regulate distribution of an intestate estate. However, a close scrutiny of these intestate rules reveals that they do not at all guarantee widow's rights of ownership of a matrimonial home.

What happens when a husband dies intestate?

Christine's story: She is 54 years old. Before retirement, she was working a principal secretary in different companies and was earning more than her husband. She advised her husband to save money to buy a piece of land on which they could build their own home while she met all household expenditures including the paying of school fees. Her husband accepted but bought the land and built the house without the knowledge of Christine. He registered the land in his sole name. Before his death, it is when he revealed to Christine that he had bought land and built a house. The family moved in the house and within two months of moving in, her husband died. Christine did not know where the title deed of the house was but was lucky to find it in a heap of papers in her husband's office. When Christine's brother-in-law learnt about the title deed he deceived Christine that the

Administrator General wanted the title deed for safe custody. It was a tag of war to retrieve the title deed from him. In addition, her brother-in-laws threatened to evict her because she was thought to have killed her husband. Her story shows that Christine's contribution went to the toilet or to intangible expenses while her husband's money went to real property.

Testate inheritance: Under testate succession a widow may inherit by virtue of bequests made in a valid Will by the testator. The only sure way where the widow could inherit the matrimonial home under the testate inheritance is when her deceased spouse left a valid will, bequeathed the matrimonial home to her and in addition made her the executor.

Jennifer's life story: Jennifer is 50 years old and is a nurse by profession. She financially contributed to the construction of the home but her husband registered the home in his name. Her husband left a valid will and made Jennifer as one of the beneficiaries. Although she was also made as one of the executors, her husband included two of his male friends as executors. Jennifer revealed that she cannot use the title deed of the home to acquire a loan because she will need consent of the other two executors. She instead bought herself another piece of land and built her own house which she calls a woman's house.

Hence there are other ways in which a husband can make a will and this will determine whether the widow is enabled or inhibited the ownership rights.

- A valid will where the deceased names the widow as both the beneficiary and the executor^[6] of the will.
- A valid will where the deceased names a brother or sister as the Executor of the will and names the widow as the beneficiary.
- A valid will where the deceased names the Administrator General as the executor of the will.
- A will where the deceased names another person other than the widow to be the guardian of husband's offspring who are still dependants.
- A will where the widow is not mentioned at all.

Although the inheritance laws seem to be supporting widows, this can only be seen in terms of access to the home not ownership. The inheritance laws seem to assume that a widow did not contribute much to the matrimonial home during marriage. The inheritance laws seem to dictate that whether the widow is co-owner or not, the matrimonial home belongs to the heir and hence she can only occupy it but not legally own it unless her husband has bequeathed it to her.

The 1995 constitution: The second statutory law that deals with inheritance matters in Uganda is the 1995 Constitution. In general, it has been observed that this Constitution is gender sensitive because it addresses many inequality issues that affect women in all spheres of life through its affirmative action provisions^[7]. Hence, Articles 21, 31, 32 and 33 of the Uganda 1995 Constitution are all aimed at rendering discriminatory provisions against women unconstitutional^[8]. For example Article 31(2), which is pertinent to inheritance, matters states that Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses although the matrimonial home is not specifically mentioned but presumed. As noted by some authors, the issue of inheritance is not dealt with in a more straightforward way that, the equal right to inheritance is not explicitly stated.

However, what is stated in the clause is a delegation of duty to Parliament to come up with laws that can protect the widow. Clause (2) of Article 31 states "Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children^[9]". This means that the onus is on Parliament to pass the relevant Bills, which will specifically look at the detailed aspects of what is termed as property and how it should be shared upon marriage, divorce, separation and death. The Constitution does not go into all the details of the particular properties to be inherited and by whom but gives only the guidelines.

In order to harmonize the Constitution with the existing family laws for example the succession law, divorce Act, marriage Act, an attempt was made to come up with a revised family law, commonly known as the Domestic Relations Bill, through the Law Reform Commission. As noted by some authors, the Domestic Relations Bill is probably the first attempt to reconcile the 1995 Constitution with inheritance and family legislation^[10]. Unfortunately this attempt has so far been unsuccessful^[11]. One of the ways in which a married woman could possibly own a matrimonial home in Kampala is through divorce or separation. There are a number of laws in Uganda that seem to guarantee or would have guaranteed a/divorced/separated woman a share in the matrimonial home. These include the 1995 Constitution, the divorce Act, the marriage Act, Registration of Titles Act.

