

# Potential Effects of the Marriage and Divorce Bill on the Family in Uganda



MARTIN JUUKO KIRUME

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**Author:** Martin Juuko Kirume

**Editors:** Rev. Lawrence Adams (PhD), Cadreen Kabahizi

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Any inquiries can be addressed in writing to the Executive Director at the following address:

Center of Faith Family and Justice

P.O Box 150045

Mukono, Uganda

Tel: +256760130120

Email: [info@cffj.or.ug](mailto:info@cffj.or.ug)

Web: [cffj.or.ug](http://cffj.or.ug)



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## Introduction

There are many laws in Uganda that have been enacted to govern and regulate marriage, family and divorce. These laws generally protect the marriage institution in Uganda. They include, the Constitution of the Republic of Uganda 1995, as amended, Marriage Act CAP 251(1904), Customary Marriage (Registration) Act CAP 248(1973), Hindu Marriage and Divorce Act CAP 250(1961), Marriage and Divorce of Mohammedans Act CAP 252(1906), the Divorce Act CAP 249(1904) [1], the Succession Act, The Land Act CAP 227, and many others.

However, the Marriage and Divorce Bill, like the, above stated laws, would have been expected to be gladly recognized and received. This is because the Bill covers a wide range of marriages in Uganda. These include the Civil, Christian, Hindu, Bahai, and customary marriages, with only the exclusion of marriage under the Islam faith. On the contrary, this Bill received a lot of criticism, not only from the different religious leaders but also the different political leaders, including the different members of parliament. No wonder it still hasn't been passed. Some people see this Bill as a death trap aimed at promoting violence in homes[2]. Others see it as a divorce-promoting Bill, hence contesting it[3]. Moreover, in 2013, H.E Yoweri Kaguta Museveni urged the Members of Parliament not to be too excited about pushing for the Bill, as this would cause a civil war in the Country. The Speaker too, Rt. Honourable Rebecca Atitwala Kadaga has constantly reminded the Members of Parliament to be very careful while pushing for this bill into law.

## Definition of Marriage in the Biblical perspective

In the Biblical perspective, straight away from the creation of man (Genesis 2), to the return of our Lord Jesus Christ (Revelation), throughout the entire Holy Bible, there are many scriptures that clearly show that marriage is God's intended permanent union of man and woman, with husband and wife living together as one person for all the days of their life, till death does them apart[4]. It is important to note that in the Christian worldview, marriage is ordained by God[5].

Definition Marriage in the legal Perspective.

In the legal perspective as well, there are cases that have defined marriage from a biblical perspective. For example in the case of HYDE V. HYDE AND WOODMANSEE (1866) LR 1 P&D 130, Lord Penzance stated that "Marriage as understood in Christendom, may be defined as the voluntary union for life of one man and one woman to the exclusion of all others"

According to the Laws of Uganda, Marriage is reflected under Article 31(1) of the Constitution of the Republic of Uganda, 1995. Article 31(1) provides that Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution. This is also reflected in the many other laws that govern and regulate marriage in Uganda, which include, Marriage Act CAP 251(1904), Customary Marriage (Registration) Act CAP 248(1973), Hindu Marriage and Divorce Act CAP 250(1961),

Marriage and Divorce of Mohammedans Act CAP 252(1906), the Divorce Act CAP 249(1904)[6]. The Succession Act though the case of *Law Advocacy for Women in Uganda v Attorney General - Constitutional Petitions Nos. 13 /05 /& 05 /06 [2007] UGCC 1* (5 April 2007), has declared that Section 2 (n) (i) and (ii), 14,15, 26, 27, 29, 43, 44 of the Succession Act and Rules 1, 7, 8, and 9 of the Second Schedule of the same Act are inconsistent with and contravene Articles 21 (1) (2) (3) 31, 33(6) of the Constitution and they are null and void.

Be that as it may, it is very clear that marriage under the laws of Uganda is a legal contract between man and woman to stay as husband and wife. In other words, the two must be 18 years and above, of sound mind, there must be a mutual agreement between the two, with an understanding of living together for all their life, except where the relation is by law terminated. It is also prudent to note that under Islamic and Customary law, a man is allowed to marry more than one woman, but the same requirements of marriage apply.

