



Thesis By
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University of Cape Town

**GENDER DYNAMICS IN HOME
OWNERSHIP IN KAMPALA
UGANDA**

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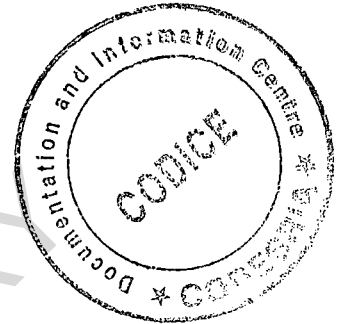
Thesis presented for the degree of:

DOCTOR OF PHILOSOPHY

**In Department of Sociology
Graduate School of Humanities**

University of Cape Town

Supervisor: Prof. Owen Crankshaw



February 2008

DEDICATION

This thesis is dedicated to my late mother Janet Nyabuje Manyuru Abwooli who passed away on 26th May 2004 and to my late brother Engineer Samuel Asaba Akiiki who passed away on 4th September 1992 for the instrumental role they played in my education. Without their financial support at the initial stage of my education I would not have come this far. To my late mother Nyabuje thank you for the value you attached to education. Even though your parents denied you education because you were a girl, you did not want the same denial to be extended to your girl children.

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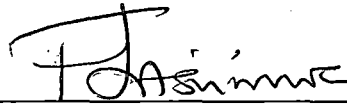
DECLARATION

I declare that this thesis is my own work. I know that Plagiarism is wrong. All quotations in this thesis from other authors have been cited and referenced.

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ABSTRACT

This study explores the different ways in which married women in Kampala, Uganda are unable to become homeowners during marriage and at widowhood. In the process, the study also explores the special mechanisms through which married women became homeowners through marriage and at widowhood. The study was premised on the assumption that gender inequality in homeownership exists and persists in Uganda in spite of urbanization, increase in information flow, education and income of women. Although married women live in a home with their husband, they do not actually own the home. As a result, women tend to be users rather than owners. Although one would expect statutory law to guarantee married women home ownership rights during marriage, this is not the case. While Uganda's state policy states that every citizen has the right to own property, in particular houses, there is no legal framework that guarantees married women equal ownership rights of the home. The current Marriage and Divorce Acts are not clear on the benefits of the married woman in the matrimonial home during marriage and divorce. At divorce the married woman's benefits in the matrimonial home is at the discretion of the judge who determines the percentage of a married woman's entitlement to the matrimonial home upon proof of evidence the married woman presents. The Domestic Relations Bill that would address the unequal gender relations in homeownership and probably guarantee married women benefits in the matrimonial home has never been passed. Though a number of NGOs and civil society organizations have lobbied Parliament to pass the Domestic Relations Bill, no progress has been made. Similarly, while one would expect a widow to automatically inherit the matrimonial home upon the death of her husband, intestate law of succession guarantees the widow only user rights of the home until she dies or remarries. The matrimonial home belongs to the eldest son of the deceased. Although the Constitutional Court recently declared some of the clauses in intestate succession law unconstitutional, Parliament is yet to come up with a new succession law.

The research applied Hirdman's gender system and contract theory to explain the complex gender dynamics in homeownership. The study explores the relationship between married women and their husbands and unmarried women and married male

adulterers. The analysis of married women dynamics highlights the different gender contracts that exist between married and unmarried women. Two suburban middle-income areas, namely Banda and Kiwatule were chosen from which urban women were identified and interviewed about the challenges they face to become homeowners in their own right. The study was based on purely a qualitative design. The data were collected through life stories of unmarried women, married couples, and widows. The study reveals that while married men adulterers are not concerned to have their names included on the title deeds of their female lovers' homes, ironically married men ensure that the matrimonial home is solely registered in their names regardless of whether or not their wives contribute to the construction costs. Married women were unable to become homeowners due to lack of regular income, lack of awareness, and patriarchal male cultural beliefs.

The study reveals that it is only under special circumstances that married women are able to become homeowners an indication of male dominance in home ownership. In some cases married women are able to become homeowners when a husband is absent at the time of purchase and registration of the plot of land on which the matrimonial home is built. In other cases married women become homeowners when their husbands need their income as a contribution to the home project or when they are in a financial crisis. Married women with nothing to contribute to the home project find it difficult to negotiate for homeownership rights. Divorce and separation case laws show that married women whose names do not appear on the title deed are at the mercy of the Court for beneficial rights in the home. However, in cases where the married woman moves out and leaves behind the husband in the home, it becomes difficult to evict him even when the court rules in her favour.

On inheritance, the findings reveal that the homeownership contract existing within a marriage is sometimes sustained upon the death of a husband except in a few circumstances where a husband dies before he acquired the title deed. Married women whose names were not on the title deed of the matrimonial home before the death of their husbands are unable to inherit the matrimonial home especially when the husband died intestate. A widow's user rights of the home are in jeopardy when she is in unrecognized marriage relationship. A married woman is denied inheritance rights of the home in a case where her husband does not name her as sole executor and sole

beneficiary. Similarly, a married woman is denied inheritance rights in a situation where the husband bequeaths the matrimonial home to the youngest son.

In a case where the husband bequeaths the matrimonial home to his wife but she did not have children with the deceased and the deceased had other children from other relationships, the widow is unable to inherit the home due to interference from her husband's children. Married women acquired the matrimonial home in cases where they had their names on the title deed as either sole owners or joint owners before their husbands' death. A married woman was also able to inherit the matrimonial home even when her husband died intestate in a situation where the husband died before he processed the title deed. In this case the married woman inherited the home through manipulation of the intestate succession law in her favour.

The main contribution to this study is the understanding of the complex dynamics of homeownership among middle class urban women. It brings to light that there should be no generalisation of women's problems in terms of homeownership because each story presents different elements of the homeownership gender contract. This research adds to the existing knowledge on the complex relationship between married women and their husbands and unmarried women with married male adulterers in as far as home ownership is concerned. The study adds on new knowledge on the impact of a husband's presence at the time of purchase and registration of the land in depriving of married women of homeownership. While appreciating the importance of women's income for married women to negotiate for homeownership rights, lack of husbands' interference and married women's independent decision making of married women are some of the contributing factors in facilitating married women becoming homeowners. In cases where husbands are present and involved in the purchase and registration of the home, married women need to be aware of their ownership rights, assertive and use negotiation skills to have their name included on the title deed of the home. The study therefore contributes to the theoretical insights in the understanding of homeownership gender dynamics.

This study brings to light the importance of Will making among husbands. A widow is denied inheritance rights even when her husband dies testate in cases where a husband does not name her as a sole executor and sole beneficiary.

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CHAPTER ONE

INTRODUCTION

1. Introduction

This study is concerned with gender inequality in home ownership in Kampala, Uganda. Its main objective is to look at factors that either prevent married women from owning the matrimonial home in Kampala or enable them to become homeowners. The study sought to unveil the ways in which married urban women in Kampala were unable to become homeowners. In order to understand the homeownership contract in relation to married women, an exploration of the ways in which unmarried women with married men partners became homeowners was made. The purpose was to uncover the different gender power relations that exist for married and unmarried women. The study adopted Hirdman's Gender System and Contract theory as a lens to view the gender power relations in home ownership. Home ownership implies that persons have the authority to register the home in their names and have the power to use and sell the home. Hence home ownership is embedded with control and power dynamics. This study attempted to contribute to an understanding of the complex home ownership contract that exists among married women with their husbands and unmarried women with married male partners

My interest in the study stems from my work as a Programme Officer with Federation of Women Organization (FIDA) a local NGO dealing with various problems women face during marriage, divorce or separation and widowhood. My involvement in the education programme on widow's inheritance rights in which I organised various shows of 'Neria', a film from Zimbabwe that depicts the dispossession of a widow's property upon the death of her husband, sparked off my interest to investigate how and why women are deprived of property.

Married women are deprived of homeownership during marriage, separation or divorce and at widowhood under certain circumstances. Lack of income; ignorance of ownership rights, poor attitude and perception, and lack of assertiveness are some of the ways in which married women are deprived of homeownership in marriage. It is

argued in this study that while unmarried women have the power to determine whether the home should be jointly registered or registered in a man's or woman's name, married women do not have this power. Married women are only able to become homeowners under special circumstances. The different ways in which married women become homeowners present the different dynamics of the homeownership contract, which include struggles, strategies and opportunities in comparison to the unmarried women homeownership gender contract where there is freedom and independent decision-making. While for unmarried women the major condition to become a homeowner is control of income, for married women to become homeowners there are many conditions that have to be in place because there are many dynamics involved. These include a married woman's independent income, awareness of ownership rights, the husband being in a financial crisis and hence unable to provide the family with a home, negotiation with the husband to include the married woman's name on the title deed, consensus on how the home should be registered, and the absence of a husband at the time of purchase and registration of the land on which the home is built.

In terms of inheritance matters married women face different dynamics to become homeowners upon the death of their husbands. Married women are unable to inherit the matrimonial home upon the death of their husbands not only due to social-cultural factors where there is a belief that property must remain in the male line but also due to patriarchal statutory laws which are embedded with customary sentiments of having the property remain in the male line. Other dynamics that deprive a married woman inherit rights include lack of children and the presence of other children arising from either previous relationships the deceased had or due to the polygamous marriage the deceased subscribed to. In these cases the widow finds it extremely difficult to exercise her inheritance rights even in a situation where a husband could have bequeathed the home to her. While testate succession law would guarantee a widow inheritance rights, very few husbands leave behind valid Wills. In addition, the few husbands who make Wills rarely name their wives as sole beneficiaries and sole executors. Even those whose husbands name them as sole executors and sole beneficiaries of the matrimonial home find it difficult to implement what is stated in the Will because of other dynamics for example the presence of other children. As a result, widows end up with only user rights of the home even in a situation where they substantially financially contributed to the home project. Married women able to inherit the matrimonial home upon the

death of their husbands in a situation where a husband dies before he acquired the title deed. In this case the widow must have support from her in-laws because intestate succession law would not protect her. A married woman is able to inherit the matrimonial home in a situation where her name was already on the title deed of the home before her husband died. In a case where the home was jointly owned, the widow may simply take over the other half value of the home if there are no other complainants. Intestate law is unclear on what happens to the home that is jointly owned by husband and wife and the deceased husband had other children and dependants. Can the children or dependants of the deceased for example claim the other half of the value of the home? Nonetheless, cases where relatives or children contest over a home, which is jointly owned, are likely to be few. In a case the matrimonial home was registered solely in a wife's name before the husband dies, the issue of inheritance does not at all arise because legally the wife owns the home.

When a married woman becomes a homeowner or a co-owner of the home, a new homeownership contract is created. As co-owners or sole owners, married women are assured of not being evicted by either their husbands or their in-laws upon divorce, separation or widowhood. Nonetheless, findings in this study reveal that there is a dominant gender contract whereby husbands prefer to solely own the matrimonial home. While at the interpersonal level husbands would prefer to dominate in decision making and control home ownership, the institutional level also supports this male dominance through its legal provisions. The Married Women, Divorce and the Succession Act promote male dominance. There is no clear policy on women's ownership rights in marriage and hence women have to depend on the discretion of courts for a share of or a benefit from the matrimonial home. While this dominant gender contract seems to persist there are changes taking place. As women control income and become more aware of their ownership rights, homeownership inequality in marriage might be a thing of the past. Upon widowhood, women will not be subjected to the patriarchal statutory laws because they would already have a stake in the home by having their names on the title deed.

The section following this introduction provides a contextual background to the study, focusing the history of land ownership in Uganda. For the proper introduction of this thesis to the reader, this chapter is divided into three sub-sections. The first section

provides the background to the study whereby the history of women in home ownership and the context of home ownership in Uganda in terms of economic, social, political and cultural aspects is presented. The subsequent section introduces the research problem, the objective of the study and the research questions. The final section of the chapter outlines the structure of the thesis.

1.1 Background to the study

As a patriarchal society, most land in Uganda is usually registered in the name of the husband. Hence, he is free to dispose of it the way he wishes during marriage or at death through his Will. Customary law recognizes property rights but in a very limited way. A woman is a worker in the home and traditionally expected to lay no claim to the wealth in the home. In marriage, a woman does not own immovable property. This is because, in traditional society, the land and all that is on it belongs to men. Under customary law, all property acquired during marriage is under the sole control of the husband. A wife has control only over her personal effects like clothes and cooking utensils. Upon divorce a woman's access to property will depend on the rules of a particular ethnic group. In some cases, a woman usually leaves with a few clothes and some utensils. Normally, division of matrimonial assets under customary law is not recognized, nor is maintenance after divorce payable to a wife. This is because the husband's family regards divorce as a loss of labour power.¹

On widowhood, under customary law, women do not inherit property. When a man dies, the clan immediately appoints an heir. The heir is usually the first son in the family. He inherits the property of the deceased and he is supposed to take care of everybody in the home. A widow only holds goods in trust for her sons until they are adults.² The widow's right to access to the home and property within the home depends on whether she decides to remarry or not. A widow can decide to marry one of the members of the lineage. If she does so, she automatically has access to the home. To marry one of the members of the lineage is a personal choice. If she wishes,

¹ Okumu-Wengi, J., *Women's Law and Grass roots Justice in Uganda*, Uganda Law Watch Centre, Kampala, 1997, p.2.

² Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*, p.49.

she can remain in the family of her deceased husband as a single woman. If the widow remarries outside the clan, she loses her life interest in the property. If she returns to her parents' home the bride price is repayable to the heir of her deceased husband. In such cases, the widow ceases to hold any interest in the property apart from her personal belongings. Customary law puts a woman in an economically insecure position. She inherits no property despite the fact that she has contributed to it through her unpaid labour in the home. The widow is left at the mercy of her husband's line and his heir who controls what benefit she is allowed from the home. In a case where the husband does not make a Will bequeathing the matrimonial home to his wife, intestate succession gives the matrimonial home to the first-born son of the deceased. Although some Ugandan women own pieces of land in Kampala as individuals, when it comes to the matrimonial home, it becomes a game of patriarchy, negotiation, renegotiation, consensus and contribution with their husbands. Upon divorce, separation or widowhood, the married woman's rights depend on whether her name was on the title deed or not or whether the land belonged to her husband's clan.

The Ugandan Government is at the forefront of addressing gender inequalities in all sectors of society. To do this a number of policies related to gender equality have been put in place through the Constitution. For example the Constitution provides for equal rights in marriage and its dissolution and equal rights in inheritance. Although the Ugandan Constitution is regarded as one of the best legal frameworks south of the Sahara, the Ugandan Parliament has not put in place new laws that specifically address marriage and inheritance matters.

Today there is debate in Parliament on co-ownership of land and housing, but Parliament has prolonged the debate forcing one to believe that this is a very sensitive issue for them to decide on. What makes it sensitive is the resistance of men and some women parliamentarians to acceptance of co-ownership of property like land and housing. So while we talk of policies related to equality, when it comes to ownership of land and housing, what we get are double standards, especially with regard to married couples. The existing marriage and inheritance statutory laws are parochial, outdated and do not conform to the Constitution. Apart from the conflicting statutory laws, social-cultural norms that promote male supremacy still prevail in many Ugandan patriarchal societies. Many discriminatory cultures and traditions inherent in

Ugandan society still undermine the status of women, especially through their control of property. As a result, women continue to be marginalized as far as property ownership is concerned.

1.2 Home ownership in Uganda

It is reported that about 70 per cent of housing units in Uganda are owner occupied.³ In Kampala however, owner occupation for men also accounts for 70 per cent while female owner occupation accounts for 30 per cent (Table 1).

Table 1: Gender tenure dynamics among households in Kampala

Occupancy tenure of Dwelling	Male headed	Female headed	Total	Male headed %	Female Headed %	Total %
Owner occupied	46,633	20,211	66,844	70	30	100
Free	19,163	6,402	25,565	75	25	100
Subsidised	4,117	1,521	5,638	73	27	100
Rented	149,169	57,064	206,233	72	28	100
Other	1,425	473	1898	75	25	100
Total	220,507	85,671	306,178	72	28	100

Source: 2002 Uganda Population and Housing Census, Kampala District Report, November, 2005, Uganda Bureau of statistics, Entebbe, Uganda, p.26

Recent studies show that women who own land in their own names account for 18 per cent and this is prevalent in the Central region where Kampala is located, as illustrated in Table 2.⁴ Although ownership of land does not necessarily mean homeownership, it is nonetheless an indicator of property acquisition.

³ Uganda Population and Housing Census, Analytical Report, October, 2006, Uganda Bureau of Statistics, Kampala, p.47

⁴ Patterns and Trends of Land Registration and Ownership in Uganda 1980-2002, Makerere University Institute of Social Research, Makerere University Printery, Kampala, 2004, p.5.

Table 2: Gender of Title Deed owner by Region

Category of current title owners	Central Frequency	%	Western Frequency	%	Eastern Frequency	%	Northern Frequency	%	Total Frequency	%
Man only	40,908	59	8,373	72	6,068	72	3,048	78	58,397	63
Woman only	12,543	18	997	8	962	11	289	7	14,791	16
Joint ownership (Conjugal)	2,609	4	336	3	197	2	51	1	3,193	3
Joint (Sister & brother)	1,779	3	160	1	117	1	27	1	2,083	1
*Institution	6,433	9	1,107	9	823	9	293	7	8,656	9
*Administrator	3,180	4	178	2	34	0	48	1	3,440	4
Joint (Brothers)	1,268	2	536	4	206	2	139	3	2,149	2
Joint (woman & woman)	379	0	18	0	19	0	9	0	425	1
Total	69,099	100	11,705	100	8,426	100	3,904	100	93,134	100

Source: Makerere University Institute of Social Research, Patterns and Trends of Land Registration and Ownership in Uganda 1980-2002, Makerere University Printery, Kampala, 2004, p.5.

*Institutions refers to estate belonging to Schools and Churches

*Administrator: This refers to deceased persons' estates under the Administrator General

'Male only' landownership dominates in all regions, with an overall 63 per cent. When we look at the dynamics of ownership comparing unmarried and married women we note that 'woman only' ownership accounts for 18 per cent in the central region where Kampala is located while joint ownership among conjugal partners accounts for only 4 per cent in the central region. This shows that more unmarried women own land than married women. The table also demonstrates that more women own land in the Central Region than in other parts of Uganda. This is because Kampala was one of first areas that benefited from the individual land ownership system. With urbanisation and migration to the city some women took advantage of the market economy to buy land in the city. There has been an increase in land ownership by women since 1980, as demonstrated in the table below:

Table 3: Patterns of Land Ownership in Uganda 1980-2002⁵

Category of current title owners	1980-1985 %	1986-1991 %	1992-1997 %	1998-2002 %
Man only	72	67	61	55
Woman only	12	14	17	17
Joint (Conjugal)	1	2	4	6
Joint (Man & Woman)	2	2	2	3
*Institution	7	8	9	12
*Administrator	3	4	4	4
Joint (Man & Man)	3	3	2	2
Joint (woman & woman)	0	0	1	1
Total	100	100	100	100

Source: Patterns and Trends of Land Registration and Ownership in Uganda 1980-2002, Makerere University Institute of Social Research, Makerere University Printery, Kampala, 2004, p.9 (Table transposed)

*Institutions refers to estate belonging to Schools and Churches

*Administrator: This refers to deceased persons' estates under the Administrator General

The above table indicates that sole ownership of land among women increased from 12 to 17 per cent during the period while ownership of land among married women increased from one to six per cent. Overall, male landownership decreased by 17 per cent from 73 to 55 per cent while joint (conjugal) land ownership increased from one percent to six percent. On the other hand, landownership by women only increased by six per cent from 12 to 17 per cent. These figures show us that there is gender inequality in landownership among married couples (Joint Conjugal). However, there has been an increase hence an indicator that there is a change in gender ownership patterns. Although statistics help us to know the extent of gender inequality in land ownership in Uganda, it is difficult to know the gender inequality in home ownership. This is because land and housing are regarded as different properties. Registration of land does not necessarily mean that there is a home on that particular piece of land. Although the above statistics give some indication of gender inequality, they do not indicate whether the jointly owned land has a matrimonial home on it.

⁵ Makerere University Institute of Social Research, *Patterns and Trends of Land Registration and Ownership in Uganda 1980-2002*, Makerere University Printery, Kampala, 2004, p.9, (Table transposed)

A number of studies on gender and housing have been carried out in the urban areas of Uganda but they have not specifically dealt with the dynamics of gender inequality in home ownership. In addition, most of the studies have been conducted in low-income areas, leaving out housing dynamics in mid-income areas.⁶ For example, Kuteesa and Kateregga's study conducted in Kamwokya looked at how low-cost housing affects men and women.⁷ Recent studies carried out by Manyire and Nabajja investigated the nature and relative importance of the socio-cultural and economic factors that facilitate or impede men and women's engagement in low-cost urban housing development in Jinja and Kampala respectively. Their study specifically focused on housing development for renting rather than the matrimonial home. They looked at the different strategies men and women use to facilitate access in housing development. Another study carried out in Kampala by Atukunda focused on access to housing. The study assessed the situation of female-headed households and male-headed households in relation to quality of housing.⁸ Research by Tusingwire and Tumushabe focused on women headed households in relation to the control of housing. Their study focused on establishing the socio-economic characteristics of women heads of households in Kampala and the extent to which they control housing. They further looked at the way single women are perceived by both men and women when they control housing.⁹ The gap in this study is its failure to look at the dynamics among unmarried women with male partners and married women with their husbands in the ways in which they become homeowners or are deprived of home ownership. Other studies have looked at housing policies and how these affect women.¹⁰ These studies are mainly concerned

⁶ Obbo, C., *African Women: Their Struggle for Economic Independence*, Zed Press, London, 1980.