Like the English Law, there is no clear provision in the statute books on the ownership of the matrimonial home upon divorce and separation. What is stated

though is the judicial power of the judges to decide in the distribution of the property especially where the wife has been found guilty of adultery but even then, the matrimonial home is not specifically mentioned. The matrimonial home is at stake during separation or divorce because it will depend on whose name is on the title deed. The wife is likely to have only user rights if her husband walks out of the house or court decides that the wife and children should not be evicted. The wife will never at any time own the matrimonial home unless her name is on the title deed. If the wife decides to vacate the matrimonial home on her own, she may even lose the user rights.

The Registration Act: Another Legal instrument that may enable or inhibit a married woman to own or from owning a home is The Registration of Titles Act. To facilitate the ownership process, there is a general land law and in particular the Registration of Title Act (In case of Real Property) and the Contract Act where ownership of personal property is determined by who bought the property and in whose names it is registered.

The 1964 Registration of Titles Act allows any Ugandan citizen to purchase and own land^[12]. The initial Registration of Titles Act was adopted in 1924. The 1964 Act provides for joint ownership and ownership in common and for the transfer of land or interest in land by one spouse to the other^[13]. It states that Two or more persons who are registered as joint proprietors of land shall be deemed to be entitled to the land as joint tenants; and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares. Although Section 56 provides for joint ownership and ownership in common and transfer, this has to be explicitly registered and is not presumed. As can be seen, this does not help women much as most registered owners are not inclined to register their property jointly or in common with their spouse. Hence upon separation or divorce, the one in whose name the title deed is registered stand to benefit at the expense of another whose name is not included on the title deed.

Nonetheless, the recognition of women's right to own property in their own right is a good gesture and this is well documented both in the Registration of Titles Act and the Constitution. The question remains as to whether in practice spouses co-own the matrimonial home. There is no legal frame work in which a married is mandated to co-own the matrimonial home with his wife. The decision to co-own the matrimonial home is left to the individual spouses.

Marriage act: Property acquired during marriage is governed by the different laws that govern property transactions since a husband and wife are separate and independent personalities for purposes of property law. By inference it can be presumed that if the property is acquired jointly and/ or registered in joint names it can be considered marital property.

Property acquired during marriage is marital property if it is jointly acquired. Property acquired by one spouse during marriage can only constitute marital property when there is evidence of contribution in monetary or otherwise by the other spouse on the acquisition, improvement etc. Evidence of proof seems to be tricky though. It involves a spouse to have receipts for purchasing building materials for example.

REFERENCES

1. Uganda Population and Housing Census, 2005. Uganda Bureau of Statistics, Kampala, pp: 31.
2. Patterns and Trends of Land Registration and Ownership in Uganda 1980- 2002, Makerere Institute of Social Research, Kampala, 2004.
3. Uganda: Growing out of poverty,(Washington, DC, The World Bank, 1993).
4. Miles, M. and A. Huberman, 1994. Qualitative Data Analysis: An Expanded Source Book, 2nd Edn., Sage Publications, California.
5. Nanyenya, P., 1993. A simple guide to the Law of Succession in Uganda, Introduction to Law Series. The Law Development Centre, Kampala, pp: 7.
6. Nanyenya, P., 1997. A simple guide to the Law of Succession in Uganda, Introduction to Law Series. The Law Development Centre, Kampala, pp: 9.
7. Okumu-Wengi, J., 2005. Women and the Law of Inheritance, in Tuhaise, P., V. Matovu, C. Madrama, F. Mbaaga, J. Mugisha and J. Okumu-Wengi (Eds.), Women and Law in East Africa, The Law of Succession in Uganda: Women, Inheritance laws and Practices. WLEA (U) Publications No. 2 2001, pp: 5 Baguma, A., The New Vision, pp: 5-12, <http://www.unhabitat.org/publication/hs66702e/rr-con.pdf>. Article 21, 32 and 33, of the Constitution.
8. Wagubi, A., 2003. The Legal and Institutional framework Governing Inheritance in Uganda: A Critique of the Law and Institutions. A Dissertation Submitted in Partial Fulfillment of the Requirements for the Award of the Degree of Master of Laws, of Makerere University, pp: 7.
9. Constitution of the Republic of Uganda 1995, LDC Publishers Printing Press, Kampala.
10. Wagubi, A., 2003. The Legal and Institutional framework Governing Inheritance in Uganda: A critique of the Law and Institutions. A dissertation submitted in Partial fulfilment of the requirements for the award of the Degree of Master of Laws, of Makerere University. Cabinet Memorandum CT, The Domestic Relations Bill, pp: 9.
11. Kawamara, S., 2003. East African Legislative Assembly member's Response to President Yoweri Museveni's view on the reform of the Domestic Relations Bill. Uganda Women's Network (UWONET).
12. Cap. 205 of the 1964 Laws of Uganda
13. Section 56 of the Registration of Titles Act.