### **What the Bill is aimed to achieve once it passes into law**

From the long title of the Bill, one would expect the bill to serve a great purpose in Uganda, once passed into law. For instance, the long title of the Bill is to the effect that, this Act is intended to reform and consolidate the law relating to Civil, Christian, Hindu, Bahai and customary marriages; to provide for the types of recognized marriages, marital rights and duties; recognition of cohabitation in relation to property rights; separation and divorce, and the consequences of separation and divorce; and for related matters.

Therefore, the Bill is expected to create a reformed compendium of laws that govern marriage in Uganda, as below are the reforms that the Bill seeks to address. This helps to have an organized community with legally recognized and enforced marriages.

The only recognized marriages in Uganda are provided for under Clause 12 of the Bill. The Bill recognizes only Christian, Civil, Cultural, Hindu, Bahai, and Muslim marriages, and any other legally recognized marriage in any other country, although it must not be same-sex marriage. This, in other words, helps society to be organized. It is prudent to note that though the Islamic Marriage is not provided in the Marriage Bill, in Uganda, it is also celebrated under the Islamic Marriage Laws.

The old cultural Practice of inheriting widows is declared unlawful under Clause 13 of the Bill. In some cultures in Uganda, there is a barbaric custom that once a man dies, and he has been married, his brother or closest relative can inherit his wife, as part of the property of the deceased brother, this connotes from the old archaic understanding that payment of blood price amounts to also wife purchase as Justice Sheridan stated in the case of *R. V. Amikeyo (Uganda Case)*. However, this position of the law was reversed in the Uganda case of *Uganda V. Alai*. And the new position of the law has been maintained both in the Constitutional Court and the Court of Appeal of Uganda in the case of *Mifumi (U) Ltd and 12 Others V. Attorney General (Constitutional Appeal No.2 of 2014)*[7]. Therefore, according to the Bill, inheriting a widow is unlawful.



Under Clause 14 of Bill, the Bill also outlaws the concept of demanding for the return of marriage gifts, as this is deemed to demean the meaning of bride price, appreciated in the African cultural perspective. This act was also declared unlawful in case of a marriage failing, as was held in the Uganda case of Mifumi (U) Ltd and 12 Others V. Attorney General (Constitutional Appeal No. 2 of 2014)[8]. This declaration helps to protect the family institute from all the negative ramifications that would emerge out of such a cultural practice. For example transmission of sexually transmitted diseases, loss of privacy of the woman and the family in general.

Furthermore, the Bill also established the minimum age standard of Marriage for all marriages recognized under the Bill. That is to say, all marriages, Civil, Christian and customary marriages shall be celebrated at the minimum age of 18 years, as stated under Clause 15, Clause 37, and Clause 58 of the Bill. This will have a very good impact on the protection of the family institute and the society in general. Previously, Courts in Uganda have been battling with cases of rape and defilement, because of the different minimum ages for marriage. For example, the Constitution of the Republic of Uganda puts it at 18 years and above, pursuant to Article 31, the Marriage Act CAP 251, under Section 17 establishes the age of 21, and the position of customary law and Islamic law is not clear. It can go as low as 16 years of age. However, the Marriage and Divorce Bill aligned all this by putting the minimum age for marriage to be 18, which is consistent with Article 31 of the Uganda Constitution.

Last but not least, the bill also settles the question of Matrimonial property, under Part VIII of the Bill. It is worth noting that the Marriage and Divorce Bill is the first law (if it passes), that will be the first to have expressly established the legal position of Matrimonial property. This is considered by many human rights activists of equality of gender before the law to be one of the greatest works of the Bill. In fact, organizations like Uganda Women Network have highly commended the Bill for resolving the question of matrimonial property.

The Bill puts the yardstick at the amount of contribution that each party contributed towards the matrimonial property. Hence with this Law in place, the question of Matrimonial property will have been settled. This is so important to be addressed as it helps the family in the future substance, and uncertainties in case there is separation and dissolution of marriages. But even if the Legislature has not yet passed law to this effect, the Judiciary has addressed this question in many cases, the latest or recent being Julius Rwabinumi and Hope Bahimbisomwe Constitutional Appeal No. 10 of 2009 (In the Supreme Court of Uganda) that established what Courts base on while determining the distribution of Matrimonial property in Uganda.

Conclusively, in the bid to protect the Marriage institute, the Bill has also established offences and penalties in line with any unlawful acts that tend to compromise the legal position of Marriage in Uganda.