⁷ Kateregga, R., 'A Gendered Assessment of the Housing Situation in Urban Areas: A Case Study of Kamwokya II, in Kampala', M.A. Dissertation, Makerere University, 1996; Kuteesa, S., 'Urbanization and Housing problems, A Case Study of Kampala District', M.A. Dissertation, Makerere University, 1995.

⁸ Atukunda, G., 'Access to Housing in Peri-urban Kampala: A Comparative Study of Female and Male Headed Households', Makerere Institute of Social Research, Research Report, 2001.

⁹ Tusingwire, H. & Tumushabe, J., 'Women and Control of Housing in Kampala, Uganda: Characteristics and Problems of Women Household Heads'. In Lee-Smith, D., (ed.), *Women Managing Resources, African Research on Gender, Urbanisation and Environment*, Mazingira Institute, Nairobi, 1999.

¹⁰ Ntege, H., 'Women and Urban Housing Crisis: Impact of Public Policies and Practices in Uganda'. In Dandekar, V., (ed.) *Journal of Indian School of Political Economy*, Vol.V. No.3, July-September, 1993. Also in Economic and Political Weekly October 30, 1993, pp.46-62; Turyahumura, M. 'Housing Policy and Urban Women's Access to Shelter in Uganda: A Case Study of Kampala City', M.A. Dissertation, Makerere University, 1998.

with rental housing access, not home ownership. Furthermore, these studies were carried out in low-income areas where the legal ownership of land and housing is not common. The in-depth analysis of the experiences of men and women and the analysis of the different ways in which women in Uganda are deprived of home ownership are the innovations of this study.

1.3 Government Policy and the Legal Framework related to Housing

Like many other developing countries today, provision of housing in Uganda is an individual's responsibility.¹¹ With the Structural Adjustment Programme and overall economic liberalization policy the Uganda Government has relieved itself from direct supply of houses. Instead, it assumes the role of an enabler to facilitate different actors to play a role in increasing the housing stock, mainly in cities. The government has left the responsibility for provision of housing to private investors and individuals because it was unable to construct houses for its employees and others and it could not maintain the existing stock of government houses.

1.4 Housing composition in Kampala

There is gender inequality in terms of the type of dwelling in which male headed and female-headed household members live as shown in the table below.

Table 4: Characteristics of the Dwelling Unit by Household Head in Kampala.

Type of Housing unit	Male Headed	Female-Headed	Total	Male headed %	Female headed %
Detached House	47,204	17,803	65,007	22	21
Semi-detached house	29,862	12,350	42,212	14	15
Flat	4,832	1,854	6,686	2	2
Tenement (muzigo)	135,546	52,921	188,467	62	62
Total	217,444	84,928	302,372	100	100

Source: 2002 Uganda Population and Housing Census, Kampala District Report, November, 2005, Uganda Bureau of statistics, Entebbe, Uganda, p.26

¹¹ Uganda Population and Housing Census Analytical Report: Housing Characteristics, October 2006, p.33.

The table above indicates that majority of people in Kampala live in one or two-roomed housing units accounting for 63 per cent, of which women account for 18 per cent. Flats constitute a very small proportion of housing units in urban areas. Until recently, Uganda did not have a condominium law to facilitate the sale and ownership of flats by an individual. The Condominium Properties Act was enacted in 2001 and as a result individuals can now sell and own flats. There is a construction boom in Kampala, contributing to available housing. Residents in Kampala live in different types of housing tenure ranging from free accommodation, and rented dwellings, to owned homes. The privatisation policy of the government resulted in all government houses being sold to the sitting tenants. Since most of these houses were allocated to sitting tenants on an employment basis, men were the main beneficiaries of the privatisation policy because there were more men than women in formal employment. Therefore men own most of prime properties in Kampala.

1.5 History of Land Ownership

To have a proper context in which to examine home ownership in Uganda it is important to understand the land ownership dynamics. This is because the history of land ownership in Uganda has influenced the home ownership dynamics of Ugandan women. The problem of home ownership inequality in Uganda and Kampala in particular can be understood from the historical perspective of land ownership as perpetuated by the British administration. Uganda has had a long legislative history in the area of land, dating as far back as the 1900 agreement by which the British acquired crown land in the Buganda Kingdom where Kampala is situated. The colonial government made several land 'agreements' with other ethnic groups in 1901, 1912, 1922 and 1933. One thing that remained constant throughout the legislative change, especially after the introduction of individual acquisition of land by acquiring title deeds, was women's position in relation to ownership of land. The British brought with them the idea of land ownership by a single person and the systems of acquisition of ownership excluded women. The British found in place some existing customs of land ownership that were based on the patrilineal type of system which they integrated into

their statutory law and these further excluded women from land rights.¹² At independence, Uganda inherited five formal tenure systems from the colonial administration. These were mailo tenure, freehold, and leasehold, native freehold and adjudicated freehold.¹³

Mailo land came as a result of the 1900 Uganda Agreement, which the Baganda made with the British government. Under this agreement, 8,000 square miles of land were allocated to chiefs and private landowners. Because the land allocations were made in 'miles', the recipients came to refer to their land as 'mailo' hence the name 'mailo' tenure.¹⁴ As a result of discontentment by other clan members of the Buganda Kingdom, the Colonial Government introduced a system of purchase whereby an individual could buy a piece of land from the mailo land owners at a fee. Through these fees, the Colonial government generated income. The people who were unable to buy land from the mailo owners were regarded as squatters and the piece of land they occupied was referred to as 'kibanja'.¹⁵ In order to live on their piece of land the 'kibanja' owner had to pay a certain fee, called 'Busulu' or 'envujjo'. Freehold land was also allocated to private persons and corporations. Leasehold tenure is where an individual owns land for a particular period of time say 49 or 99 years, and thereafter the land reverts to the owner. The mailo, freehold and leasehold tenure systems are mainly found in the central region where Kampala is located while in the rest of the country land is held either under customary or leasehold tenure system. Under the 1995 Constitution, the government of Uganda adopted four tenure systems - namely, customary, freehold, mailo tenure, and leasehold - as the main tenure systems under

¹² Sebina-Zziwa, A., 'Gender Perspectives on Land Ownership and Inheritance in Uganda', Research and Policy Development Project, Research Paper No.16, Makerere Institute of Social Research, Makerere University, Kampala, and The Land Tenure Centre, University of Wisconsin-Madison, USA, June 1995.

¹³ Batungi, N., 'Land Reform in Uganda: Harmonising the Land Tenure Systems of Uganda', A Thesis submitted in Full Fulfilment of the requirements for the Degree of Doctor of Philosophy in the School of Architecture, Planning and Geomatics of University of Cape Town, 2006, p.74; Muhereza, F., 'Mailo Land Tenure: Customary Land Rights and Claims in Buganda: A Case Study of Nakasongola', (Unpublished Article) 1998, p.31.

¹⁴ Muhereza, 'Mailo Land Tenure', p.17.

¹⁵ Kibanja is a plot of Land managed by a de facto owner, while the land legally belongs to a de jure landowner. See Nabwire, S., 'The Impact of Health User Fees on Women's role in Household Health Care Decision-Making in Mukono District, Uganda: A Gender Analysis', Ph.D. Thesis, Queen Margaret University College, UK, p.213.

which all land in Uganda can be held.¹⁶ Currently, these are still the four tenure systems under which land in Uganda is held.¹⁷ Leasehold and mailo land tenure systems are predominant in Kampala where this study was carried out.

1.6 The Land Registration Process in Uganda

All land titles in Uganda are registered under the Registration of Titles Act, 1958 (Cap.230). The right itself together with the names and physical address of the claimant and the object of that right with its restrictions, charges and responsibilities are registered.¹⁸ Ownership by documentary title usually starts with the identification of the ultimate owner as controller of the land rights.¹⁹ Recent studies show, there are about 110,307 titles registered under mailo land type of tenure and 131, 571 leasehold title deeds.²⁰ A study carried out by Makerere Institute of Social Research recorded over 90,000 titles registered between 1980 and 2002, although it did not specify the type of title deeds.²¹ The land transactions that were identified included transfers, mortgages, caveats and subdivisions.²² According to Nkurunziza, the largest supplier of land in Kampala is subdivisions on mailo land. Any Ugandan individual with a 'kibanja' on mailo land wishing to regularize their occupancy on the land by acquiring a title deed has to first 'buy him/herself in' by paying the titleholder the current value of land.²³ Studies on land registration in Uganda have noted that title deed acquisition in Uganda has been an urban phenomenon common in the Central Region and a few towns.²⁴

¹⁶ Batungi, 'Land Reform in Uganda', p.210.

¹⁷ Batungi, 'Land Reform in Uganda', p.99.

¹⁸ Batungi, 'Land Reform in Uganda', p.96.

¹⁹ Batungi, 'Land Reform in Uganda', p.78.

²⁰ Batungi, 'Land Reform in Uganda', p.81.

²¹ Makerere University Institute of Social Research, *Patterns and Trends of Land Registration and Ownership in Uganda 1980-2002*, p.1.

²² Batungi, 'Land Reform in Uganda', p.99.

²³ Nkurunziza, E., 'Informal Land Delivery Processes and Access to Land for the Poor in Kampala, Uganda', Working Paper No.6, International Development School of Public Policy, University of Birmingham, England, 2004, p.79.

²⁴ Makerere University Institute of Social Research, *Patterns and Trends of Land Registration and Ownership in Uganda 1980-2002*, Makerere University Printery, Kampala, 2004, p.1; Batungi, 'Land Reform in Uganda'.

1.7 The Socio-economic and Cultural Setting

1.7.1 Ethnic groups and Family structures

Uganda is a multi-ethnic country comprised of many ethnic groupings. As Nzita and Mbaga-Niwampa have rightly observed, there is no single Ugandan culture, because there are as many cultures as there are peoples.²⁵ There are diverse cultural groupings with more than thirty-three languages. These comprise of Bantu communities, the Luo, Sudanic speaking people and the Atekerin.²⁶ Furthermore, the majority of ethnic groups in Uganda are patriarchal in nature. This patriarchal system comes along with patriarchal ideologies that influence the way women are regarded in terms of ownership of property. The patriarchal ideologies regard the male as superior and hence men make most decisions on big investments like housing, while the women are usually confined to a subordinate position in the home whereby they are allowed to make decisions on minor domestic issues. As Kyoheirwe observes ‘ These [patriarchal] discourses are not only intimately linked with gender inequality and the perpetuation of power imbalances between [Ugandan] men and women but also privilege men’s control over decision making in all spheres of social organization’.²⁷

1.8 Economic setting

What is important to be aware of as far as the economic setting of women in Uganda is concerned are the education, employment, income and housing occupation dynamics between men and women in terms of policies and statistics. In Uganda there is an extreme imbalance in type of work and income distribution between men and women.²⁸ Their level of education, and the type of work they engage in influence the economic status of Ugandan women. Uganda’s 2002 Population and Housing Census Report

²⁵ Nzita, R. & Mbaga-Niwampa, *Peoples and Cultures of Uganda*, Fountain Publishers, Kampala, 1993, p.iii.

²⁶ Nzita & Mbaga-Niwampa, *Peoples and Cultures of Uganda*, p.iii.

²⁷ Kyoheirwe, F, ‘Exploring Gender Dynamics in Sexuality Education in Uganda’s Secondary Schools’, Ph.D. Thesis Presented for the Degree of Doctor of Philosophy in the African Gender Institute, Faculty of Humanities, University of Cape Town, 2005, p.65.

²⁸ Okumu-Wengi, *Women’s Law and Grass roots Justice in Uganda*, p.42.

highlights various economic and demographic indicators as issues for concern, and these include the difference in the level of education between the sexes and the discrepancy in the occupations men and women are engaged in.

1.9 Education

The overall literacy rate in Uganda in 2002 stood at 68 per cent. The literacy rate for women was 61 per cent compared to the men's literacy rate of 76 per cent. The table below showing the education trends among men and women in Kampala indicates the gender disparities in education status.

Table 5 : Education level attained by gender

	Male Age: 20-60	Female Age: 20-60	% Male	% Female	Total
Never Attended	10,920	20,596	4	7	31,516
Incomplete Primary	39,939	56,465	14	19	96,404
Completed Primary	34,155	42,149	12	15	76,304
Incomplete Secondary	104,677	98,520	37	34	203,197
Completed Secondary	95,077	72,200	33	25	167,277
Total	284,768	289,930	100	100	574,698

Source: Compiled by researcher using data from Uganda Population and Housing Census, Kampala District Report, Entebbe, November 2005.

The above table shows that only one quarter of women completed secondary education compared to 33 per cent of men. Thus women have less chances of acquiring good jobs and hence good income. This also implies that women are more likely to depend on men for housing because of poor income. On the other hand men are more advantaged in having better employment opportunities and hence better income to invest in land and housing.

**Table 6: Occupation of currently Working Persons Aged 14-64 Years by Sex:
Urban Distribution**

Occupation	Male Frequency	Female Frequency	Total Frequency	Male %	Female %	Total %
Managers, Senior Officials, Legislators	4,603	2,310	6,913	67	33	100
Professionals	13,908	8,004	21,912	63	37	100
Associate Professionals	25,897	21,769	47,666	54	46	100
Clerks	4,299	7,375	11,674	37	63	100
Personal/Protective work/sales persons and models	35,580	39,944	75,524	47	53	100
Wholesalers and Retailers	31,866	38,010	69,876	46	54	100
Market Oriented Agriculture Workers	804	633	1,437	56	44	100
Subsistence crop farmers	2,639	3,891	6,530	40	60	100
Subsistence livestock and fishery workers	1,044	780	1,824	57	43	100
Craft and related workers	52,007	10,403	62,410	17	83	100
Machine Operators	31,553	1,256	32,809	96	4	100
Elementary Occupations	34,256	19,757	54,013	63	37	100
Total	238,456	154,132	392,588	61	39	100

Source: 2002 Uganda Population and Housing Census, p.18.

Men dominate employment in most occupations. The occupational groups in which women are the majority are the less-skilled and lower-paid clerical, personal services, sales and subsistence farm jobs. By contrast, the more-skilled and well-paid occupational groups of managers, professionals and associate professionals are filled predominantly by men. In addition, there are more men employed in most jobs an indication that women are dependent on men for income.

1.10 Decision making in households

In Kampala, men make decisions on major household purchases while women decisions on daily households needs. The table below demonstrates women's participation in decision-making on particular issues in the home.

Table 7: Women's participation in decision-making

Decision	Mainly wife	Mainly husband	Wife and husband jointly	Other	Total
Own Health care	22	39	39	1	100
Major HH purchases	16	49	36	1	100
Purchases of daily HH needs	35	34	31	1	100
Visit to her family relatives	20	36	43	1	100

Source: Uganda Demographic and Health Survey, Uganda Bureau of Statistics Kampala, Uganda, Macro International Inc. Calverston, Maryland, USA, August, 2007, p.244

*Percentages do not add up to 100 because of rounding off.

According to the Uganda demographic and health survey, only 15 per cent of married women make decisions about major household purchases by themselves. Nearly half of married women (49 per cent) report their husbands/ partners make decisions about large household purchases by themselves.²⁹ This implies that married women rarely make decision regarding homeownership hence creating unequal gender power relations.

1.10.1 Aims of the study

The purpose of this study is to explore Hirdman's gender system and contract approach in understanding gender dynamics in home ownership among married women in a middle-income urban area. The goal was apply the gender system and contract theoretical conceptual framework to an understanding of the gendered home ownership dynamics in Uganda. It is hoped that the study will illuminate the gender power relations between men and women in an urban context in relationship to home ownership in Uganda. This was achieved by recording unmarried women's life stories in relation to their experiences with their male partners and married women's life stories in relation to their experiences with their husbands. The goal was to understand

²⁹ Uganda Demographic and Health Survey, Uganda Bureau of Statistics Kampala, p.244.

different home ownership contracts between unmarried and married women in terms of gender power relations.

1.11 Overview of the remaining chapters of the thesis

Chapter Two presents a review of the literature on the ways in which women are deprived of home ownership in marriage and in inheritance. Factors that impact on women's rights to home ownership include socio-economic and cultural factors, as well as institutional factors and issues of perception. In Chapter Three the methodological elements of the study are presented. In this Chapter the research process, tools in data collection, the data analysis and the relationship between the theoretical lens and the research design are presented. Chapter Three also provides a discussion on the theoretical and conceptual framework of gender system and contract theory on which this study is based. In this regard the chapter discusses its applicability to this study. In Chapter Four, Uganda's institutional legal frame in which homeownership is contextualised is presented. In Chapter five the ways in which unmarried women with married partners became homeowners is presented.

Chapter Six discusses findings on the ways in which married women are deprived of home ownership. This is followed by a discussion on the home ownership contract with regard to unmarried women and married women. In Chapter Seven findings on the special circumstance under which married women became homeowners is presented through their life stories. Chapter Eight presents the special circumstances in which married women may inherit the matrimonial home. Chapter nine discusses findings on the ways in which married women are deprived of inheritance rights. Chapter ten presents a summary of findings and concludes with comments on the study in relation to its contribution to the knowledge of gender and home ownership for policy formulation purposes.

CHAPTER TWO

REVIEW OF THE LITERATURE

2. Introduction

This chapter reviews literature in the broad field of gender inequality in homeownership. The literature deals with the ways in which women are deprived of home ownership in the course of their lives, for example in marriage, divorce and at widowhood but also focuses on the circumstances under which the women become homeowners at different pillars of their lives. In order to understand the ways in which married women are deprived of home ownership a review of the literature dealing with the ways in which unmarried women are able to become homeowners is presented. The purpose is to identify the different home ownership contracts for unmarried and married women. To understand the subject of home ownership this author examines literature from both the developed countries and developing countries with a special focus on Africa. Although these studies on gender and urban home ownership from other regions and continents emanate from different social contexts, the purpose is to compare and contrast with their findings and to allow the findings from other social contexts to inform this study. In summary, the chapter discusses the debates on factors that prevent or allow unmarried women to become homeowners and factors that facilitate or prevent homeownership for married women. The chapter further discusses the theoretical and conceptual framework on which this study is based.

2.1 Unmarried Women and Home Ownership Dynamics

This section focuses the literature on how and why unmarried women in developed and developing countries become homeowners. The section goes further to explore the literature on the relationship between unmarried women and unmarried male lovers and married men adulterers. The purpose is to compare the unmarried and married women homeownership gender contracts so as to understand the dynamics embedded therein.

2.1.1 Unmarried women without any relationship with men

This section focuses specifically on literature relating to unmarried women who do not depend on men for housing. It explores the ways in which unmarried women without any male in their lives are unable or able to become homeowners. In developed countries most of the studies on unmarried women in terms of gender and housing have focused on unmarried women as a group in comparison with unmarried men.¹ In this regard these studies have discussed the difficulty unmarried women as a group face to become homeowners as compared to unmarried men. This study is specifically interested in the unmarried women relation with married men in relation to homeownership. This is because the ways in which unmarried women become homeowners enlightens us on how and why married women are able or unable to become homeowners; hence unveiling the various gender dynamics in homeownership. Many authors attribute unmarried women's deprivation of ownership to four broad factors: economic, socio-cultural, psychological (perception) and legal institutional factors.² However, most authors in developed countries concur that unmarried women's problems in homeownership are more related to economic factors than social-cultural, institutional and legal aspects.³ Economic factors tend to mainly refer to the income of unmarried women. Related to income are education and employment patterns.

¹ Little, J., *Gender, Planning and The Policy Process*, Elsevier Science, The Boulevard, Oxford, 1994; Gilroy, R. & Woods, R., (eds.) *Housing Women* London: Routledge, 1994; Pugh, C., 'A New Approach to Housing Theory: Sex, Gender and the Domestic Economy', *Housing Studies* 5, pp.112-119, 1990; Munro, M. & Smith, S., 'Gender and Housing: Broadening the debate', *Housing Studies* 4, pp.3-17, 1989; Watson, S., *Accommodating Inequality: Gender and Housing*, Sydney, Allen & Unwin, London, 1988.

² Little, *Gender, Planning and The Policy Process*, p.157; Watson, *Accommodating Inequality*; Larsson, A., *Women Householders and Housing Strategies: The Case of Gaborone, Botswana*, The National Swedish Institute for Building Research, 1989; Schlyter, A., *Women householders and housing strategies, the case of George, Zambia* The National Swedish Institute for Building Research, 1988; Mirafab, F., 'Shelter as Sustenance: Exclusionary Mechanisms Limiting Women's Access to Housing' In Dandekar, H., *Shelter, Women and Development*, Ann Arbor, George Wahr Publishing Co. 1993; Grant, M., 'Moving and Coping: Women Tenants in Gweru, Zimbabwe' in Sheldon, K., (ed.) *Courtyards, Markets, City Streets: Urban Women in Africa*, Boulder, Colo: West view Press, 1996, pp.169-189; Moser, C. & Peake, L. (eds.) *Women Human Settlements and Housing*, London, Tavistock, 1987.

