



WHY THE PRESIDENT SHOULD NOT ASSENT TO THE RECENTLY PASSED SUCCESSION AMENDMENT BILL [2018]

The Succession Act dates back in 1906 and there no doubt about the urgent need for its amendment to bring it in conformity with the 1995 Constitution and Human Rights standards. However, MCJL notes that on the 24th March 2021, Parliament passed the Succession (Amendment) Bill 2018 without an exclusion clause divorcing Muslims from the operation of provisions affecting their personal status as envisaged under the 1995 Constitution.

Before the Bill was passed into law by the 10th Parliament, different stakeholders and the public in general had been invited to express their views on the same. The Muslim community led by Uganda Muslim Supreme Council presented their views to the Legal and Parliamentary Affairs Committee regarding the contents of the Bill. The summary of views by the Muslim community was a request to have the Muslims excluded from the operation of the provisions on intestate succession since the same contravened the already comprehensive succession system provided for in the Qur'an.

The consolidated report of the Sectoral Committee on Legal and Parliamentary Affairs on the Succession (Amendment) Bills 2018 & 2019, recommended that Muslims be excluded from the operation of clause 13 of the Bill, that provides for distributions of estates of an intestate person. The report on pages 22 & 23 notes as follows;

The distribution scheme does not take into account religious requirements, especially of the Muslim faith, during distribution of property. It should be noted that whereas Uganda is a secular state, Article 29 (1) (c) of the Constitution guarantees a person's freedom to practice any religion and manifest such practice which shall include the right to belong to and practices of anybody or organization.

The Committee further notes that religious practices have been recognized as an influential factor in determining succession matters among certain sects of people. The Committee observes that Muslims in Uganda follow religious provisions of 'Sharia law and hadith as stipulated in the Koran' in determining succession matters.

The Committee also notes that Article 129 (1) (d) of the Constitution directs Parliament to establish Qadhi Courts for purposes of dealing with matters involving marriage, divorce, and inheritance of property and guardianship.



It is the committee's considered opinion that the distribution scheme as prescribed in section 27 is not in accordance with the Koran and hadith and is further a contravention of Article 129

(1) (d) which directs Parliament to prescribe a separate court to handle matters of Islamic inheritance.

The Committee is of the considered opinion that, given the differences between distribution of property of a deceased professing the Islamic faith in the Quran, the distribution scheme in the Succession Act should not apply to the distribution of the estate of an intestate professing the Islamic faith as is the case in other countries such as Kenya, Tanzania, Malaysia, India, Pakistan, Singapore, Sri Lanka, Sudan and Nigeria where Islamic succession has its own distinct legislation.

The Committee is aware that the proposal to have a distinct legislation to cater for intestate succession of persons professing the Islamic faith will not be unique in Uganda considering that Mohammedans were excluded from the operations of part V of the Succession Ordinance of 1906 which provided for distribution of an intestate's property and were entirely left to rely on the Sharia law in cases of intestate. Therefore, unless the distribution scheme is structured in a manner that takes into account the views and aspirations of persons professing the Muslim faith, the distribution scheme will continue facing challenges of implementation.

The report also provided an opportunity to Muslims who do not want sharia law to apply to them to opt out.

According to Parliament of Hansard of 24th March, 2021, it is clear that the Bill presented for discussion by the Chairman Legal and Parliamentary Affairs Committee, Hon. Jacobsons Oboth Oboth, did not have an exclusion provision under clause 13, contrary to the committee report and in total disregard of the interests of the Muslim community. Clause 13 (11&12) of consolidated Succession Amendment bill 2018, which formed part of the Report, had expressly excluded Muslims from the operation of the above clause. The implication is that the members of Parliament were denied an opportunity to debate the exclusion clause that was omitted from the Bill as it was presented for the 2nd reading.

The public ought to be aware that matters relating to marriage, divorce and inheritance are considered an entrenched part of the Islamic religion and Muslims all over the world have jealously guarded this part of faith. It was on the basis of the above, that the members of the constituent assembly found it relevant to include article 129(1) (d) in our cherished 1995 constitution for the establishment of Kadhi's Courts.



The Bill in the form in which it was presented to President for assent is not only unconstitutional but it will naturally occasion injustice to Muslims once passed into law. In this regard, Muslims across the country ought to pass out a loud voice calling upon the President not to assent to the Succession [Amendment] Bill 2018 so that an exclusion clause, divorcing the Muslims from the operations of the provisions on intestate succession is included in the Bill in accordance with the recommendations contained in report of Sectoral committee on legal and parliamentary affairs on the Succession [Amendment Bill] 2018 &2019.