For example, Clause 165 of the Bill establishes the offence of Jactitation of marriage; Clause 167 establishes the offence of making false statements; marrying a person previously married, with the knowledge of the subsistent marriage commits an offence under Clause 168, and also the offence of false declarations is by law punishable under Clause 169 of the Marriage Bill.

Uganda, if it is passed into law. This is because it addresses many pertinent issues in the marriage institute that have not been addressed in the previous legislation. However, much as the Bill is not in force, it should be acknowledged that most of the concerns it seeks to solve have been addressed by the Judiciary in the above-cited cases, including the question of Matrimonial property. And also certain provisions of the law (Statutes), have addressed other pertinent issues that the Bill seeks to establish, as discussed above.

### **Critics of the Bill**

With all the above mentioned positive things that the Bill would have on Marriage and Family in general, one would expect the Bill to be welcomed by Ugandans, and yet, it is known as one of the oldest Bills that has stayed on the shelves of the Parliament, because of its controversies as analyzed below

The title of the Bill, that is to say, “Marriage and Divorce” Bill have been the first point of attack to this Bill.

The Bill has been criticized by different People, including Church leaders, the heads of the Muslim faith in Uganda, the different members of parliament, the citizens of Uganda straight away from its title. For example, the Religious leaders criticize the Bill for it being named “Marriage and Divorce”, which they say, has a connotation that the Bill creates a clear contemplation of divorce as people get married. And yet divorce would look at as the last resort.

In fact, there are some religions that see divorce as very inhuman and ungodly. For example the staunch and traditional Roman Catholics cannot line behind the Bill, because to them, divorce is wrong. Secondly, the Moslem leaders too contested the Bill because of its title. Their faith very reluctantly accepts divorce. Hence they preached against the Bill, according to the report produced by New Vision Uganda News Paper reporter on 2nd April 2013 (Haji Nsereko Mutumba[9]). It is prudent to note that the Muslims demand a law that strictly applies to them, and in their own Courts of law. Hence the Bill has been revised to exclude them[10]. The Parliament now is faced with the challenge of changing the name of the Bill to just be the Marriage Bill.

### **The Bill is also challenged with its Part VIII, which provides for matrimonial property.**

Many people have argued that the Bill seeks to give a soft platter to people with the intention to marry, get property and then after, a divorce, hence deviating from the sole purpose of marriage.

The Bill has made it so easy for division of property, with all its effects, which among them are silent fights that will emerge between couples about who owns what, leading to hatred, and death, just to mention but a few. Worse of all, another foreseen issue that is extremely going to affect families and finally destroy them, is the high level of secret property ownership among couples, as a way of trying to dodge the likelihood of division of property upon divorce. This is worse, because, usually, when discovered, it shows distrust, and unfaithfulness, hence a gate pass to divorce and separation of couples. Besides all this, the Bill leaves the children born in this relationship, out of the whole equation. The Bill is completely silent on the share of the children, who are a product of such a failed marriage.

Furthermore, still on the question of Matrimonial property, though the creates an avenue where both parties in the marriage are put on the same weighing scale in regards to the division of matrimonial property, the scale seems to be weighing more on the side of the men, especially in the normal trend/practice. For instance, the Bill is not so clear in marriages where the wife earns more than the husband. It would practically be a bit stretching and rare that Court would grant that a man claims part of the woman's property. In conclusion, be it as it may, the question of matrimonial property has raised more pertinent issues among Ugandans. Not necessarily because it is bad to share matrimonial property, but because this concept is not freely welcome in the African perspective.

Further still, the Bill salon introduces the concept of marital rape, something so strange in Uganda, or as one may call it, the African community or culture.

The Bill states that a married partner has a right to have sex or to reject sex in marriage. And where the spouse tries to force the other, then this would amount to marital rape. This is stated under Clause 114 of the Bill. Section 114(1) of the Bill grants the spouses conjugal rights.

However, Subsection 2 gives exceptions to this right; poor health, surgery, and childbirth. When a spouse has a reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm. All this is vague and in fact, puts the marriage institution at stake. For example, what happens if a woman falsely accuses the husband of rape? How would such a case be proved beyond reasonable doubt, for actions that happen in the couple's private bedroom? Also, Biblically, sex is seen as a gift and part of marriage from God. Trying to give the perimeters of sex in marriage is trying to infringe on people's right to privacy in marriage, and also, this ends up poking loopholes in the marriage institution.