³ Sedo, S. & Kossoudji, S., 'Rooms of One's Own: Gender, Race and Home ownership as Wealth Accumulation in the United States Discussion Paper No.1397, Germany, 2004; Reitz, J., 'Home ownership McAuley Institute, Silver Spring 2000; Little, *Gender, Planning and The Policy Process*, p.157; Watson, *Accommodating Inequality*; Moser, & Peake, (eds.) *Women Human Settlements and Housing*.

There is a general consensus among authors that unmarried women tend to experience more difficulty than unmarried men to become homeowners in their own right due to their lower income.⁴ Unmarried women with children are further faced with the sole responsibility to bring up children. Studies reveal that unmarried women earn less than their male counterparts. And in spite of all efforts that have been made especially in developed countries like Australia, Sweden, and Denmark to reduce this disparity between men and women, differentials in salaries persist.⁵ Because of their lower incomes unmarried women are not able to sustain ownership with their own regular income because prices of houses and interest rates continue to rise.⁶ The low income of unmarried women is attributed to low education, lack of employable skills, and discriminatory practices at work places.⁷ Moser and Peake argue that unmarried women are normally employed in unskilled, non-unionized occupations and as a result earn lower wages than men.⁸ Smith observes that unmarried women who occupy professional and managerial posts earn 15 per cent less than that of men.⁹ In Australia for example, it is only in the public sector where there is less occupational discrimination. Here, earning discrepancies between men and women are minimal as compared to the private sector. Smith also notes that sometimes education, experience and qualification do not always mean equal income earning between men and women. This is because sometimes employers pay different salaries to male and female employees. This discrepancy persists regardless of industry, occupation, marital status, country of origin, or geographical location.

Recent studies in developed countries however show that the number of unmarried women owners is increasing due to increased income, good education and

⁴ Sedo & Kossoudji, 'Rooms of One's Own'; Reitz, 'Home ownership'; Little, *Gender, Planning and The Policy Process*, p.157; Watson, *Accommodating Inequality*; Moser, & Peake, *Women Human Settlements and Housing*.

⁵ Smith, S., 'Income, Housing Wealth and Gender Inequality', *Journal of Urban Studies* 27(1) pp.67-88.

⁶ Brion, M. & Tinker, A., *Women in Housing: Access and influence*, The Housing Centre Trust, London, 1980; Little, *Gender, Planning and the policy Process*; Smith, 'Income, Housing Wealth and Gender Inequality', pp. 67-88; Watson, *Accommodating Inequality*.

⁷ Little, *Gender, Planning and The Policy Process*.

⁸ Moser & Peake, (eds.) *Women Human Settlements and Housing*, p.25.

⁹ Smith. 'Income, Housing Wealth and Gender Inequality', pp.67-88.

employment in well-paid jobs.¹⁰ Studies in the United States of America for example reveal that unmarried women are closing the gap in home ownership. For example in 1998 there were more unmarried women homeowners than unmarried men by one per cent. Although there is this development, it is noted that unmarried women with children are among the least likely to own homes.¹¹ The above literature on developed countries enlightens us on the impact of low income on homeownership among unmarried women. The literature implies that unmarried women without income cannot become homeowners.

In developing countries studies also reveal that unmarried women have low incomes and therefore are unable to become homeowners. Just like in developed countries, many authors attribute the low income of unmarried women to low education, lack of employable skills, and discriminatory practices at work places.¹² Education for example improves someone's chances of getting a better job and hence better earning. There is evidence that girls have far less opportunity of schooling than boys do.¹³ The opportunities of higher education are fewer for young women than young men.¹⁴ As a result, 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.¹⁵ In relation to employment, unmarried women are either employed in stereotyped gender-specific occupations because of their training background, or are unemployed in small-scale and low-status income earning activities with low

¹⁰ Reitz, 'Home ownership'.

¹¹ Reitz, 'Home ownership'.

¹² Gwebu, T., 'Housing Provision and Home-ownership Schemes Among Low-income Groups: A Gendered Case Study of Bulawayo in Larsson, A., Matseliso Mapetla and Schlyter A (eds.), *Gender and urban housing in southern Africa: emerging issues*, Roma, Lesotho: Institute of Southern African Studies, National University of Lesotho, 2003; Mafafo, M., 'Housing Policy and Institutional Practice in Swaziland: Incorporating a Gender Perspective', in Larsson, A., Matseliso Mapetla and Schlyter A (eds.), *Gender and urban housing in southern Africa: emerging issues*, Roma, Lesotho: Institute of Southern African Studies, National University of Lesotho, 2003; Lee-Smith, D., *'My House is My Husband' A Kenyan Study of Women's Access to Land and Housing*, Thesis 8, Lund University, CombiGrafik, Sweden, 1997, pp.169-189.

¹³ Floro, M., and Wolf, P., *Economic and Social Impact of Girls Primary Education in Developing Countries*, Washington DC 1990.

¹⁴ Brock, B., and Cammish, N., *Factors Affecting Female Participation in Six Countries*, Overseas Development Agency, London, 1991.

¹⁵ Narayan, D., Patel, R., Schafft K., Rademacher, A., and Koch-Schulte, S., *Voices of the Poor: Can anyone hear us?* Oxford University Press, New York, 2000, p.184.

income.¹⁶ The majority of unmarried women are unable to seek paid employment because of childcare responsibilities and lack of time. Instead they engage in home-based moneymaking activities.¹⁷ In some cases there is discrimination against unmarried women in different respects. In some cases for example, men expect sexual favours from young women and hence some employers prefer to hire young and attractive women than middle-aged women.¹⁸ On the other hand, the lending institutions discriminate against unmarried women because they believe that unmarried women are business risks.¹⁹ For example in some cases banking institutions discriminate against unmarried women when they seek a mortgage. Furthermore, unmarried women with low-incomes lack collateral and regular employment. Hence unmarried women have limited access to credit facilities because they do not fulfil the banks requirements for a mortgage or loans compared to their male counterparts.²⁰ As a result, unmarried women are excluded from the profit oriented market economy.²¹ In some cases unmarried women without children are not recommended for allocation of land through state institutions but are left to the mercy of the market economy.²² Because unmarried women are unlikely to purchase or build homes due to their low income and because of the high prices of homes, building materials and interest rates,

¹⁶ Gwebu, 'Housing Provision and Home-ownership Schemes Among Low-income Groups', pp.19-43; Budlender, D., (ed.) *The Women's Budget*, The Institute for Democracy in South Africa, Public Information Centre, Cape Town, 1996; Doo, A., & Dlamini, T., *Inheritance in Swaziland: Law and Practice*, Women and Law in Southern Africa Research and Education Trust, Women and Law in Southern Africa Research Trust (WLSA) SAPES Trust, Harare, 1994, p.51; Mazumdar, V., & Sharma, K., 'Sexual Division of Labour and the Subordination of Women: A Reappraisal from India'. In Tinker, I. (ed.), *Persistent Inequalities: Women and World Development*, Oxford University Press, 1990, p.186.

¹⁷ Massiah, J., 'Defining Women's Work in the Commonwealth Caribbean'. In Tinker, I. (ed.), *And Persistent Inequalities: Women and World Development*, Oxford University Press, 1990, p.235; Senauer, B., 'The Impact of the Value of Women's time on Food and Nutrition'. In Tinker, I., (ed.) *Persistent Inequalities: Women and World Development*, Oxford University Press, p.155.

¹⁸ Narayan, et. al., *Voices of the Poor: Can anyone hear us?* p.185; Obbo, C., 'East African Women, Work, and the Articulation of Dominance'. In Tinker, I. (ed.), *And Persistent Inequalities: Women and World Development*, Oxford University Press, 1990.

¹⁹ Little, *Gender, Planning and the policy Process*; Watson, *Accommodating Inequality*.

²⁰ Asimwe, J., 'Women and the struggles for land in Uganda'. In Kwesiga, J., & Tripp, A. (eds.) *Women's Movement in Uganda, History, Challenges, and Prospects*, Fountain Publishers, Kampala, 2002, p.5; Parnell, S., 'Housing', in Budlender, D., (ed.) *The Women's Budget*, The Institute for Democracy in South Africa, Public Information Centre, Cape Town, 1996, p.123.

²¹ Sayne, P., 'Ideology as Law: Is There Room for Differences in the Right to Housing'. In Dandekar, H., (ed.) *Shelter, Women, and Development*, Ann Arbor: George Wahr Publishing Co. 1993.

²² Narayan, et. al., *Voices of the Poor: Can anyone hear us?*, p.213.

most unmarried women end up as tenants.²³ Apart from economic factors, unmarried women are socially discriminated whereby they are sometimes referred as prostitutes, immoral.²⁴ As a result, unmarried women are discouraged to become homeowners to avoid derogatory names being conferred upon them. In some cases, culturally unmarried women are not expected to live alone.²⁵ As a result they cannot purchase a home of their own even when they have income. Nonetheless, Apart from economic hardships and discriminatory cultural practices and beliefs unmarried women face to become homeowners, the legal institutional framework in most cases works in their favour. For example under Common law, unmarried women are free to acquire property and dispose it off the way they wish.²⁶

Other studies in developing countries however reveal that unmarried women are beginning to close the homeownership gap because of improved income due to good education.²⁷ For example a number of unmarried women with income are securing their future through purchase of land in their names. They are able to do so because of the free market economy in the urban areas.²⁸ However, in some cases unmarried women

²³ Grant, 'Moving and Coping', pp.169-189.

²⁴ Manyire, H., 'Gender and Housing Development in the Low Income Suburbs of Jinja Municipality, Uganda Gender Issues Research Report Series No.17, Organization for Social Science Research in Eastern and Southern Africa, OSSREA, 2002; Miraftab, F., 'Risks and Opportunities in Gender Gaps to Access Shelter: A Platform for Intervention, *International Journal of Politics, Culture and Society*, 15 (1) 2001, pp.143-160; Lee-Smith, 'My House is My Husband'; Fundire, S., 'Gender Issues amongst Dombo Tombo Lodgers: A Case Study Approach', In Gruphel, Phase One, Gender Research on Urbanization, Planning, Housing and Everyday Life, Zimbabwe Women's Resource Centre & Network, Harare, 1995, pp.115-134; Schlyte, A., & Zhou, A., 'Gender Research on Urbanisation, Planning, Housing and Everyday Life, In Gruphel, Phase One, Gender Research on Urbanization, Planning, Housing and Everyday Life, Zimbabwe Women's Resource Centre & Network, Harare, 1995; Ntege, 'Women and Urban Housing Crisis'.

²⁵ Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter A Platform for Intervention, *International Journal of Politics, Culture and Society*, 15, (1), 2001, pp.143-160.

²⁶ Matere-Lieb, T., 'Basotho Women's role in Urban Housing: The Case of Maseru In Sithole-Fundire, S., Zhou, A., Larsson, A., Schlyter, A., (eds.), *Gender Research on Urbanization, Planning, Housing and Everyday Life*, Zimbabwe Women's Resource Centre & Network, Harare, 1995, p.63.

²⁷ Lee-Smith, D., & Trujillo, C., 'Unequal Rights: Women and Property'. In Jaquette, J., & Summerfield, G. (eds.) *Women and Gender Equity in Development Theory and Practice: Institutions, Resources, and Mobilization*, Duke University Press, Durham and London, 2006; Gray, L., & Kevane, M., 'Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa, *Africa Studies Review*, 42(2), 1999, p.28; Lee-Smith, 'My House is My Husband'; Obbo, *African Women: Their Struggle for Economic Independence*, p.44.

²⁸ Lee-Smith, *My House is my husband*, p.89; Matere-Lieb, 'Basotho Women's role in Urban Housing', pp.61-81.

acquire land from their parents as security against being unmarried.²⁹ However, it can be argued that having land does not necessarily lead to homeownership in a situation where the unmarried woman does not have income to meet the construction costs of the home. Such women are most likely to have poor housing. Nonetheless, such unmarried women can use and transfer the land as they wish.³⁰ Unmarried women prefer to live in the urban areas because in rural areas they are not allowed to own property. The studies further reveal that unmarried women with income are in a better position to become homeowners than married women.³¹ In Botswana, for example, educated unmarried women with good income prefer to remain unmarried in order to remain owners.³² This is mainly because married women are not allowed to own property. By implication, the uneducated unmarried women most likely prefer to get married in order to access housing.

In ranking all categories of women in relation to men in terms of ownership of housing, men, followed by unmarried women with high incomes, were the main homeowners and the most disadvantaged categories of women were the low-income unmarried women and high-income women married in community of property.³³ This is because men and unmarried women with income had easy access to housing credit, hence easy access to land with registered title deeds and to houses on sale. In these cases not only did education empower women with good income but it also enabled unmarried women to assert their rights to own homes in contrast to the uneducated unmarried and

²⁹ Lee-Smith, *My House is My Husband*, p.130.

³⁰ Matere-Lieb, 'Basotho Women's role in Urban Housing'.

³¹ Gwebu, 'Housing Provision and Home-ownership'; Munalula, M., 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property In Gruphel, Phase One, *Gender Research on Urbanization, Planning, Housing and Everyday Life*, Zimbabwe Women's Resource Centre & Network, Harare, 1995.

³² Larsson, A., 'Housing as a Strategy for Urban-Rural Linkages in Botswana'. In Larsson, A., Schlyter, A., Mapetla, M., (eds.) *Changing Gender Relations in Southern Africa: Issues of Urban Life*, Institute of Southern African Studies, Institute of Southern African Studies, National University of Lesotho, 1998, p.150; Larsson, A., Schlyter, A., Mapetla, M., (eds.) *Changing Gender Relations in Southern Africa: Issues of Urban Life*, Institute of Southern African Studies, Institute of Southern African Studies, National University of Lesotho, 1998, p.277.

³³ Kalabamu, F., 'Changing Gender Contracts in Self-help Housing Construction in Botswana The case of Lobatse', *Habitat International*, Elsevier Ltd, 2005, 29:245-268; Kalabamu, F., 'Gender Neutral Housing Delivery Systems: A Critical Analysis of Housing in Botswana'. In Larsson, A., Schlyter, A., Mapetla, M., (eds.) *Changing Gender Relations in Southern Africa: Issues of Urban Life*, Institute of Southern African Studies, Institute of Southern African Studies, National University of Lesotho, 1998, p.70; Matere-Lieb, 'Basotho Women's role in Urban Housing', p.63.

married women.³⁴ For example, working class unmarried women in low-cost houses acquired a plot of land in their own right. In addition, they bought building materials, supervised the construction and paid for the labour without any support from men. As unmarried women, they were able to apply for a plot of land in the Municipality and register the plot solely in their names without any societal, patriarchal and male hindrance. Apart from having income, as unmarried women, they were able to make decisions without any societal and patriarchal hindrance because they did not need consent from any man on what to do with their homes.

The above literature on developing countries points to the importance of high income and independent decision-making in homeownership among unmarried women. Unmarried women with high income do not need any assistance from men to become homeowners and therefore they do not need to consult anyone on whose name the title deed of the plot of land should be registered. Although the above literature enlightens us on the importance of income and independent decision-making on homeownership among unmarried women, it seems to imply that unmarried women without income cannot become homeowners and therefore they end up as tenants. The question that needs to be answered is whether it is only unmarried women with adequate incomes that are able to become homeowners. That is, there is need to unravel the process through which some unmarried women become homeowners. The section below therefore presents literature on how unmarried women without income become homeowners.

2.1.1 Home Ownership through Men

This section explores the literature on the relationship between unmarried women and unmarried male lovers and married male adulterers in terms of homeownership. Although other studies have emphasized the importance of income as one of the major ways in which unmarried women become homeowners, other studies in developing countries reveal that unmarried women tend to depend on different categories of men

³⁴ Larsson, et. al.,(eds.) *Changing Gender Relations in Southern Africa: Issues of Urban Life*, p.278; Tusingwire, & Tumushabe, 'Women and Control of Housing in Kampala' p.110; Gray, L., & Kevane, M., 'Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa, *Africa Studies Review*, 42 (2) 1999,p.28.

for housing.³⁵ The groups of men from whom unmarried women receive assistance differ in marital status ranging from unmarried male cohabiters, unmarried male lovers, and married male adulterers. Studies reveal that unmarried women either employ prostitution to generate income that enables them to buy or build a home or they nag their male lovers to build homes for them.³⁶ Studies in South African countries for example reveal that some unmarried male lovers met some of the construction costs of building materials and payment of builders of their female lovers' homes and unmarried women who had children with their male lovers received more money from their lovers.³⁷ In some of these cases unmarried women would save from the money their lovers left behind for food and spend some of it to meet construction costs of their own homes. In all these cases, the unmarried male lovers did not pressurise the unmarried women to include their names on the title deed.

Although these studies enlighten us on how unmarried women become homeowners through men, these studies focus specifically on unmarried male lovers. This study is interested in the ways in which unmarried women become homeowners through married male adulterers. Studies on the relationship between unmarried women and married male adulterers reveal that cases where unmarried women had children with a married male adulterer, the unmarried women not only received assistance from their married male adulterers but went further to oblige them to provide financial assistance for the children and build a home for them.³⁸ In a case where the married male adulterer hesitated to provide financial support for the children or failed to provide a home, the unmarried women would threaten to reveal the secret relationship they had to their married male adulterer's legal wives. With such threats the married male adulterers

³⁵ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', pp.245-268; Lee-Smith, *'My House is My Husband'*; Ntege, 'Women and Urban Housing Crisis'; Obbo, 'East African Women, Work, and the Articulation of Dominance', p.219; Obbo, *African Women: Their Struggle for Economic Independence*.

³⁶ Lee-Smith, *'My House is My Husband'*, p.145; Massiah, 'Defining Women's Work', p.236; Ntege, 'Women and Urban Housing Crisis'; Obbo, 'East African Women, Work, and the Articulation of Dominance', p.219; Obbo, *African Women: Their Struggle for Economic Independence*.

³⁷ Kalabamu, 'Gender Neutral Housing Delivery Systems', p.71.

³⁸ Manyire, 'Gender and Housing Development in the Low Income Suburbs'; Lee-Smith, *'My House is My Husband'*; Ntege, 'Women and Urban Housing Crisis'; Moser, *Gender Planning and Development, Theory, Practice and Training*, p.18; Obbo, 'East African Women, Work, and the Articulation of Dominance', p.219; Massiah, 'Defining Women's Work in the Commonwealth Caribbean', p.236.

were forced to provide a home for their mistress. In some other circumstances unmarried women used non-confrontational means to manipulate men for their money. For example the unmarried women used persuasion and the supply of good food for their married male adulterers to entice them for more money. In addition, unmarried women rarely disclosed their side income, especially if the married male adulterer had a higher income. This was to ensure that the rich lover continued to give more money. In these situations unmarried women used men as 'income-generating projects'.³⁹ The unmarried women would then use the money to buy plots of land. In the majority of these cases, the unmarried women were free to register the plot of land solely in their names if they wished to do so.

The above literature on unmarried women in developed and developing countries points to the importance of high income and independent decision-making in homeownership among unmarried women. Unmarried women with high income do not need any assistance from men to become homeowners and therefore they do not need to consult anyone on whose name the title deed of the plot of land should be registered. As a result, unmarried women with income make independent decisions regarding the ownership status of their homes. The controversial part surrounding homeownership among unmarried women concerns the independent decision unmarried women make on the ownership status of their homes when their unmarried lovers or married men adulterers contribute or meet all the construction costs. For example, though the male lovers contribute to or wholly meet the construction costs of their female mistresses or lovers' homes they do not pressurize the unmarried women to include their names on the title deed demonstrating a special gender contract. There is little evidence available to show the home ownership gender dynamics of unmarried women and their married male partners. Hence, there is need to compare the gender contracts among unmarried women with their unmarried male lovers and married male adulterers and the gender contract among married women and their husbands. In this way, we shall be able to understand the mechanisms and processes through which unmarried and married women become homeowners and the dynamics embedded in these processes.

³⁹ Ntege, 'Women and Urban Housing Crisis'.

2.2 Married Women and the Home- Ownership Contract

This section presents literature on the factors that account for either equal or unequal gender relations in homeownership among married women in developed and developing countries. The review of the literature is in terms of institutional, social-cultural and economic ways in which married women are deprived of or guaranteed home ownership rights. This is because many authors tend to attribute married women's homeownership dynamics to four broad factors: economic, socio-cultural, psychological (perception) and legal institutional factors.⁴⁰ These factors are reflected at different levels in society, that is, institutional or state levels, and community and interpersonal levels. Although these factors are diverse in nature they are interrelated and they reinforce one another to deprive married women of home ownership. It is therefore important to discuss how these factors deprive married women of home ownership.

2.2.1 Institutional framework on married women homeownership rights

This section focuses specifically on literature relating to laws that govern property ownership rights in marriage commonly known as marital laws. Marital laws include laws that concern rights of property in marriage, separation, divorce and widowhood. In this regard, this section specifically reviews literature on marriage and inheritance laws. The main interest of the review in this section is to show how the legal institutional framework impacts on married women's right to property in developed and developing countries in marriage, separation, divorce and widowhood. As noted by some authors, the state plays a vital role in either guaranteeing or denying women ownership rights in marriage and at widowhood.⁴¹ While there are no specific laws governing unmarried women's right to property, there are specific laws that determine a married woman's right of property hence presenting a different gender contract with

⁴⁰ Grant, 'Moving and Coping: Women Tenants', pp.169-189; Miraftab, 'Shelter as Sustenance: Exclusionary Mechanisms Limiting Women's Access to Housing'; Larsson, *Women Householders and Housing Strategies*; Moser & Peake, *Women Human Settlements and Housing*.

⁴¹ Larsson, A., & Schlyter, A., 'Changing Gender Contracts and Housing Conflicts'. In Sithole-Fundire, S., Zhou, A., Larsson, A., Schlyter, A., (eds.), *Gender Research on Urbanization, Planning, Housing and Everyday Life*, Zimbabwe Women's Resource Centre & Network, Harare, 1995, p.229; Larsson, *Women Householders and Housing Strategies*, p.13.

different dynamics. Similarly, while in developed countries the statutory legal institutional framework is not muddled up with cultural elements, in developing countries the statutory legal framework is in contradiction with the existing customary laws. Hence, married women are not only guaranteed or denied home ownership rights through the statutory legal regime but are also denied ownership through the existing customary law regimes.

In developed countries, legal structures guarantee co-ownership of the matrimonial home married women regardless of whether the married women contribute financially to the home project or not.⁴² In developed countries the legal structures and institutions regulate ownership of property within marriage and at widowhood.⁴³ A number of developed countries, apart from the United States, have ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that came into effect in 1981.⁴⁴ The section on property rights in the CEDAW provides for an end to all sorts of discrimination against women. In this section women have a right to own, inherit and administer property in their own names.⁴⁵ Developed countries have not only ratified the CEDAW Convention but continue to apply it in day-to-day practices. In cases where the CEDAW provision is not complied women have a right to petition the political regimes. For example in the United Kingdom and New Zealand, there is equal distribution of property upon separation or divorce. Upon widowhood, the widow automatically inherits the matrimonial home. It is not surprising therefore that the majority of home owning couples in these countries voluntarily opt for co-ownership of their homes. A study carried out among married couples in the United Kingdom revealed that 52 per cent of

⁴² Lundy, A., 'Race and Gender Inequality in Homeownership: Does Place Make a Difference?' *Rural Sociology*, 67(4), 2002, p.607; Little, *Gender, Planning and the Policy Process*, p.158; Brion, & Tinker, *Women in Housing: Access and Influence*, pp.11- p.12.

⁴³ Lundy, 'Race and Gender Inequality in Home ownership, Does Place Make a Difference?' p.607; Little, *Gender, Planning and the Policy Process*, p.158; Brion, & Tinker, *Women in Housing: Access and Influence*, p.11.

⁴⁴ Deere, D., & Doss, C., 'The Gender Asset Gap: What do we know and why does it matter?' *Feminist Economics*, 12 (1-2), 2006, p.20.

⁴⁵ United Nations 1980: Article 2, pars. a and f; and United Nations 1980: Part IV, Article 15, par.2; United Nations 1980: Part IV, Article 16, par.2 [h].

married couples had their homes in their joint names.⁴⁶ Recent studies in Britain and United States reveal that it is now common for spouses to jointly purchase the matrimonial home.⁴⁷

In Britain for example, the Law Commission recommended that husbands and wives should be equal owners of the matrimonial home.⁴⁸ Recent studies show that changes in estate laws have contributed to an increase in women's wealth. The Married Women's Property Act, for example, plays a big role in guaranteeing married women the same rights to own property as single women.⁴⁹ Not only does the Married Women's Property Act guarantee a married woman ownership rights to the matrimonial home but it also guarantees her sole ownership of her personal property. In developing countries many countries have also ratified international conventions that discriminate against women. Various international human rights instruments address the question of property rights though not in detail. For example, Articles 16 and 17 of the Universal Declaration of Human Rights 1948 provides for equal entitlements for men and women during marriage and its dissolution. Article 17, stipulates that everyone has the right to own property alone or in association with others. Similar provisions are echoed in Article 23 (4) of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 (d) of the Convention on Elimination of Racial Discrimination. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Article 15 (2) requires governments to give women equal rights to sign contracts and to administer property. The provisions of this article also address matters that concern customary law and religious practices that tend to discriminate against women in regard to property. For monitoring purposes countries that ratified the CEDAW Convention are expected to report on beneficial rights of women cohabiters upon separation and death of a partner. The countries are also supposed to report on the beneficial rights in the home for women in polygamous situations when they divorce, separate or become widows at regional level, African Charter on Human and Peoples Rights guarantees among other things

⁴⁶ Moser, *Gender Planning and Development, Theory, Practice and Training*, p.14; Brion, & Tinker, *Women in Housing: Access and Influence*.

⁴⁷ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?' pp.1-50.

⁴⁸ Brion, & Tinker, *Women in Housing: Access and Influence*, p.12.

⁴⁹ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?' p.4.

the right to property. Article 18 (3) provides for equality between men and women at marriage, within marriage and at the dissolution of marriage. A number of countries in developing countries have gone ahead to include the gender affirmative international and regional conventions in their national constitutions. What is questionable though is their implementation amidst the existing patriarchal social-cultural norms and practices. A number of researchers argue that what is stated in the constitutions is mere sugar coating because in reality there are various contradictions whereby there is emphasis on male domination and female subordination.⁵⁰

Although in principle Constitutions in many developing countries seem to guarantee married women ownership of the matrimonial home in marriage, in practice this is not possible. For example in some cases the Constitution, the Land Acts, and Registration of Titles Act are not harmonized but contradict each other.⁵¹ In some countries, the Registration of Titles Act does not allow women married in Community of property to register land in their names.⁵² 'In community of property' the husband is the sole administrator of the joint property and therefore the name of the wife is not allowed to appear on the register but instead her name is assumed to be there.⁵³ As a result women cannot secure loans from financial institutions since banks require title deeds in one's own name. This therefore means that a married woman becomes a homeowner on separation, divorce and widowhood. On separation and divorce however, the wife is entitled to half of the matrimonial property that includes the matrimonial home. On the other hand if she marries 'out of community of property', on divorce, she is only entitled to what she brought into the marriage. In countries where the two systems 'In community of property' and 'out of community of

⁵⁰ Asiimwe, J., 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform in Uganda from 1985-2000'. In Bond, J. (ed.) *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press, Durham, 2005; Tamale, S., 'Riding the Paper Tiger: Gender and the Family under Uganda's 1995 Constitution' *Makerere Law Journal*, Makerere Law Society, 2002; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.219; Matere-Lieb, 'Basotho Women's role in Urban Housing' p.63.

⁵¹ Matere-Lieb, 'Basotho Women's role in Urban Housing', p.63.

⁵² Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231; Matere-Lieb, 'Basotho Women's role in Urban Housing', pp.61-81.

⁵³ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', p.67; Musyoki, A., 'Perceptions on Gender and Access to Housing in Botswana'. In Matseliso Mapetla, Larsson, A., Schlyter, A., (eds.) *Changing Gender Relations in Southern Africa, Issues of Urban Life*, Institute of Southern African Studies, National University of Lesotho, 1998, pp.266-285; Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', pp. 245-268.

property' do not exist, common law is applied. Under the common law, the judge decides how each party to marriage should benefit and this depends on the evidence provided.⁵⁴

Furthermore, in many developing countries statutory, religious and traditional or customary laws govern property rights in marriage and inheritance and these tend to contradict each other. There are many ethnic groups and so are cultures and customary laws. Women's rights to home ownership therefore depend on the social and cultural context in which they live. As Ntimo-Makara and Makara-Khatleli observe, 'the state has no monopoly on law or legal regulation, there are many sources of regulation which members of society recognize and consider important'.⁵⁵ In many statutory legal regimes patriarchal social-cultural elements are incorporated into the legal framework, making women's rights to home ownership more complex. As a result they also contravene the international conventions.⁵⁶ For example women are culturally regarded as 'minors' from birth till death and therefore they cannot make any major decision on housing without consultation with their husbands, fathers, brothers or sons. Women are allowed to make major decisions regarding housing for example only when they are widowed, divorced, separated or unmarried at the age of 21 years.⁵⁷

⁵⁴ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

⁵⁵ Ntimo-Makara, & Makara-Khatleli, 'Gender and administrative conflicts over land in peri-urban areas in Maseru, Lesotho'. In Kalabamu, F., Matseliso Mapetla & Schlyter, A., (eds.) *Gender, Generations and Urban Living Conditions in Southern Africa*, Institute of Southern African Studies, National University of Lesotho, Roma, 2005, p.198.

⁵⁶ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter? pp.1-50; Namita, D., 'Joint titling- A Win -Win Policy? Gender and Property Rights in Urban Informal Settlements in Chandigarh, India', *Feminist Economics* 12(1-2), 2006, p.273; Ntimo-Makara, & Makara-Khatleli, 'Gender and administrative conflicts over land in peri-urban areas', p.198; Asimwe, 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform'; Kakooza, J., 'The Application of Customary Law in Uganda' *The Uganda Living Law Journal*: Journal of the Uganda Law Reform Commission, Uganda Law Reform Commission, Kampala, 1(1) 2003; Tamale, 'Riding the Paper Tiger'.

⁵⁷ Mapetla, N., & Sakoane-Songca, R., 'Perceptions on property and inheritance rights in Lesotho: Need for legal change?'. In Kalabamu, F., Mapetla, M., & Schlyter, A., (eds.) *Gender, Generations and Urban Living Conditions in Southern Africa*, Institute of Southern African Studies, National University of Lesotho, Roma, 2005, p.155; Ntimo-Makara, & Makara-Khatleli, 'Gender and administrative conflicts over land in peri-urban areas', p.199; Matere-Lieb, 'Basotho Women's Role in Urban Housing' pp.59- 63.

Under customary law a married woman has no property entitlements in marriage, upon separation or divorce. This is because payment of bride wealth implies that women are properties of men and as 'properties' they are cannot own property because 'property cannot own property'.⁵⁸ In many African countries a woman marries in a man's clan and therefore all the property belongs to the husband and his clan.⁵⁹

The mix of laws does not only impact on married women's right to ownership of the matrimonial home but is subject to abuse and misinterpretation by different actors who apply the law at any point in time. As Larsson rightly observes 'The most severe cases of discrimination against women are however, to be found in relation to marriage laws and their effect on property such as housing. As unmarried women manage their own property, the main concern here is women who have been married but divorced, widowed or have been separated'.⁶⁰ It is not surprising therefore that states have failed to implement international conventions that do not acknowledge the existence of the existing laws that create rules, norms and practices in various communities. The existing laws that are patriarchal in nature tend to predominantly govern peoples' lives in these countries.

2.2.2 Inheritance Law and its impact on Women's Right to Home Ownership

This section focuses on the literature related to inheritance laws in developed and developing countries. The main interest in this section of the review is to show the existing inheritance laws and their impact on a woman's right to ownership of the matrimonial home upon the death of her husband. Studies in developed countries reveal that inheritance is one of the ways in which women accumulate wealth.⁶¹ In this

⁵⁸ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property'; Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*; Oruwari, Y., 'The Invisible Contribution of Married women in Housing Finance and Its Legal Implications: A Case Study from Port Harcourt, Nigeria'. In Dandekar, H., (ed.), *Shelter, Women, and Development* Ann Arbor: George Wahr Publishing Co. 1993.

⁵⁹ Asiimwe, J. 'Making Women's Land Rights a Reality in Uganda: Advocacy for Co-Ownership by Spouses'. *Yale Human Rights and Development Law Journal* 4(1), pp.173-189, 2001; Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*.

⁶⁰ Larsson, 'Women Householders and Housing Strategies', pp.154-162.

⁶¹ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?'

regard a woman becomes the owner of the matrimonial home upon the death of her husband, regardless of whether the home was previously jointly owned or solely owned by the husband me during the marriage. However, studies in developed countries also reveal that widows do not necessarily find it easy to inherit the homes in which they lived with their husbands but sometimes instead of benefiting, they often take over the poor credit histories of their former spouses.⁶² In some cases some of these widows may not have enough credit to meet the mortgage obligations. Nonetheless, legally, in developed countries widows are automatically guaranteed inheritance rights to the matrimonial home. They are only denied inheritance rights if they cannot afford to pay the mortgage rates. Therefore, in cases where a husband dies after the entire mortgage had been paid, the widow automatically inherits the matrimonial home. In a case where a husband dies before the entire mortgage has been paid but the widow has enough credit to pay mortgage rates, she automatically inherits the matrimonial home without any hindrance. Therefore, in developed countries, widows' inheritance problems can be attributed to the affordability crisis due to rising housing prices and interest rates. These two factors become crucial in home ownership making it a necessity or a prerequisite to have dual income in order to own housing.

The discussion on homeownership through inheritance among married women in developed countries suggests that gender inequality in home ownership seems to exist in these countries, though it is minimal. Homeownership through inheritance in developed countries is determined by income and affordability to purchase a matrimonial home. The cultural here is relatively gender equal and therefore does not contradict the law. In addition the legal framework regulates home ownership in marriage and therefore it determines a married woman's rights with regard to the matrimonial home.

In many developing countries statutory law does not guarantee a widow's inheritance rights except user rights of the matrimonial home.⁶³ Widows are deprived of home

⁶² Reitz, 'Women and homeownership', p.2.

⁶³ Asiimwe, F., 'Gender Dynamics and Homeownership in Kampala; Trapped by laws, A sociological Perspective, *The Social Sciences* 1(2): pp.144-148, Medwell Online, 2006; Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter? pp.1-50; Okumu-Wengi,

ownership rights because of the social-cultural ideologies embedded in the ethnic groups they get married into. This is irrespective of whether statutory law exists or not. Home ownership through inheritance is highly gendered and culturally embedded with complex dynamics. These complex dynamics differ from country to country, from society to society and from one ethnic grouping to another.⁶⁴ Whereas inheritance is one of the ways in which women become homeowners in developed countries, on the contrary in developing countries women are only guaranteed user rights of the home and at times they become homeless upon the death of their husbands.⁶⁵ As Miraftab observes, 'when women's right to inherit the home is not guaranteed, one major door through which women could own property is closed'.⁶⁶

In many cases the cultural traditions and statutory legal systems deny the widow inheritance rights. Both statutory and customary law promote male dominance whereby land and housing are passed on to the male line (from father to son).⁶⁷ Although a woman may have the legal right to inherit property through inheritance this may not be realised if the claim is not socially and culturally recognised as legitimate.⁶⁸ In many countries patriarchal customary systems deprive widows of the matrimonial home.⁶⁹ Here, it is sons and not widows who inherit the matrimonial and at times brother in-

J., 'Women and The Law of Inheritance'. In, Tuhaise, P., Matovu, V., Madrama, C., Mbaaga, F., Mugisha, J., & Okumu-Wengi, J (eds.), *Women and Law in East Africa*, WLEA (U) Publications No.2, LDC Publishing Printing Press, Kampala, 2001; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.205; Matere-Lieb, 'Basotho Women's role in Urban Housing', pp.61-81.

⁶⁴ White, S., Kamanga, D., Kachika, T., Chweza, A., Chidyaonga, F., (eds.), *Dispossessing the Widow: Gender Based Violence in Malawi*, Christian Literature Association in Malawi (CLAIM), Blantyre, 2002; Harley, A., & Verbeek, C., 'A Place to Live, Women's Inheritance Rights in Africa' Summary English Report, Centre of Adult Education, University of KwaZulu-Natal, Pietermaritzburg, 2005. Original Report prepared by Scholz, B., & Gomez, M., Centre on Housing Rights and Evictions (COHRE), Geneva Switzerland, also see <http://www.cohre.org>.

⁶⁵ Okumu-Wengi, 'Women and the Law of Inheritance'; Owen, M., *A World of Widows* Zed Books, London 1996; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.220; Guyer, J., 'Women and the State in Africa: Marriage Law, Inheritance, and Resettlement', Working Papers in African Studies No.129, African Studies Centre, Boston University, Boston, 1987.

⁶⁶ Miraftab 'Risks and Opportunities in Gender Gaps to Access Shelter', pp.143-160.

⁶⁷ Kanabahita, D., 'Report on Intestate Succession', Law and Advocacy for Women in Uganda' Kampala, 2006; Narayan, et. al., *Voices of the Poor: Can anyone hear us?* p.260; Asiimwe, 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform'.

⁶⁸ Farha, L 'Is there a Woman in the House? Women and the right to adequate housing' *A Resource Guide to Women's International Human Rights*, Transnational Publishers, Geneva, 1998.

⁶⁹ Narayan, et. al., *Voices of the Poor: Can anyone hear us?*, pp.257-258.

laws of widows have the right to claim household property that includes the matrimonial home unless the male children are old enough to inherit. If the deceased did not have a boy child, his young brother becomes the heir.⁷⁰ Women without children are more vulnerable to dispossession of the matrimonial home.⁷¹ In some cases a widow with young children is obliged to get married to one of her brother's in-law if she is to exercise user rights to the home. If she refuses she has no alternative but to return to her natal family. Although in general widows lack inheritance rights to the matrimonial home, there are special circumstances through which they can inherit. In a case where houses were acquired through employment and state institutions, for example through a local council or housing authority, widows are able to inherit their husbands' plots of land through the help of these state institutions. In cases where the husband dies before he has paid off the mortgage, the widow is allowed to pay off the mortgage and thereafter inherit the plot of land.⁷² In some cases customary law is flexible and as a result widows can inherit the matrimonial home.⁷³ Some widows were able to transfer the matrimonial home in their names due to the support from their in-laws (especially sister and brother-in-laws) and children even when the inheritance laws support the eldest son of the deceased inheriting the matrimonial home.⁷⁴

A number of Non Governmental organizations and civil society organizations in developing countries have attempted to challenge the discriminatory laws against women that are still operational in these countries. However, the task is complex because statutory law is infused with patriarchal customary law. It is difficult to separate statutory law from patriarchal customary law. As Munalula rightly observes

⁷⁰ White, et. al. *Dispossessing the Widow, Gender Based Violence in Malawi*.

⁷¹ Casimiro, I, Andrade, X, Temba, E., Espling, M., *Women and Law in Southern Africa Research Project: Right to Succession and Inheritance, Mozambique*, Department of Women and Gender Studies, Centre of African Studies, Eduardo Mondlane University, Maputo, 1996; Narayan, et. al., *Voices of the Poor: Can anyone hear us?*, p.257.

⁷² Gwaunza, E., Nzira, T., Dengu-Zvogbo, Donzwa, B., Kazembe, J., Ncube, W., Stewart, J., *Widowhood, Inheritance Laws, Customs & Practices in Southern Africa*, Women and Law in Southern Research Project, Harare, 1995; Dengu-Zvogbo, K., Donzwa, B., Gwaunza, E., Kazembe, J., Ncube, W., Stewart, J., *Inheritance in Zimbabwe: Law, Customs and Practice*, Women and Law in Southern Africa Research Trust (WLSA) SAPEs Trust, Harare, 1994, pp.120-121; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.223.

⁷³ Larsson, A., Schlyter, A., (eds.), *Gender Research on Urbanization, Planning, Housing and Everyday Life*, Zimbabwe Women's Resource Centre & Network, Harare, 1995.

⁷⁴ Gwaunza, et.al., *Widowhood, Inheritance Laws, Customs & Practices in Southern Africa*; Dengu-Zvogbo et.al., *Inheritance in Zimbabwe: Law, Customs and Practice*, pp.120-121.

‘Changing the law to ensure women have equal access to and power over property is empowering only in that it provides the framework within which rights can be enforced and claimed but it does not guarantee that those rights will be achieved in practice’.⁷⁵

2.3 Economic Dynamics in Home Ownership among married women

This section focuses on literature regarding economic factors and how they impact on married women’s right to homeownership in developing countries. As noted earlier, unequal gender relations in homeownership among married women not only stems from legal and institutional framework but also social-cultural and economic factors. We have noted that in developed countries dual income is often a prerequisite for co-homeownership.⁷⁶ There is still no agreement on whether economic empowerment and education enables women to make decisions in the home although some scholars argue that women’s economic empowerment is the major way through which they could negotiate for major resources for example land and housing.⁷⁷ Agarwal on the other hand not only focuses on the market as determinants of the bargaining process but also extends the bargaining approach to the community and the state.⁷⁸ In many households men make the decisions on major investments for example housing while women’s decisions are restricted to decisions on the day-to-day matters of the family.⁷⁹ In some cases a woman cannot make any decisions on housing investment

⁷⁵ Munalula, ‘Choice of Law: Theoretical Perspectives on Urbanization and Women’s Rights to Property’, p.211.

⁷⁶ Deere, & Doss, ‘The Gender Asset Gap: What do we know and why does it matter?’, pp.1-50; Lundy, ‘Race and Gender Inequality in Home ownership’ p.607; Little, *Gender, Planning and the Policy Process*; Smith, ‘Income, Housing Wealth and Gender Inequality’.