**In conclusion,** the Marriage and Divorce Bill will take many more years on the shelves of Parliament because of its irregularities and loopholes. And as many see it, I would also avert that this Bill still needs to be revised and edited before it can be passed into law. Otherwise, apparently, it contradicts a lot with African values of marriage and family. And it will also still be attacked by different religious leaders, and to an extent, even the different political leaders, for as long as the above-stated loopholes of the Bill are not cleared.



## BIBLIOGRAPHY

### 1.Statutes

v The Constitution of the Republic of Uganda 1995, as Amended

v The Marriage Act CAP 251

v The Marriage and Divorce Bill

v The Divorce Act CAP 249

v The Succession Act

v The Land Act CAP 227, as Amended

### 1.Case Law

### 1.Text Books

v Nigel L. And Douglas, Bromley's Family Law. 2007, United States, Oxford University Press.

v Katarina J. And Kanjama C. Family Law Digest on Matrimonial Property

v Jennifer Okumu Wengi, Women's Law and Grassroots Justice in Uganda. 2011; Kampala, Law Africa.

### 1.Online resources

v <http://eagle.co.ug/2017/07/03/constraints-the-marriage-and-divorce-bill-brings.html>

v <https://jocom.mak.ac.ug/news/analytical-report-legal-challenge-marriage-and-divorce-bill>

v [http://www.newvision.co.ug/new\\_vision/news/1316590/loopholes-marriage-divorce](http://www.newvision.co.ug/new_vision/news/1316590/loopholes-marriage-divorce)

[1] Though Sections 4(1) and (2), 5, 21-24 and 26 of the Divorce Act were found to be inconsistent with the Constitution of the Republic of Uganda, 1995, as amended.

[2] Andrew Ssenyonga, one of the Ugandan Journalists writes that "the residents in Bamunanika constituency in Luwero district have warned their legislators against pushing for the Marriage and Divorce Bill, arguing that it is death trap aimed at promoting violence in homes." He proceeds to say that this warning was sounded recently in a meeting at Semuwangizi Secondary School in Kireku to consult residents of Kireku village in Kikyusa sub-county on the Law that has ignited a lot of heat and attracted divided public opinion.

[3] Rita Aciro, the Executive director of Uganda Women's Network noted that the bill only seeks to consolidate the Marriage Act and the Divorce Act, which are already in place, contrary to popular belief that it is "a divorce- centered bill."

[4] Genesis 2: 24, Malachi 2:16, Matthew 19:6a, Ephesians

[5] Matthew 19:6a

[6] Though Sections 4(1) and (2), 5, 21-24 and 26 of the Divorce Act were found to be inconsistent with the Constitution of the Republic of Uganda, 1995, as amended.

[7] Where by the majority, Court held that payment of bride price does not amount to wife purchase

[8] In this case, the Non-Government Organization (Mifumi), tried to challenge the payment of blood price, with all its ramifications, especially to the mothers and children, Court held that payment of bride price is a cultural practice, and does not contravene with other Uganda written laws, hence payment of blood price is still considered a good cultural practice. However, court noted two things. Blood price should be given at free will, and secondly, no party shall claim for the return of the marriage gifts upon desolation of marriage.

[9] [http://www.newvision.co.ug/new\\_vision/news/1316590/loopholes-marriage-divorce](http://www.newvision.co.ug/new_vision/news/1316590/loopholes-marriage-divorce) who stated that much as the Muslims are not affected by the on-going debate on Marriage and Divorce Bill because in April 2008, UMSC submitted the Muslim personal Law Bill to the Uganda Law reform Commission, which, if passed, will establish Qadhi Courts in Uganda and provide for Muslims a separate family law in respect of marriage, divorce, inheritance, guardianship and other matters incidental thereof as stipulated by Article 129(1)(d) of the Constitution of the Republic of Uganda, 1995, as Amended.

[10] Inter alia

Center of  
**FAITH  
FAMILY &  
JUSTICE**



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**P.O Box 150045**

**Mukono, Uganda**

**Tel: +256760130120**

**Email: [info@cffj.or.ug](mailto:info@cffj.or.ug)**

**Web: [cffj.or.ug](http://cffj.or.ug)**