⁷⁷ Agarwal, B., ‘Bargaining’ and Gender Relations: Within and Beyond the Household’, in *Feminist Economics* 3(1), 1997, pp.1-51; Kabeer, N., ‘Reversed Realities, Gender Hierarchies in Development Thought’, Verso, London and New York, 1994; Sen, A., ‘Gender and Cooperatives Conflicts’. In Tinker, I. (ed.), *And Persistent Inequalities: Women and World Development*, Oxford University Press, 1990.

⁷⁸ Agarwal, ‘Bargaining’ and Gender Relations: Within and Beyond the Household’, pp.1-51.

⁷⁹ Kalabamu, ‘Changing gender contracts in self-helping Housing Construction’, pp.245-68; Behice, E., ‘Women’s Efficiency in Decision Making and Their Perception of Their Status in the Family’, *Public Health Nursing* 20(1), Blackwell Publishing Inc. 2003 pp.65-70; Cubbins, L., ‘Women, Men, and the Division of Power: A Study of Gender Stratification in Kenya’, The University of North Carolina Press, *Social Forces*, 69 (4), 1991, p.1065; Agarwal, ‘Bargaining’ and Gender

even where a husband is absent or abroad.⁸⁰ Nonetheless, many researchers agree that a woman's economic empowerment and education does are a prerequisite to decision-making regarding homeownership.⁸¹ In addition, control of income homeownership also involves negotiation, consensus, cooperation, and women's confidence to make choices. Many authors suggest that the expenditure pattern, which tends to replicate the gender roles, has an impact on ownership rights of property, for example housing.⁸² For example husbands spend their income on housing and their children's education while wives spend their income on day-to-day items like food, clothing and other domestic goods.⁸³ Hence upon separation or divorce, a married woman has nothing to show as proof of her contribution to the matrimonial home.

2.4 Perceptions and homeownership

This section explores literature on how women's roles in the family are perceived and how women themselves perceive themselves. Some authors have argued that the attitudes of other people and the women themselves could be key factors in the problem of inequality in home ownership. For example where women do not value their work they may lose out on home ownership.⁸⁴ Social- cultural attitudes in some societies make it unthinkable for women to formally own land and housing in their

Relations: Within and Beyond the Household', pp.1-51; Sen, 'Gender and Cooperatives Conflicts'; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

⁸⁰ Schlyter, *Women householders and housing strategies, the case of George, Zambia*, p.146.

⁸¹ Deshmukh-Ranadive, J., 'Gender, Power, and Empowerment: An Analysis of Household and Family Dynamics'. In Narayan, D., (ed.), *Measuring Empowerment: Cross-Disciplinary Perspectives*, World Bank, Washington, 2005, p.113; Gwebu, 'Housing Provision and Homeownership Schemes Among Low-income Groups' p.32; Afshar, H., (ed.) *Women and Empowerment: Illustration from the Third World*, Macmillan Press Ltd, Houndmills, Basingstoke, Hampshire and London, 1998, pp.2-3; Rowlands, J., 'A Word of the Times, but What Does it Mean? Empowerment in the Discourse and Practice of Development'. In Afshar, H., (ed.) *Women and Empowerment: Illustration from the Third World*, Macmillan Press Ltd, Houndmills, Basingstoke, Hampshire and London, 1998, pp.11-34.

⁸² Moser, *Gender Planning and Development, Theory, Practice and Training*, p.27.

⁸³ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter? p.36; Vogler, C., 'Cohabiting couples: rethinking money in the household at the beginning of the twenty first century', *The Sociological Review*, Blackwell Publishing Ltd, Oxford, 2005; Narayan, et. al., *Voices of the Poor: Can anyone hear us?*, p.175; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.218; Moser, *Gender Planning and Development, Theory, Practice and Training*, p.24; Dow, U., & Puseletso, K., *Women, Marriage and Inheritance*, Women and Law in Southern Africa Trust Botswana, 1994, p.103.

⁸⁴ Miraftab, 'Shelter as Sustenance', p.225.

own names.⁸⁵ Similarly, the way women perceive themselves also depends on the various networks they belong to.⁸⁶ Men tend to be seen as the primary producers, owners, and controllers of housing and related resources in the household while women are seen as users and caretakers of the resources.⁸⁷ On the other hand men are identified as breadwinners and decision makers even when these roles have changed as a result of social and economic changes.⁸⁸ Thus men, through private ownership and control of decision-making and their greater participation in paid employment gain autonomous economic power and access to credit while women, as the primary users and caretakers of housing receive little autonomy.⁸⁹ On the other hand, women are identified, and tend to identify themselves, as homemakers, the keeper of the family, responsible for the well being of their children.⁹⁰

Apart from the attitude of other people and their negative perceptions regarding a woman owning a house, some authors have argued that the negative attitude could actually be from the women themselves. Miraftab argues that women's own perceptions about life often play a limiting role with regard to their owning or co-

⁸⁵ Women and Shelter No.12, 1998; Women and Shelter, No 11, March 1998, Newsletter of the women and shelter network on the *Habitat International* coalition; Miraftab, 'Risks and Opportunities in gender Gaps to access Shelter', pp 143- 160; Hardoy, J., & Satterthwaite D., *Shelter, Need and response, housing land and settlement, policies in Seventeen Third World nations*, (John Wiley & Sons, Chichester, 1981).

⁸⁶ Griffiths, A., *In the Shadow of Marriage: Gender and Justice in an African Community*, The University of Chicago Press, London, 1997, p.225.

⁸⁷ Chafetz, J., 'Gendered Power and Privilege: Taking Lenski One Step Further', *Sociological Theory* 22, American Sociological Association, New York, 2004, p.269; Narayan, et. al., *Voices of the poor: Can anyone hear us?* pp.175, 181, 269; Musyoki, A., 'Perceptions on Gender and Access to Housing in Botswana'. In *Changing Gender Relations in Southern Africa, Issues of Urban Life*, Matseliso Mapetla, Anita Larsson, Anna Schlyter (eds.) Institute of Southern African Studies, National University of Lesotho, Lesotho, 1998 pp.282-283; Sayne, 'Ideology as Law: Is There Room for Differences in the Right to Housing' p.98; Moser, *Gender Planning and Development, Theory, Practice and Training*, p.15; Moser, & Peake, (eds.) *Women Human Settlements and Housing*, p.13.

⁸⁸ Narayan, et. al., *Voices of the Poor: Can anyone hear us?*, p.175; Larsson, A., 'Theoretical and Methodological Considerations', In Gruphel, Phase One, Gender Research on Urbanization, Planning, Housing and Everyday Life, Zimbabwe Women's Resource Centre & Network, Harare, 1995, p.218; Musyoki, 'Perceptions on Gender and Access to Housing' p.276.

⁸⁹ Sayne, 'Ideology as Law: Is There Room for Differences in the Right to Housing', p.98.

⁹⁰ Behice, 'Women's Efficiency in Decision Making and Their Perception of Their Status in the Family', pp.65-70; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.218; Sen, 'Gender and Cooperatives Conflicts'; Senauer, B., 'The Impact of the Value of Women's time on Food and Nutrition'. In Tinker, I. (ed.), *Persistent Inequalities: Women and World Development*, Oxford University Press, 1990.

owning housing. For example, sometimes women do not value or acknowledge their own work at home, nor acknowledge their own needs.⁹¹ As a result of these perceptions women sometimes exclude themselves from equal entitlements to family resources such as housing. Women's limited access to home ownership is also related to their personalities or character. Hence, the way a married woman looks at life and her role in the family determine her ownership rights in the home.⁹² Studies reveal how most married women seem not to mind being excluded from land title and are willing to accept this in order to keep their marriage.⁹³ Men take advantage of this attitude of married women to exclude them from co-ownership.

2.5 Theoretical framework

This section focuses on the literature that relate to the theoretical frame on which this study is based. The purpose is to highlight the applicability of the theory in explaining the unequal gender relations in homeownership in other countries and explore its suitability in explaining the gender dynamics in homeownership in the Ugandan context. Many researchers have applied the gender system and contract theory to the study of gender and housing in Sub-Saharan Africa and have come up with interesting results, which will be explained in this section.

2.5.1 An overview of Hirdman's Gender System and Contract Theory

This section provides an overview of Hirdman's theoretical framework and its relevance to the current study. Gender system and contract theory provides a strong emphasis on the gender power relations in the household and the social changes that take place within a social system as a result of factors such as modernization and urbanization.⁹⁴ The theory questions the relevance of associating female and male

⁹¹ Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter, pp.143-160; Schlyter, *Women householders and housing strategies*', p.74.

⁹² Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter: p.229; Sen, 'Gender and Cooperatives Conflicts'.

⁹³ Oruwari, 'The Invisible Contribution of Married women in Housing Finance', p.117.

⁹⁴ Lee-Smith, *'My House is My Husband'*; Larsson, 'Theoretical and Methodological Considerations'.

tasks with nature and the physiology of women and men. According to Hirdman's theory, there is no general answer that explains the difference that exists in some cases between men and women's living conditions because it all depends on the area studied and the social context. For example, 'tradition', lifestyle, interests, biological differences, division of labour, and working environment could probably explain the differences in circumstances between men and women. These form part of a complex pattern of circumstances that together influence how women and men live their lives.⁹⁵ Hirdman's theory describes the structure of the gender system observed on the basis of social, economic and political systems. The gender system has two principles: The logic of separation between the sexes or the dichotomy between male and female, and secondly, the logic of the male norm, that is a hierarchy between men and women whereby men are regarded as the 'norm' (superior) and women are regarded as subordinate or 'the other'.⁹⁶ For example in many societies men are regarded as the main breadwinners while women are regarded as homemakers and caregivers. This puts women in a subordinate position when it comes to property ownership. Even if the woman contributes financially to the home project she will still be regarded as a homemaker and not a homeowner. Gender contracts are formed over long periods of time through day-to-day interactions and cannot be formed in a couple of days through individual or face-to-face negotiation.

Different gender contracts exist in different societies, eras and classes. For example, in some societies married women are not expected to co-own the matrimonial home with their husbands while in other societies it is normal for married women to co-own the matrimonial home. Several gender contracts create a 'gender system' under which a number of social, cultural and economic dynamics operate.⁹⁷ There is a belief in Hirdman's theory that with the gender system, it is possible to recognize the

⁹⁵ Hirdman, Y., 'The Gender System'. In Andreassen, T., Borschorst, A., Dahlerup, D., Lous, E., Nielsen, H., *Moving on: New Perspectives on the Women's Movement*, Aarhus University Press, Denmark, 1991, p.187.

⁹⁶ Hirdman, 'The Gender System', p.190; Arber, S., Andersson, L., & Hoff, A., *Current Sociology*, Journal of the International Sociological Association, Vo.55, No.2 Monograph 1 March 2007, p.157; Lee-Smith, 'My House is My Husband', p.70; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.214; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.202.

⁹⁷ Hirdman, 'The Gender System', p.191; Larsson, 'Theoretical and Methodological Considerations', p.35.

differences between women and men in terms of class, age, family structure and the way these differences influence economic, social and political outcomes. For example a study in Nigeria suggest that the Hausa and Kanuri ethnic groups restrict girls' access to formal education and women's access to employment outside the home while in contrast the Yoruba, Ibo and Ijaw societies educate their daughters.⁹⁸ As a result Hausa and Kanuri women are disadvantaged in decision-making in the home as opposed to women of the Yoruba, Ibo and Ijaw ethnic groups.

Hirdman's major concerns are the power relations that exist between men and women. She criticizes theories that base their analysis on gender roles because such theories tend to ignore power relations.⁹⁹ Gender power relations are complicated processes and therefore they should be looked at from the institutional, cultural, and biological perspectives.¹⁰⁰ There are different rules governing gender interactions in different societies and these vary over time and space. These sets of rules found in different societies at particular times and space form the gender contracts. The Gender contracts are usually invisible relationships between men and women and are reflected at different levels for example at institutional, interpersonal and cultural levels.¹⁰¹

The levels indicate the processes by which the values are assimilated and reproduced. In other words, they provide us with tools for analyzing how change, maintenance and adaption of the system take place. The levels also emphasize the process by which rules are reproduced in human thought and action.¹⁰² What they describe is the mechanism for social stability and rule creation. The three or four levels form the

⁹⁸ Kritz, M., & Makinwa-Adebusoye, P., 'Determinants of Women's Decision-Making Authority in Nigeria: The Ethnic Dimension', *Sociological Forum*, 14(3), Plenum Publishing Corporation, 1999.

⁹⁹ Larsson, 'Theoretical and Methodological Considerations', p.35.

¹⁰⁰ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction'. pp.245-268; Hirdman, 'The Gender System', p.190.

¹⁰¹ Larsson, 'Theoretical and Methodological Considerations', p.36; Lee-Smith, 'My House is My Husband', p.136; Kalabamu, F., 'An Exploration into Changing Gender Roles in Self-help Housing Construction in Botswana: the case of Woodhall, Lobatse Township', in Larsson, A., Matseliso Mapetla and Schlyter A (eds.), *Gender and urban housing in southern Africa: emerging issues*, Roma, Lesotho: Institute of Southern African Studies, National University of Lesotho, 2003, pp.47-73; Gwebu, 'Housing Provision and Home-ownership Schemes Among Low-income Groups' p.22.

¹⁰² Lee-Smith, 'My House is My Husband', p.72.

theoretical base with which to interpret the research findings.¹⁰³ The three or four levels identified by these researchers are interwoven in such a way that change at one level is likely to affect the other levels.¹⁰⁴ Gender systems and contracts at various levels are subject to negotiation, re-negotiation and change. In this way women as individuals or groups may benefit from or access resources and services owned, produced or controlled by men. Through negotiation gender inequalities within households, communities, the market and the state are challenged. These negotiation and bargaining processes may result in cooperation or conflict. The extent to which women or men are willing to cooperate or to conflict is likely to influence the expected outcome.¹⁰⁵ The outcome of any of the negotiation processes depends on an individual's bargaining power.¹⁰⁶ For example in cases where married women have income, they have better bargaining power with their husbands than married women without any income. Similarly, in cases where married women have alternative options for example ownership of land, they are able to negotiate with their husbands to have their names included on the title deed of the matrimonial property. In such cases a husband's acceptance is most likely to depend on the outcomes of the negotiation. Hence, when social, economic and political rules change; the gender system creates new segregations and new hierarchies in society.¹⁰⁷ In cases where wives have income to contribute to the home project and insist on having their names included on the title deed, the traditional or dominant home ownership gender contract, where husbands are homeowners, and wives are homemakers is changed. In the new home ownership gender contract, the wives change from being homemakers to being homeowners. Therefore, the gender system itself and its principles are also open to negotiation and change.¹⁰⁸ The changes however come about only if societies are also ready to change in terms of attitude and practice. At institutional level, for example if governments put in place affirmative action policies and promote an

¹⁰³ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', pp.202-203.

¹⁰⁴ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.202; Larsson, 'Theoretical and Methodological Considerations', p.36.

¹⁰⁵ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', p.248.

¹⁰⁶ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', p.248.

¹⁰⁷ Lee-Smith, *'My House is My Husband'*, p.70; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.217.

¹⁰⁸ Lee-Smith, *'My House is My Husband'*, p.71.

elevation of women's economic status, there is likely to be a new social order. Recent changes that have taken place in the social rules that reduce the inequality between sexes are creating tensions, bringing into focus and questioning the prevalence of the male norm (superiority). For example patriarchy or the subordination of women in African societies is being challenged.¹⁰⁹ In societies where change is being experienced elements of the gender contract may contradict each other.¹¹⁰ As Larsson observes, 'one can easily identify the different gender contracts even where the words 'men' and 'women' are not specifically indicated'.¹¹¹ It is worth discussing the different levels through which women have to negotiate their ownership rights.

2.5.2 Levels of negotiation

i) The Institutional level

This involves the state and its machinery, for example the police and judiciary. The State plays a role in assigning entitlements to men and women. The state determines who gets what, through rules and regulations that are usually formalized and codified. The state is an important actor in the maintenance of the old gender contract and creation of new gender contracts by legal instruments. The state mediates relationships not only between individuals and civil society, but also within the family between men, women and children. This has critical implications for the way gender inequality is built and maintained in the family. The state can liberate or control the lives of women through various social, economic, political and legal policies. For example, marriage laws and legal provisions regarding divorce and inheritance control women's right to ownership of property. Similarly, state laws sometimes tend to reproduce gender division of labour within the family.¹¹²

In many countries in Africa a dual legal system exists. The two legal systems, which include the English statutory law and customary law, are applied at both the

¹⁰⁹ Lee-Smith, *'My House is My Husband'*, p.71.

¹¹⁰ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts' p.217.

¹¹¹ Larsson, 'Theoretical and Methodological Considerations', p.36.

¹¹² Moser, *Gender Planning and Development, Theory, Practice and Training*, p.41.

community and state level.¹¹³ The disadvantaged position of women is increasingly being challenged either by state action, through legislation, by NGOs through petition of the constitutional court or by women themselves.¹¹⁴ From the legal perspective there are a number of questions to ask: Is the Constitution gender sensitive or is it a replica of what is found at cultural and ideological level whereby men are favoured over women? What are the mechanisms put in place to ensure that women receive equal justice under the law? Are judicial institutions transparent to ensure that gender sensitive laws apply to cause equal justice or do they follow the cultural ideology syndrome? What is the composition of the judiciary in terms of gender? What mechanism is in place to ensure that all citizens are aware of their legal rights and obligations? Who ensures the implementation of laws, rules and obligations regarding rights of ownership and inheritance at all levels? What is the gender composition of Parliament? How are gender sensitive bills discussed in Parliament? How long does it take to pass these gender sensitive Bills? Are Parliamentarians just rubber stamps to please the authority in power? What mechanisms are in place to ensure that both men and women of all categories are represented at all levels of local and national administration? What are the follow up mechanisms to ensure that these gender representation mechanisms are adhered to? What mechanisms are in place to ensure sustainability of gender sensitive policies? From the economic perspectives there is need to know whether there is discrimination in financial institutions. For example, how do financial institutions treat men and women of all types in the granting of housing loans? These many questions point to the vital role the institutional level plays in either perpetuating gender inequality or in bringing about equitable gender relations. Whatever happens at the institutions level impacts on what happens at the abstract cultural ideology and interpersonal levels? Larsson advises that if the intention is to carry out a gender analysis, the researcher must try to find out what is hidden 'between' the lines in policy and statutory documents [my emphasis].¹¹⁵ As Munalula observes,

¹¹³ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.216.

¹¹⁴ Gwebu, 'Housing Provision and Home-ownership Schemes among Low-income Groups, p.22.

¹¹⁵ Larsson, 'Theoretical and Methodological Considerations', p.36.

the abstract cultural image level in which women are subordinate is reflected at the institutional level in the legal system.¹¹⁶

ii) The Interpersonal level

This level focuses on intra-family relations in which for example couples may negotiate over their gender contracts within the household setting.¹¹⁷ At this level, gender contracts are created on a day-to-day basis.¹¹⁸ The interpersonal level also refers to the relationship between female and male members of various ages, status in a household or extended family.¹¹⁹ At Interpersonal level, individuals tend to respond to what they see happening around them. Individuals relate to fellow individuals on the basis of their socialisation and interaction with other agents of socialisation. At this level, class structure, family relations, and age operate and contribute to shaping the different elements of the gender contract.¹²⁰ To understand the interpersonal level we need to capture men's and women views and their arguments during the interviews.

iii) Cultural image ideology

These are ideas, norms, values and beliefs that are embedded in people's minds and reflected in institutional policies. This level reflects accepted cultural beliefs and norms in societies.¹²¹ These cultural beliefs tend to be difficult to change because of their strength to reproduce existing gender relations or contracts, to maintain the patriarchal system.¹²² At an abstract cultural image and ideological level, many authors agree that cultures, norms and ideologies at personal and at community level account for unequal gender relations in home ownership. For example, the patriarchal cultural norms have tended to favour men over women of all types, whereby women have always been

¹¹⁶ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.202.

¹¹⁷ Gwebu, 'Housing Provision and Home-ownership Schemes among Low-income Groups', p.22.

¹¹⁸ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.203.

¹¹⁹ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', p.248.

¹²⁰ Larsson, 'Theoretical and Methodological Considerations', p.36.

¹²¹ Gwebu, 'Housing Provision and Home-ownership Schemes among Low-income Groups', p.22.

¹²² Gwebu, 'Housing Provision and Home-ownership Schemes among Low-income Groups', p.22.

subjected to lower positions in terms of their roles, distribution of resources and decision-making powers compared to men. In general there is a tendency for individual members to behave and act culturally, as community cultural norms dictate. For example, in a culture where men are regarded as breadwinners and women as homemakers, men will always be given a higher position in society regardless whether women financially contribute to the domestic expenses in one way or the other. This is because the type of work that women are traditionally assigned in this view is not valued. Similarly, in societies where men are regarded as the owners of the matrimonial home, it is normal for the matrimonial home to be registered solely in a husband's name regardless whether the wife has contributed financially to the home. Hence it is not surprising for a married man to exclude his wife's name from the title deed of the plot of land on which the matrimonial home is built regardless of whether or not the wife contributed financially to the home project. The husband sees his action as normal and acceptable because culturally a home belongs to the man. To understand the cultural image and ideologies we capture information from interviews of men and women and try to seek explanation for their actions. As Larsson and Schlyter observe 'Such explanations reflect cultural images and ideologies and these are also reflected in laws, but not in a simple and direct way'.¹²³

Table 8: The Gender system: How Gender Contracts are reproduced.¹²⁴

The Cultural Level	The Institutional level	The Interpersonal level
Abstract Archetypal images, ideologies	Concrete Laws, organizations, the division of labour	Socialization of the individual, relationships.

2.5.3 Application of the Gender System and Contract Theory in Housing Studies

The gender system and contract theory enable us explore gender inequality at all levels of society, the institutional, community, and interpersonal. It also enables us to critique the many supposedly neutral institutions. In so doing we understand the complexities and opportunities in women's pursuit to become homeowners amidst

¹²³ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.216.

¹²⁴ This table is adapted from Lee-Smith, 'My House is My Husband', p.72.

male dominance in most spheres of society. The gender system and contract model help us to explore the history of gender inequality in the women's life courses and how this is reflected in their life experiences. The gender system and contract theory also helps explain the geographical and temporal differences in gender roles and to identify the new power relationships between men and women in changing social-economic circumstances. This is because society is not static and neither are its rules, values and norms.¹²⁵ Gender System and Gender Contract theory explain gender relations in a historical perspective and hence helps to explain changes that take place in peoples' behaviour and changes in society at large.¹²⁶

The gender contract approach explores the different strategies and actions some women employ to become homeowners in male-headed households. In exploring strategies developed by women in order to become homeowners we are able to judge whether the male dominance gender contract is being challenged or negotiated and what the resultant outcomes are in terms of the creation of a new home ownership gender contract. We are also able to judge the cause of some women's actions and strategies and their outcome in relation to the actions and strategies of other women within the same social context. The gender system and contract theory help us to explore the challenges women face to become homeowners in male-headed households. In so doing we are able to advise development partners to design appropriate programmes to address gender inequality and policy makers to put in place relevant policies to address the gender inequality in home ownership.

2.5.4 Application of the Gender System and Contract Theory in Other Studies

The gender system and contract model has been used in various studies in Sub-Saharan Africa in order to understand the existence and change in gender inequality related to property. For example, in her study of gender and housing in Kenya, Lee-Smith looked at historical contracts of land ownership in Kenya and the East African region and how this changed as a result of urbanization and colonization. She suggests that the social rules of gender that operated in the pre-colonial society protected the universal right of men and women to land. At the institutional level, social customs in

¹²⁵ Lee-Smith, *'My House is My Husband'*, p.72.

¹²⁶ Lee-Smith, *'My House is My Husband'*, p.65.

African societies allowed for men's and women's access to land and housing and the social customs facilitated women's right to land. Women negotiated with men using the customary rules at the interpersonal level to access property. With colonization, urbanization and modernization of the economy, gender relations changed because the colonial system introduced the market model where land was individualized and was accessible to both men and women. As a result many women took advantage of the colonial laws in urban areas to acquire urban land in their own names. As a result of a new gender contract whereby women became homeowners was created Man's authority as the controller of resources like land and as a breadwinner was challenged in Kenya. This implies that at institutional level women with income were able to purchase land at the market level hence creating gender equality.

As noted earlier in the literature, unmarried women with income are able to own property hence creating a new gendered homeownership contract. While at institutional level married women in developed countries are able to become homeowners through marriage and inheritance, in developing countries there is lack of institutional support for widows to inherit the matrimonial home through the law upon the death of their husbands. The powerful patrilineal inheritance beliefs still prevent women's homeownership rights through inheritance. There is no evidence to show what happens with regard to contracts on the interpersonal level when the home is jointly owned.

In their application of the gender system and contract theory on gender and housing studies in Southern African countries, various scholars reveal that men make all the important decisions on major investments for example housing.¹²⁷ The studies also show that there are changes taking place as women acquire education and income, creating a new home ownership contract.¹²⁸ Their findings also reveal that women become homeowners in marriage through negotiation. Where women fail to negotiate their rights at interpersonal level they resort to seeking law reform. At the institutional

¹²⁷ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', pp.245-268; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', pp.195-211.

¹²⁸ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', pp.245-268; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', pp.195-211.

level, men dominate state and bureaucratic structures and male officials deny women home ownership rights due to their cultural belief that women are not supposed to own property. In order to acquire a plot of land unmarried women have to enter into some form of 'marriage' relationship with men. This puts the unmarried women in a vulnerable situation especially in cases where the relationships go sour. Because the plot of land is registered solely in the male lover's name, these men could legally reclaim the plot of land. The findings further showed that in male-headed households it was the men who made the final decision whether to build or purchase a house while women played a supportive role, for example buying building materials, paying and supervising builders and cooking food for them. Although many respondents suggested that women are expected to be supportive when the male partner is around and also get involved to provide a home for the family when the male partner is absent, there was no evidence to show this.

In order to convince their husbands to spend more money on self-help housing, married women have to negotiate with their husbands in a non-confrontational manner. For example the wife has to prove that she can be trusted with money. Even then this does not guarantee the women co-ownership of the home. Consensus building has been shown to be very important in households where both couples are formally employed. In such cases the couple builds commitment and consensus through cooperation and pooling of their income. Studies further show that while workingwomen are able to convince their husbands to pool resources in order to have a home, it is difficult for unmarried women to convince their male partners to do the same. Male partners were unwilling to finance the home projects of their female lovers where there is no marriage or no legal sign of long-term commitment to live together.

Results of studies show that the gender system and contract theory is flexible and relevant to the study of modern society especially in housing studies. The gender system and contract model helps us to explore changes in the gender system and allow us to discuss variations among women in terms of class, age, and family status. Changes occur because various actors can question a system and therefore the gender system is fluid, with various dynamics prone to change.

This author strongly believes that the gender system and contract theory has a significant role to play for this particular study. The theory helps us to explore the dynamics among men and women as actors. In so doing we are able to assess the problems women face and the opportunities at their disposal that they can or able to use to exercise their ownership rights. Hence the gender system is not static but is in motion all the time, and the changes take place at all levels of society. Since the gender system is prone to change and shake up, it may be difficult to harmonize the different elements of the gender contracts at different levels. Hence, the gender contracts may not necessarily fit into each other but may instead contradict each other.

2.6 Summary of literature review

The above analysis of unmarried and married women compares the different gender contracts that exist between unmarried women with their male lovers and married women with their husbands. Unmarried male lovers and married men adulterers have no control over ownership of the home of their female lovers and mistresses even when they build the home.¹²⁹ In such situations the female lovers and mistresses have the power to decide on whose name the title deed of the plot of land on which the home is built is registered while the unmarried men are not concerned about ownership. Not much has been written on unmarried women and married men adulterers and their control over home ownership. Nonetheless, it is still a mystery as to why married male partners give their female lovers the power to have homes in their names even when they meet all the construction costs of the home project. The literature shows that in many Sub-Saharan African countries home ownership dynamics among married couples are determined by the social-cultural and institutionalised subordination of women and promotion of male supremacy.¹³⁰ As a result, married women have to constantly negotiate and renegotiate with their husbands and have also to deal with patriarchal socio-economic and institutional factors at individual, household and

¹²⁹ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', pp.245-268; Ntege, 'Women and Urban Housing Crisis'; Obbo, *African Women: Their Struggle for Economic Independence*.

¹³⁰ Ntimo-Makara, & Makara-Khatleli, 'Gender and administrative conflicts over land in peri-urban areas', p.200.

community level.¹³¹ At interpersonal level individuals tend to reproduce societal norms, values, power, and privilege.¹³² The above discussion shows that statutory rules, customs and tradition posit women as subordinate to men and in some cases as men's property even in the face of changing gender roles.¹³³ Women have traditionally been disadvantaged by the patriarchal ideologies related to private ownership of property. Hence women's deprivation of property through customary laws is an expression of patriarchal relations that have historically rendered women subordinate to and dependent on men for their housing rights.¹³⁴ Hence women's lack of ownership of land and housing is attributed to various factors that range from socio-political and social-cultural.¹³⁵

The above discussion also shows that whereas there is gender equality concerning inheritance in developed countries, in developing countries widows have to negotiate around the existing inheritance contract, which emphasizes that, the matrimonial home belongs to the male line. Both customary and statutory law advance the ideology of male dominance. Studies also show that in some countries a new inheritance contract was created whereby widows were able to inherit the matrimonial home. In these cases the state institutions for, example the local councils, chieftaincy and the statutory law, were the main enabling factors. This indicates that the state can play an important role in enabling widows to exercise inheritance rights. Larsson and Schlyter caution us that in order to comprehend married women's actions and the strategies they employ to become homeowners we should understand the cultural and legal structures of their societies.¹³⁶

¹³¹ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.195.

¹³² Narayan, et. al., *Voices of the Poor: Can anyone hear us?* p.175; Kabeer, N., 'Women, Wages and Intra-household Power Relations in Urban Bangladesh', *Development and Change* 28(2), 1997, pp.261-302.

¹³³ Narayan, et. al., *Voices of the Poor: Can anyone hear us* pp.178-180.

¹³⁴ Miraftab, F., 'On Loan from Home: Women's Participation in Formulating Human Settlements Policies In Jaquette, J., & Summerfield, G. (eds.) *Women and Gender Equity in Development Theory and Practice: Institutions, Resources, and Mobilization*, Duke University Press, Durham and London, 2006, p.189; Sayne, 'Ideology as Law: Is There Room for Differences in the Right to Housing', p.98.

¹³⁵ Miraftab, 'On Loan from Home: Women's Participation in Formulating Human Settlements Policies', p.189.

¹³⁶ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.213.

The gender system and contract theory is relevant in explaining the gender power relations that exist between men and women. It offers a means through which we become aware of the forces at work in these relationships. This theory depicts men and women as actors trying to shape their lives and enables us to explore the structural obstacles and opportunities caused by the gender system. Defining the process in terms of the ways men and women behave in different contexts assists us to understand how the gender system is being created and recreated all the time. Apart from the interpersonal relationships between men and women, we also investigate how the process takes place at all levels of society and in different ways, for example how laws are written, judgments are made, and policy documents and regulations are formulated. The gender system and contract theory helps us to establish when the gender system portrays the dominant gender contract of inequality and when it is disturbed and portrays changes in this system. Since the gender system is composed of different contracts, some of the elements of these contracts or relationships are bound to change over a period of time because the gender system is not static but dynamic in nature.¹³⁷ What brings about the changes in the gender system are changes in attitudes among all actors, policies, laws, regulations that govern social behaviour and also determine entitlements of economic resources for example land and housing.

¹³⁷ Tatyana, Y., 'The Gender System of Carelia (1950-2000), A Paper Presented at Gender and Power in the New Europe, the 5th European Feminist Research Conference, August 20-24, 2003, Lund University, Sweden.

CHAPTER THREE

METHODOLOGY

3. Introduction

This chapter focuses on the design and methodological aspects of the study. It describes the research process of the study that includes selection of the study area, target population, the sampling design, tools of data collection, and data management and analysis. It goes further to discuss the challenges encountered during the study that could have compromised the validity of the study's contribution to the understanding of gender dynamics in home ownership and the strategies employed to address the challenges. The selection of research methods and design therefore was a critical factor in handling the complexity, diversity and dynamics of home ownership as a social phenomenon. The data generated, analysed and interpreted through the chosen qualitative design techniques should lead to a deeper, richer and ultimately a clearer understanding of the sociological implication of the family law on both men and women.

3.1 Research Design

The study was largely based on a qualitative research design. A qualitative research design was adopted to capture men and women's experiences with regard to home ownership. In this regard the focus was to explore the ways in which women were deprived of home ownership and in what ways some women were able to become homeowners. In order to capture this information there was need to interpret men and women's actions, strategies and outcomes. As Larsson rightly observes, 'If we want to understand processes and why and how people act under certain conditions, that is, if we want to focus on men and women as actors and as negotiators in society, qualitative methods have many advantages. It is not easy to get answers to these questions through quantitative methods'.¹

¹ Larsson, 'Theoretical and Methodological Considerations', p.39.

The qualitative approach helped the researcher to interpret activities, events or information based on men's and women's own knowledge, their perspectives on the issues and their own experiences under various circumstances. This formed a basis on which to scientifically analyse processes of social change.² Since the study was mainly to find out how and why different categories of women were able or unable to own or co-own a home, there was no better research method than a qualitative one. Qualitative approach enables a researcher to capture peoples lived experiences, interpret these experiences and relate them to the social world around them.³

Hence, the choice of qualitative research designs compared to quantitative was mainly because of the research questions and stated problem. Rather than investigate the extent and prevalence of home ownership inequality, which would have required a quantitative approach, the study investigated the social dynamics that bring about this inequality from the persons lived experiences, through intensive oral interviews with key informants. This therefore called for a qualitative design. The qualitative method allows in-depth exploration of the issues and it captures the richness of peoples' experiences in their own terms. The qualitative approach helps the respondents to present their experience, views, perceptions, and ideas. The choice of this strategy was based on the need to obtain in-depth information, which can only be obtained from techniques that allow and encourage life story telling and probing. The most fundamental characteristic of qualitative research is its commitment to view events, action, norms, values, and experiences from the perspective of the people who are being studied. Since in this study the researcher sought to gain insight and to understand peoples' perceptions and attitudes about homeownership, there was no better method than this. In this study the researcher gives an explanatory and interpretive analysis of women and men's perceptions on home ownership.

² Mapetla, M., 'Gender and Urban Housing Research: An Introduction', in Larsson, A., Matseliso Mapetla and Schlyter A (eds.), *Gender and urban housing in southern Africa: emerging issues*, Roma, Lesotho: Institute of Southern African Studies, National University of Lesotho, 2003, p.4.

³ Miles, B., & Huberman, A., *Qualitative Data Analysis: An expanded Source book*, second edition, California, Sage publications 1994.

3.2 Research Procedures: Sample design, sampling techniques, sampling procedure

3.2.1 The Research Process

This section focuses on the whole research process right from the selection of the study area up to data collection stage. Broadly, the study was carried out in Kampala the Capital of Uganda.⁴ Specifically, the study was conducted in Banda and Kiwatule parishes, which are located in Nakawa Division, one of the five divisions in Kampala City.

⁴ Administratively, Kampala City Council consists of 5 divisions namely, Makindye, Rubaga, Central, Kawempe, and Nakawa. The five divisions are subdivided into 99 parishes and 811 sub-parishes. Please see, Kirega-Gava, *Kampala City Handbook, 2000*, Gava Associated Services, Kampala, p.16.

Figure 3.2: MAP OF UGANDA SHOWING DISTRICTS

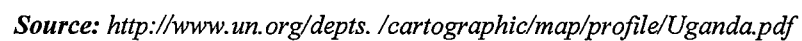


Figure 2: Map of Kampala City showing the five divisions in Kampala

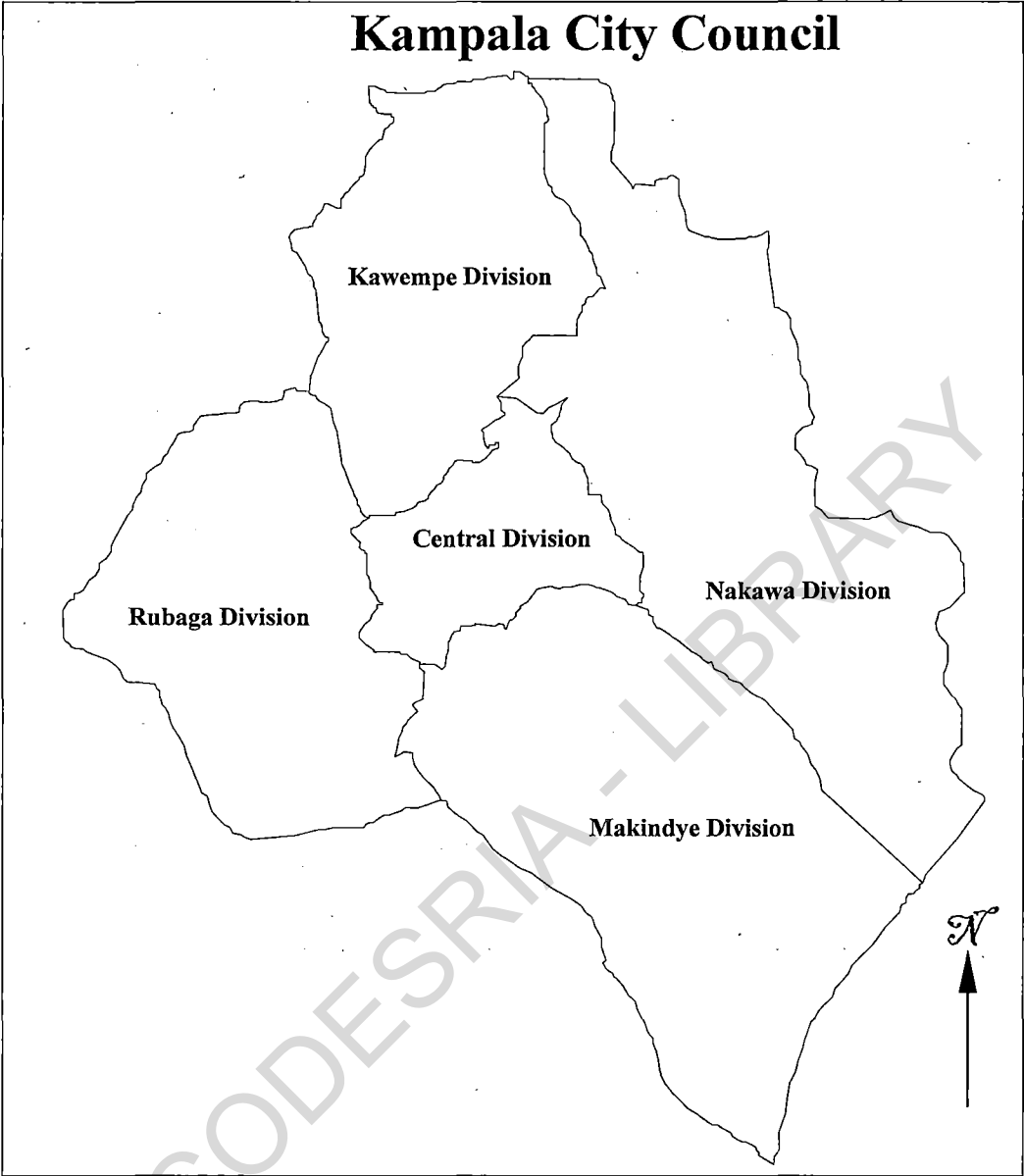


Figure 3: Map of Nakawa Division showing parishes.

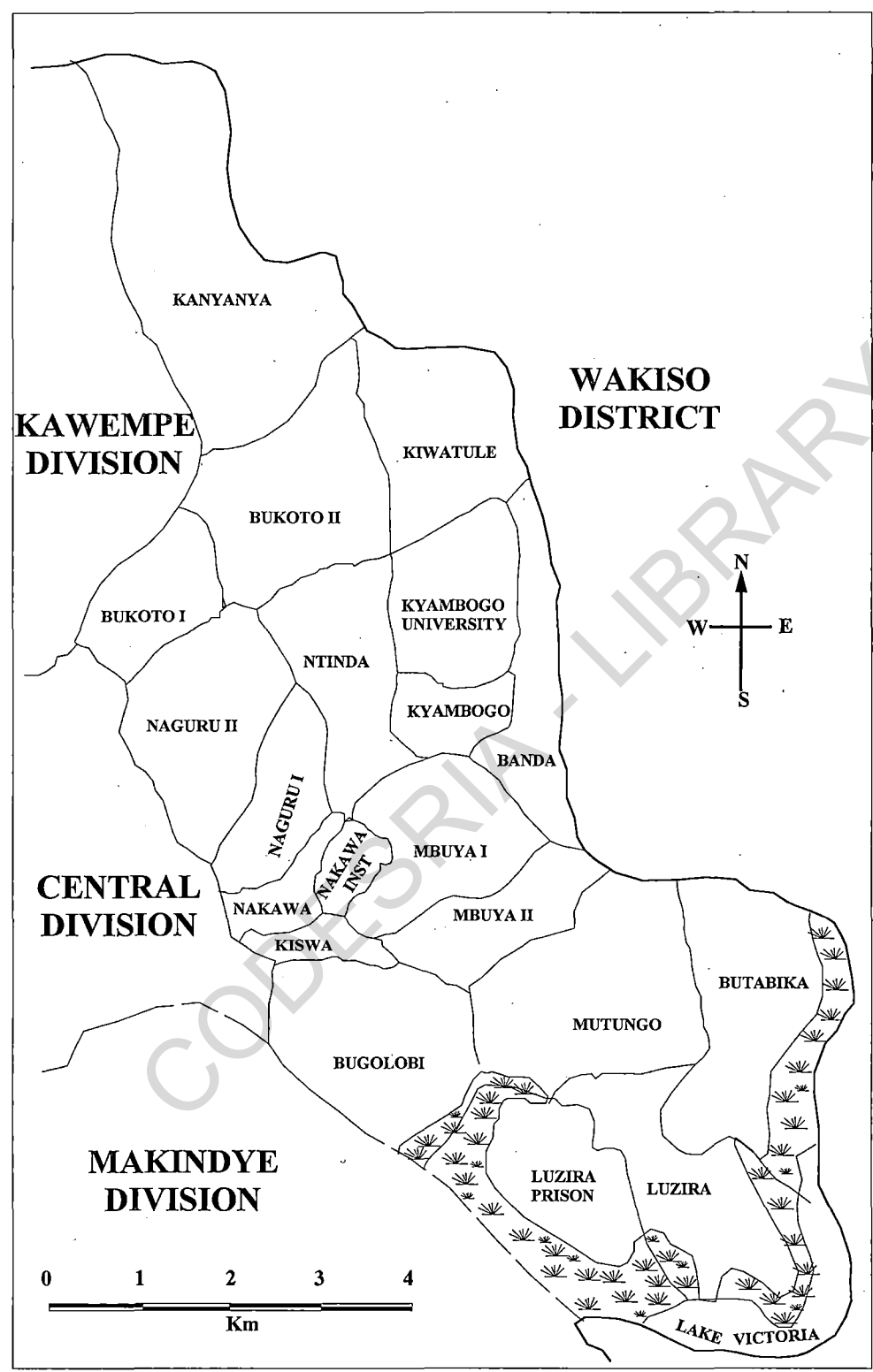


Figure 4: The cells or villages in Banda Parish

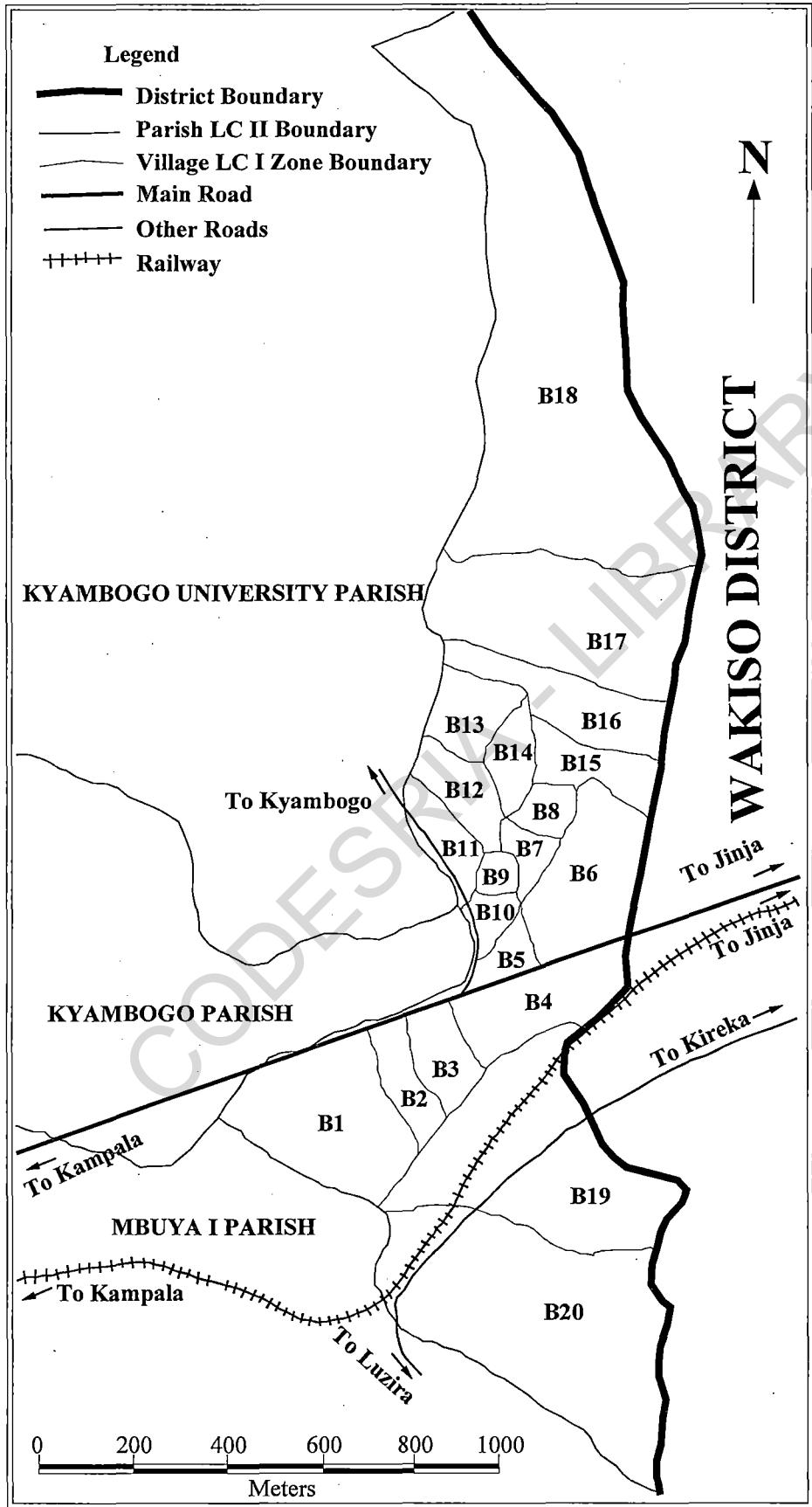
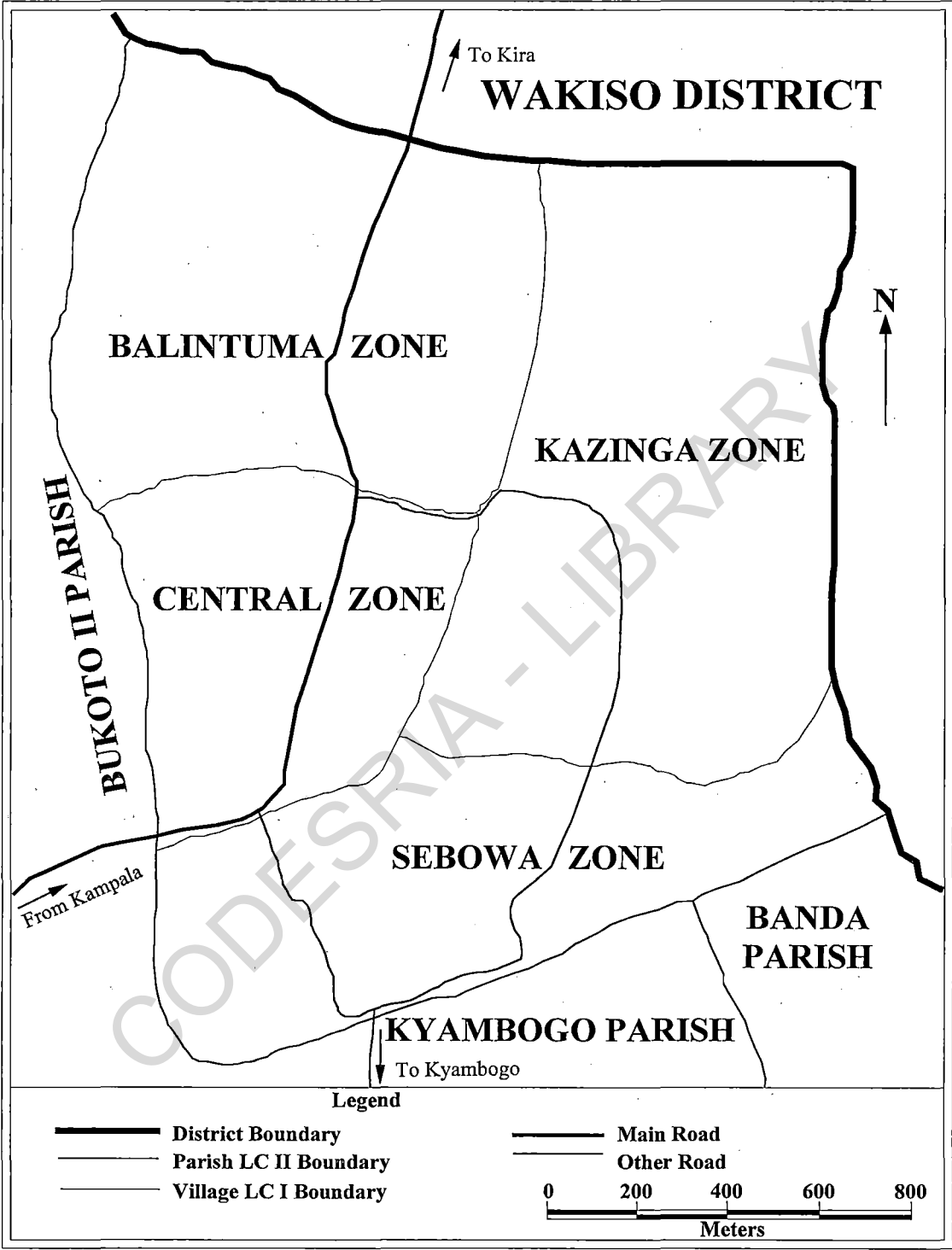


Figure 5: Map of Kiwatule Parish showing the different cells or villages.



Kampala City is divided into five divisions: Makindye, Rubaga, Kawempe, Nakawa and Central. Recently two more divisions, namely Makerere and Kyambogo, were created to cater specifically for the needs of large institutions of learning located in those areas. However, these two divisions are not yet fully recognized because of the legal requirements needed before they are made divisions.⁵ The five Kampala Divisions are further sub-divided into small units from parish to village level. Currently there are 98 parishes and 998 villages.⁶ Kampala City boasts of the most vibrant economy in the country due to its strategic location along the main international trade routes, a high concentration of people with high degree of construction activities and developmental infrastructure.

3.2.2 History of Banda

Banda is one of the Parishes in Nakawa Division. It is only 10 Kilometres from the City centre. It is one of the areas that belong to one of the children of the late Kisosonkole, the former County Chief of the Buganda Kingdom. Kisosonkole was the maternal grandfather of the current Kabaka, Ronald Mutebi. Most of the land in Banda belongs to the late Kisosonkole although most of it has been sold off to developers. According to one of the elders in Banda, when the British came to Uganda they divided land into two portions, one of 9000 acres, and the other of 8000 acres. The 9,000 acres fell under the wetlands and government controlled land while the 8,000 acres was allocated to the Kabaka of Buganda. The Kabaka used to give 8 miles to each County Chief as a reward for their work and loyalty. Kisosonkole was one of the County chiefs (abami) who acquired 8 miles of land from the Kabaka at Banda. When Kisosonkole died, he bequeathed the land to all his children. The first Kabaka of Buganda married one of the children of Kisosonkole who happened to be the mother of the current Kabaka of Buganda Ronald Mutebi. When Ronald Mutebi mother died, his maternal grandfather married a woman from South Africa. At that time Banda was unplanned and scarcely populated with about forty households. Most residents had big pieces of land. The roads were muddy but they were later worked on. There were no schools and no hospitals in the area. There were a number of

⁵ Kirega-Gava, *Kampala City Handbook*, Gava Associated Services, Kampala, 2000, p.31.

⁶ Kirega-Gava, *Kampala City Handbook*, p.31.

squatters on the land. The new Queen then advised the squatters to legalize their stay on her land by paying money. The squatters who failed to pay were allocated small plots of land and the rest of the land was sold off to willing buyers. The type of tenure on the land depended on how much a squatter paid. Those who paid more acquired the mailo type of tenure while those who paid less obtained a lease of forty-nine years.⁷ The Queen gave a large area of land to Kyambogo College, which is now Kyambogo University. Currently Banda has 11 Zones (B1-B11). The population has increased tremendously and construction of houses has increased. There are about 500 houses in the Parish. Since Banda borders Kyambogo University, most of the houses have been turned into hostels to accommodate the growing number of students. Hence the main activities in the areas are student related for example there are a number of eating-places, stationery shops, photocopying facilities, photography, and telephone kiosks.

3.2.3 The History of Kiwatule

Kiwatule is one the parishes of Nakawa Division. There are four zones in Kiwatule, namely, Kazinga, Central, Balintuma, and Sebowa. Three people, namely Balintuma, Sebowa and Kiddu, mainly owned all the land in Kiwatule Parish on 'mailo' type of tenure. In the 1960s there were about 40 households and each household had about 15 members. Of the 40 homes, about 28 had land certificates (title deeds) while the families occupying the other 12 homes were squatters (bibanja owners). Most of the houses were iron roofed with mud and wattle walls. Even the landowners had mud and wattle houses.

Housing development started around 1966 when Kabaka of Buganda was dispossessed. People then moved from Mengo and settled in Kiwatule. Between 1972 and a 1979, the number of people moving into the area increased, due to insecurity in Late President Amin's regime. Currently Kiwatule has a population of about 18,000 people. The majority of the houses are iron roofed. In some areas like Kazinga Channel most houses are tile roofed. This is an indication that the income level of the people in the area is very high.

⁷ 'Mailo' type of Tenure is where a person owns land in perpetuity.

Most of the roads in the area are tarmac through self-help initiatives and with the help of the City Council. There are a number of schools in the areas, and a planned market. The price of land in the area varies from place to place depending on whether the area is well planned or crowded, or near the main road. In well-planned areas like Kazinga, a 25 decimal piece of land costs an equivalent of 42,000 United States dollars.

3.2.4 Study Area Selection

This section discusses the criteria used to select the study sites. The aim is to explain why the sites were selected against the rest hence justifying the relevance of the study sites to the current study. In selecting the study sites, priority was given to the nature of the land tenure system in that area. To identify the areas with secure land tenure system, the researcher consulted officials in the Kampala City Council. The main aim was to select an area where many people own homes on a secure legal basis. With all the knowledge on the different types of tenure system in Kampala, the officials in Kampala City Council identified Nakawa Division as the ideal area to carry out the research. They confirmed that most of the land in other divisions of Kampala, for example Makindye, Rubaga and Kawempe falls under the Buganda Kingdom and hence belongs to the King. Most people who reside on Kabaka do not have secure land holding.

However, recently the Kabaka allowed people to lease their pieces of land from the Buganda land Board. However, the process is so tedious and times consuming that many people are reluctant to acquire title deeds. It is for this reason that such areas were eliminated from the study sites, since identifying persons with title deeds would be like trying to get water from a stone. Nakawa Division officials were enlisted to help identify the relevant parishes to work in based on the land tenure system and settlement patterns in the area.

The researcher was interested in middle-income areas because such in these areas people prefer to construct their homes on secure land ownership due collateral related benefits. The Nakawa Division officials recommended five parishes as the few parishes where land is held under leasehold and freehold tenure systems, and where there are many middle-income homes. The selection of Banda and Kiwatule parishes

in Nakawa Division was based on the land tenure system prevailing in the area, the resident's economic activities in terms of housing infrastructure development and the areas' proximity to each other. Although initially the idea of this study was to work only in Banda parish if enough life stories were obtained because location of respondents would not influence the results, this was never to be. There were not enough life stories to record not because there were no more relevant respondents, but simply because very few people had time for us and were willing to tell their stories. This confirmed the urban sociology orientation that working in an urban environment is not as easy as working in a rural environment. Therefore the choice was to move on to a neighbouring parish, Kiwatule.

3.2.5 Selection of Respondents.

This section presents the procedures and criteria used to identify the key respondents. Sampling of respondents was purposive and 'targeted' using a 'target' sampling technique. Purposeful sampling of respondents is a vital decision in a qualitative study.⁸ Purposive sampling technique was employed to ensure that only those households, which possessed a title deed, were selected. Based on a qualitative design not much attention was paid to the number of respondents in this regard. Although there is no official data on home ownership patterns in Banda and Kiwatule, identifying informants with title deeds was not difficult. The researcher requested the local council officials in Banda and Kiwatule Parishes to identify persons whom they knew had acquired title deeds. This was not difficult because the local council officials are normally involved in all land transactions in the parish and therefore they knew all the people with title deeds and those without. After identifying households with title deeds, local council officials were requested to categorize them according to marital status. Although identification of households with title deeds was easy, the selection process was at the beginning tedious and time consuming because of the many categories of gender situations outlined. One of the strategies the researcher also

⁸ Miller, R., *Researching Life Stories and Family Histories*; Sage Publications, London, 2000; Creswell, J., *Qualitative Inquiry and Research Design: Choosing Among Five Traditions*, Sage Publications, Thousand Oaks, London, 1998.

used to identify the relevant respondents was through the snowball process.⁹ This strategy was particularly useful in identification of widows and households with title deeds. We noted that each category tended to know each other, for example widows, married persons, separated, and cohabiters knew people in similar circumstances and by just asking a widow or married woman to identify a fellow widow or married woman, we were able to identify more respondents. Similarly, household heads with title deeds tended to know each other too. This snowball process helped in identifying more respondents in different categories and to confirm whether the household members actually acquired a title deed. As a result it was easy for the researcher to move straight to the right households or respondents and this saved a lot of time. In some cases the respondents took us to other respondents in their category and in so doing the new respondents confided in us their life stories. It is at this point that interviews were conducted in these households.

3.2.5 Sample Size and Type of Respondents

This section explains the number and categories of women and men interviewed in the study sites. In total we interviewed a total of 40 respondents that included widows, married couples, cohabiting couples, and separated women out of which 24 life stories were selected after realizing a general pattern in the way women were either deprived of homeownership or were able to co-own the home with the their husbands. The main aim was to identify the different ways in which married women were unable or able to become homeowners in marriage and upon the death of their husbands. The important issue here was to make sure a saturation level of information was reached.¹⁰ This comes about when interviewing more people does not add any new information. The purpose of having these categories of people was to obtain in-depth patterns of social relations, and their contradictions and similarities. To make good use of the life history approach we need to identify the empirical boundaries of our respondents by defining the kind of respondents to interview. The group of respondents interviewed can be taken as a cohort whereby the people in that group are of the same age or

⁹ Miller, *Researching Life Stories and Family Histories*, p.79; Creswell, *Qualitative Inquiry and Research Design*, p.119.

¹⁰ Miller, *Researching Life Stories and Family Histories*; Bertaux, D. (ed.), *Biography and Society: The life history approach in the social sciences* Sage, Beverly Hills, 1981.

belong to the same social structure; otherwise it becomes difficult to compare the life stories.¹¹

3.2.6 In-depth interviews

In this study the researcher developed an unstructured question guide based on the information obtained from the literature review. The researcher put emphasis on matters related to the research questions and this information provided part of the primary data. Issues covered included the law of succession and its practicability, the influence of culture on the law, relevant clauses in the law on home ownership, sources of information of the law and case laws.

The researcher strategically interviewed people who were knowledgeable about property ownership and the law. In this regard a number of key informants were consulted. These included among others Kampala City council officials, staff from Ministry of Lands, Housing and Physical Planning, staff in Administrator General's office, NGOs involved in Estate property wrangles, for example FIDA (U), the Ministry of Gender and Community Development, the National Housing and Construction Corporation, Housing Finance and other Banking Institutions. Key informants were the entry point to the study and this helped the researcher to have prior knowledge about what is actually happening before interviewing the key respondents.

The aim was to investigate home ownership issues and the law and other related issues so as to have explanations on the factors that account for and lack of home ownership. To ensure that the laws were not misquoted the researcher asked one of the lawyers in private practice to read through the work related to law. Interviews were conducted in English, which is the official language of Uganda. Information from key informants helped the researcher in generating an understanding of the salient issues on home ownership. Most of the information gathered from the key

¹¹ Zolta'n Ka'ropa'ti, 'The methodological use of the life History Approach in a Hungarian survey on mobility and urbanization'. In Bertaux, D., (ed.), *Biography and Society: The life history approach in the social sciences* Sage, Beverly Hills, 1981, p.136.

informants supplemented the findings, and enlightened the researcher on certain issues especially regarding the law.

3.3 Data Collection Methods

This section focuses on the main methods used to collect data.

3.3.1 Data Collection tools

The main tools used to collect data were the tape recorder, digital camera and semi-structured interview guide and notebooks.

3.3.1 Data collection techniques

Different techniques were combined in the process of data collection. These included in-depth interviews of key informants, recording the life stories, and taking notes, observation, photographing with a digital camera, and reviewing of documents. The Life stories were mainly told in English, Runyankore and Luganda. Since the researcher is conversant in the three languages, the messages were well understood and well interpreted. Hence the quality of the stories was not affected through translation. English was the main language of communication with government officials.

3.3.2 Life History/Life story Interviews

The usefulness of life stories in the context of sociological research cannot be over emphasized. As a number of authors observe, sociologists are developing curiosity for other research techniques of data collection. There is a general observation that life stories are sometimes more useful in getting to the core of sociological objects than survey data.¹² Atkinson defines a life story as the story a person chooses to tell about

¹² Plummer, K., *Documents of life*, Sage Publications, Thousand Oaks, California, 2001; Wengraf, T., *Qualitative Research Interviewing*, Sage Publications, London, 2001; Miller, *Researching Life Stories and Family Histories*; Chamberlayne, P., Bornat, J. and Wengraf, T., *The Turn to Biographical Methods in Social Science: Comparative issues and examples* Routledge, London,

life he or she has lived, told as completely and honestly as possible usually as a result of a guided interview by another.¹³ To him there is little difference between a life story and a life history because they are usually different terms for the same thing. In carrying out this kind of interview the researcher does not go to the field with predetermined questions to be asked. The purpose of the interview, which is usually unstructured, is to listen and later interpret the respondent's experience of a particular topic or situation. This is a qualitative method that is meant to generate in-depth, information that can be analyzed qualitatively to establish what kind of things exist or happen. This method of interviewing is directed toward understanding respondents' perspectives on their lives, experiences or situations as expressed in their own words. In regard to life story method of data collection, people appear to know a lot about what is going on in their lives than the sociologists if given a chance to talk freely.¹⁴ The explanations individuals offer of their lives regarding homeownership are shaped not only by the prevailing cultural norms within which they operate but are also shaped by institutional, and interpersonal factors.¹⁵ In this regard, homeownership can be associated with agency, strategies and modes of behaviour. Hence if used in a truly sociological framework, life stories are some of the best tools with which to elicit the expression of what people already know about social life. In this regard, the researcher recorded stories of widows, married men, married women, separated women and cohabiters. Life stories lasted between 30 minutes and one hour. There were two ways in which the researcher recorded the life story, depending on each respondent. One way was to leave the respondent to tell the whole of her or his story as the researcher noted down issues that were not clear in the story. The other way was to request the respondent to tell his or her story and in between the researcher would probe on issues, which needed more clarification. It was difficult to stick to one approach of story recording because some respondents were very fast and hence interrupting them would make them lose the trend of the story, while others were

2000; Bertaux, D., 'Introduction'. In Bertaux, D., (ed.), *Biography and Society: The life history approach in the social sciences*, Sage, Beverly Hills, 1981, p.6.

¹³ Atkinson, R., *The Life Story Interview* Sage, Thousand Oaks, 1998, p.8.

¹⁴ Plummer, *Documents of life*; Bertaux, 'Introduction', p.38.

¹⁵ Rosenwald, G., & Ochberg, R., (eds.) *Storyed lives: The cultural politics of self-understanding*. New Haven: Yale University Press, 1992.

slow, pausing, pondering, trying to remember. The researcher found it easier to intervene and probe respondents who were slow in speech.

3.3.3 Photographs

One of the ways in which the researcher could show the kind of study sites the study was conducted was through presentation of pictures. Pictures play a vital role in providing evidence and interpretations. The types of houses in study areas depict the social class of the area and of individual respondents or residents.

3.3.3 Secondary data

The researcher undertook a comprehensive secondary data review on the law of home ownership, from libraries, court files and the Internet. An extensive literature review of research reports, books and other documents such as journals, workshop/conference papers and newspapers was undertaken. The researcher put emphasis on the literature related to the research questions. This provided a context and reference for primary data.

In summary, the researcher used the above techniques at different times to different respondents and in different situations to capture different data. Bryman also supports this idea when he states, 'one reason for the employment of a variety of techniques is that it allows inferences or 'leads' drawn from one data source to be corroborated or followed up by another'.¹⁶ Life histories were recorded to capture the lived life experiences of the main respondents. In-depth interviews were conducted to capture information from key informants. Photographs were taken to capture the appearance of the homes visited. Data from court files, NGOs, parliamentary debates, Government policy papers, Acts of Parliament formed part of the secondary information sources.

¹⁶ Bryman, A., *Quantity and Quality in Social research*, Routledge London, 1992, p.47.

3.4 Data collection procedure

The section focuses on the procedure in data collection. To access the research community without any hindrances, certain procedural steps were taken. These mainly involved obtaining research permission at national level, the City Council headquarters, the Division level and local council levels. The researcher secured introductory letters from the Sociology Department at Makerere University where she is based and the National Council of Science and Technology (NCST), the institution responsible for approving research in Uganda. The letter from the Sociology Department introduced the researcher to the study area and to confirm to the local council officials that the data collected was purely for academic purposes. The letter from the National Council of Science and Technology gave the researcher the support and authority to interact with Government officials without any hindrance. However, accessing documents from the high court necessitated acquisition of an introductory letter from the Solicitor General in the Ministry of Justice and Constitutional Affairs. This was to show evidence that indeed all the information from Court files was legally acquired. Accessing the archives in the high court was not easy despite obtaining the letter from the Solicitor General. The Registrar of High Court, Family division, asked the researcher to write another letter requesting for the use of the archives. Archives at the High Court contain all files concerning court cases. With the assistance of the filing clerk, the researcher was able to read a number of files on matters concerning administration of estates, divorce cases, and other civil cases, which involved family issues.

Since a home is a private property availability of a local council representative was vital to enable the researcher access respondents' courtyards. After the local council representative had introduced the researcher to the household, he or she was free to move away and come back after an hour and introduce the researcher to another household.

3.4.1 Phase I - Preliminary preparations for data collection

a) Preliminary visit to the study areas and selection of the study sites

Following approval and clearance by the National Council for Science and Technology (NCST), a letter from the Sociology Department, telephone communication by the Division staff with the parish staff, the researcher visited Banda parish officials to introduce herself and later familiarize herself with the parish boundaries. Several meetings were held with the town council parish officials, to obtain advice on economic activities of residents in the area so as establish a convenient time to meet the residents, and obtain suggestions on how to approach the residents. Meetings held with the town council parish staff revealed that the town council officials were not the best bridge between the researcher and the respondents because their role was mainly to collect taxes from the people. This meant that they would be a hindrance to the research, as the respondents would assume that the town officials had come to the household to collect graduated tax. It was later agreed in the meeting that the existing political structures of local councils be used to act as a bridge between the researcher and the respondents because local council officials are not involved in the collection of taxes, but are involved in solving community problems. Hence, in the two parishes, the local council officials were the bridge between the researcher and the respondents. With the local council officials it was easy to identify the relevant respondents who were willing and had time to tell their stories and to establish a convenient time to visit respondents.

b) Selection and training of Research Assistants:

The researcher had two research assistants who were both social scientists. One research assistant was employed in phase one in 2004 and another one in phase two in 2005. The third phase in 2006, did not utilize a research assistant because the researcher was following up the respondents of 2004 and 2005. It was difficult to identify a research assistant who had knowledge on the life story telling technique.

The life story approach as a technique of data collection is not commonly taught at Makerere University at undergraduate level. However, the research assistant recruited had vast experience in other qualitative data collection techniques and fieldwork

experience. Because life story recording and probing at the same time is a difficult process, and there was not enough time to train the research assistant in the first phase, the researcher did the entire recording and probing. In the first phase the role of the research assistant was to identify the relevant respondents and make appointments. Moving from one household to another, making appointments was a very tiring process. In the second phase of 2005 another research assistant was recruited because the research assistant in phase one had travelled to London. In the second phase the research assistant was trained to record a life story and at what moment to probe. Although the research assistant in the second phase recorded some life stories, the researcher re-interviewed the same respondents in the subsequent meetings to capture all the information the research assistant had left out. Probing in a life story is a skill that is not easily grasped. In order to capture all the missing information the respondents were visited at least twice but a maximum of three times to avoid respondent fatigue.

c) Assurance to respondents:

Aware that the subject of ownership is very sensitive, the researcher took certain measures to ensure that she collected the required information from respondents. First of all, the research team made sure that they moved with one of the local council representatives who introduced them to the household. The local council representative briefed the respondents on the study. Where the respondent was not clear, the researcher would elaborate to make sure that the respondent understood the purpose of the study. Most respondents were concerned about the economic benefits of the research. They expressed respondent fatigue with regard to researchers who come to their homes, collect data and are never seen again. They wondered where researchers keep all the data they collect. The researcher and her research assistants made attempts to explain but sometimes with no convincing answers. One widow who was going through a marital domestic trauma first called her relative at the university to find out whether he knew me before she could allow me to record her story. Indeed her story was enriching to this study, and without it, the researcher would have missed another element of home ownership dynamics. Nonetheless, with assurances from the local council representative and the researchers about anonymity and the use of pseudonyms, respondents of all categories became relaxed and willing to tell their

stories regarding home ownership. This not only eased the work of the researchers but also helped to complete the field research within the stipulated time framework.

3.5 Data Analysis.

This section focuses on the whole process of data analysis. It is handled according to the sub- headings that follow.

3.5.1 Analysis of life stories

This section explains how data from the field was analysed at the different stages of data collection.

a) Recording

The researcher continually recorded, made notes on salient issues in the stories by use of notebooks and audio tape recorders. The use of an audio tape recorder was negotiated with the respective respondents in the study. The researcher read through the notes at the end of each day to identify emerging issues to be probed in the next interview. Apart from the regular recording of the stories, time was set aside each day before proceeding to the next day to summarize and reflect on the overall outcome of the previous work. This helped in identifying more gaps and getting strategies to address such gaps.

b) Transcription and Biographic data Chronology

Audio taped data from interviews were transcribed verbatim to make sure that the information was accurate. Transcription also involved simultaneous translation of some of the stories from the ethnic languages like Luganda and Runyankore to English. Field notes were typed while the mind could still recall. Word processing was used to store the interviews. After transcribing, the researcher cleaned up the stories removing expressions like 'ehh', 'oh', and 'mm' and rearranged the stories

chronologically in what Wengraf has called Biographic data chronology.¹⁷ Later the gender categories were re-categorized further depending on the ownership patterns they depicted. The widows were categorized in terms of whether the spouse had died testate or intestate. The emerging issues were then compared with similar re-categorized gender categories. The chronological stories were analyzed using either thematic or content analysis. 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. The main goal of this analysis was to know the actual experience of respondents and draw the meanings and interpretations. The idea was to describe in detail people's experiences and how these differ or are similar to findings from key informants and documents. Comparative methods of data analysis were employed as proposed by Maykut and Morehouse, Glaser and Strauss.¹⁸ Data were collected and analyzed simultaneously. This permitted identification of important leads in the early phases of data analysis so as to pursue them immediately. Comparisons in this study were made in terms of the emerging patterns in the ways in which women were able to become homeowners or were deprived of homeownership. An interpretive analysis of data was used during these comparisons. This was undertaken to gain an understanding of the various dynamics in home ownership and whether these are shared or not.

The researcher used the guidelines given by Miles and Huberman, Le Compte and Presslie, and Silverman, on how to generate meaning from interview in the study. Some of the suggestions they make include noting patterns or themes, seeing plausibility and clustering and making comparisons and contrasts.¹⁹ In this study, the researcher for example compared life stories of unmarried women with those of married women to explore the different gender contracts that existed between the two

¹⁷ Wengraf, F., *Qualitative Research Interviewing: Biographic Narrative and Semi-Structured Methods: Biographic Narrative and Semi-Structured Methods*, Sage Publications, London, Thousand Oaks, 2002.

¹⁸ Maykut, P., and Morehouse, R., *Beginning Qualitative Research: A philosophical and practical guide*, London: The Falmer Press, 1994, p.44; Glaser, B. and Strauss, A., *The discovery of grounded theory: strategies for qualitative research* Chicago, Aldine, 1967.

¹⁹ Miles, & Huberman, *Qualitative Data Analysis*; LeCompte, M., and Preissle, J., *Ethnography and Qualitative design in Educational research*. Second edition. London, Academic Press, inc. 1993.

categories of women. The researcher analyzed the in-depth interview transcripts and field notes to come up with summaries of respondents' views on home ownership. The next step in the analysis focused on generating an explanation for the emergent patterns.

3.5.2 Secondary Data Analysis

The researcher looked at secondary data sources, mainly official policy documents, and analyzed these for contextual information in order to gain more insight on the issues. More current literature on home ownership continued to be reviewed.

3.5.3 Data quality control:

The researcher made good use of the supervisor to read through the transcribed stories to see whether all aspects had been captured. Where there were gaps, the researcher went back to the respondent and probed further on those particular issues raised by the supervisor. For the legal language and interpretations lawyers and scholars related to this field of study were asked to read through and check the quality and validity of the legal issues.

3.5.4 Ethical Considerations.

The issue of property ownership is very sensitive, especially in Africa. Most people do not want other people to know whether or not they own property, hence this study was conducted with a lot responsibility and care. To allay respondents' fears at the beginning of an interview the researcher would inform them about the broad objective of the study. She would further inform them of the importance of the research, and the way in which responses would be recorded, and then ask for their informed consent to participate in the study. People were not coerced to participate in the study. The researcher requested consent from the respondents before the tape recording. In addition, the respondents were assured that the information they give would be kept in strict confidence and would only be used for purposes of the study. Care was taken to ensure anonymity through out the study by using pseudonyms.

CHAPTER FOUR

INSTITUTIONAL AND LEGAL FRAMEWORK IN HOME OWNERSHIP

4. Introduction

This chapter looks critically at laws that govern homeownership in Uganda for unmarried and married women. The aim is to contextualise the legal institutional framework as one of the pillars of the gender system and contract theory on which this study is based. Apart from the interpersonal, cultural and ideological levels, which are specifically discussed in the empirical chapters, the institutional level plays a vital role in determining women's right to homeownership. The main interest in this chapter is to show the influence of statutory and customary laws on unmarried and married women right to homeownership as a comparative analysis. This is because laws governing homeownership for unmarried women are general in nature, while laws governing homeownership for married tend to be specific at different stages of marriage life for example during marriage, separation, divorce and widowhood. Hence a woman's marital status determines the ways in which women are able or unable to become homeowners.

Therefore, unmarried and married women have different gender contracts. The first part discusses how statutory and customary law impact on unmarried women's right to own a home in Uganda. This is because one of the ways through which women can own a home in Kampala is through sole ownership as individuals by direct purchase or construction. The second part discusses the impact of the existing written and unwritten laws of Uganda on married women's rights to home ownership during marriage, separation, divorce and widowhood. This is because one of the ways through which women can own a home in Kampala is through marriage.

4.1 Influence of Property Laws on unmarried women

This section presents the laws that govern property ownership in Uganda and how these influence unmarried women's right to homeownership. Uganda, like many African countries, has two legal regimes, customary (unwritten law) and statutory law, both of which govern property ownership. These two legal regimes have an influence on unmarried women's rights to own a home.

4.1.1 Statutory laws and their impact on unmarried women

Like many countries, Uganda ratified a number of international conventions that protect women against discrimination. These include: The Convention on the Elimination of all forms of Discrimination against Women (CEDAW); Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights (ICCPR).¹ At regional level Uganda ratified the African Charter on Human and Peoples Rights. Not only has Uganda ratified the said international and regional Conventions but has gone ahead to incorporate them in the Constitution. The debate is whether Uganda government has been able to implement these conventions. Nonetheless, these international and regional conventions have played and continue to play an important role in most of Uganda's national legal statutes and instruments.

The international and regional Conventions do have a latent force and they guide states in the way they structure national legislation.² For example, the international Conventions also play a role to alert governments to what they are expected to do to ensure that they follow the Conventions they ratify. However, in some cases, there is poor or no implementation of the international Conventions by the national governments. Hence, the gender sensitive international legal frame framework becomes cosmetic to the women who continue to live without any legal protection. The sub-sections that follow discuss the specific statutory laws that influence property rights for unmarried women. Unmarried women's home ownership rights are

¹ Tamale, S., 'Law reform and women's rights in Uganda', *East African Journal of Peace and Human Rights* 1(2), 1993.

² Tamale, 'Law reform and women's rights in Uganda'. p.164.

guaranteed and protected under the 1995 Uganda Constitution, the Registration of titles Act and the Land Act.

4.1.2 The 1995 Constitution and its influence on unmarried women

In Uganda the 1995 Constitution is the major legal instrument that guards against all kinds of discrimination as required by most international legal regimes.³ As some authors have noted, the 1995 Uganda Constitution is regarded as one of the most gender neutral with regard to property rights in Sub-Saharan Africa.⁴ The Constitution also provides a basis for other laws, for example the 1998 Land Act. According to section 237 of the Constitution, land in Uganda belongs to the citizens of Uganda. In addition, the 1995 Constitution provides for both men and women to own property individually or with others.⁵ However, the Constitution does not specifically cater for female-headed, and cohabiters.⁶ Nonetheless, the Constitution provides for any adult woman of sound mind the right to own property in her own name.⁷ As far as property ownership is concerned the Constitution does not distinguish between married and unmarried women.⁸ Judging from the above provisions in the 1995 Constitution, there is no doubt that unmarried women's ownership rights are well protected, guaranteed

³ Constitution of the Republic of Uganda, 1995, Reproduced by The Law Development Centre, Kampala; Mulyagonja, I., 'Unravelling the Welfare Principle: The effects of the division of family property on custody decisions in Uganda A Dissertation presented in partial fulfilment of Postgraduate Diploma in Women's Law of the University of Zimbabwe, Harare, 2000, p.37.

⁴ Asiimwe, 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform'; Tamale, 'Riding the Paper Tiger'; Tibatemwa- Ekirikubinza, L., 'Property Rights, Institutional Credit and the Gender Question in Uganda *East African Journal of Peace and Human Rights*, 2 (1), 1995, p.69.

⁵ Constitution of the Republic of Uganda 1995, The Law development Centre, Kampala, see section 26 (1), p.clxvi.

⁶ Tamale, 'Riding the Paper Tiger', p.81.

⁷ Tibatemwa- Ekirikubinza, 'Property Rights, Institutional Credit and the Gender Question', p.69; Kabanda, N., 'Women's Access to and Control over Land in Uganda: A Tool for Economic Empowerment'. In Bond, J. (ed.) *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press, Durham, 2005, p.345; Musoke, D., 'Shattering the Glass Ceiling: What women in Uganda need to make it to the Top'. In Bond, J. (ed.) *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press, Durham, 2005, p.367.

⁸ Tibatemwa- Ekirikubinza, 'Property Rights, Institutional Credit and the Gender Question', p.69; Lubega, S., 'Law Reform and Effective Implementation as the Means to economically empower the Ugandan woman'. In Bond, J. (ed.) *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press, Durham, 2005, pp.385-386.

and therefore they have no barriers to owning a home as individuals, apart from economic constraints. How unmarried women are able to benefit from the above provisions compared to married women and what happens in practice is the major concern of this chapter and the empirical chapters.

4.1.3 The Registration of Titles Act and its impact on unmarried women

The 1964 Registration of Titles Act allows any Ugandan citizen to purchase and own land.⁹ Ownership of personal property is determined by the name(s) in which it is registered. Section 59 states that ‘ Every certificate of title issued under this Registration of titles Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power’.¹⁰ This implies that if the unmarried woman’s name is on the title deed, she has the right of ownership. The Registration of titles Act therefore gives liberty to individuals to decide how they would like to own property.¹¹ Section 59 provides all options for individuals to own property either solely or with others. What is debatable is whether unmarried urban women find it easy to use the Registration of titles Act to own homes compared to married women. Although the Registration of Titles Act provides for any Ugandan Citizen freedom to purchase and own land, women own only 7 per cent of the land while men own 93 per cent.¹² Nonetheless, judging from, the 1995 Constitution, and the Registration of Titles Act, unmarried women have a right to own land and housing in their individual capacities without any statutory hindrance.

⁹ Kwesiga, J., *Women’s Access to Higher Education in Africa, Uganda’s Experience*, Fountain Publishers, Kampala, 2002,p.123; Registration of Titles Act Cap.230, LDC Publishers, Kampala, p.5081, See. Cap. 205 of the 1964 Laws of Uganda

¹⁰ Registration of Titles Act, Cap. 230, p. 5096.

¹¹ Registration of Titles Act, Cap. 230, p. 5124.

¹² Tamale, ‘Law reform and women’s rights in Uganda’, p.174.

4.1.3 Influence of Customary Laws on unmarried women's right to homeownership.

This section focuses on the ways in which customary law impacts on unmarried women in terms of homeownership. Various authors have pointed out the complexity of customary law and its impact in legal practice.¹³ Kakooza defines customary law as 'a rule or set of rules, established, accepted and binding on the members of a given society in their social relations'.¹⁴ Customary law is still applicable in many of the communities in Uganda and its impact on women's right to ownership of property differently depending on the marital status.¹⁵ Unmarried women are unable to own property largely because of social and cultural practices, which often culminate into law.¹⁶ It is uncommon for parents to give land to daughters, even at death. This is because customary laws in many parts of Uganda tend to favour males to females in land ownership.¹⁷ Lack of entitlement to land from the family means that for unmarried women, owning a home becomes difficult. The only alternative is to resort to the market to purchase land and build a home, or purchase a home directly from the housing cooperatives.

There are other situations where unmarried women's land ownership is complicated by gender ideology around the notion that women should not own land and housing. For example the right of unmarried women to own a home in Uganda still carries stigma. Unmarried women homeowners are regarded as hopeless, frustrated, prostitutes and senior spinsters.¹⁸ In some areas unmarried women who own land or

¹³ Kakooza, 'The Application of Customary Law in Uganda', p.23; Tibatemwa- Ekirikubinza, 'Property Rights, Institutional Credit and the Gender Question', p.69; Tamale, 'Law reform and women's rights in Uganda', p.165; Mulyagonja, 'Unravelling the Welfare Principle: The effects of the division of family property on custody decisions'; Asiimwe, J., 'Women and the struggles for land in Uganda', in Tripp, A., & Kwesiga, J (eds.) *The Women's Movement in Uganda, History, Challenges, and Prospects*, Fountain Publishers, Kampala, 2002; Asiimwe, 'Making Women's Land Rights a Reality in Uganda', p.174.

¹⁴ Kakooza, 'The Application of Customary Law in Uganda', p.24.

¹⁵ Kakooza, 'The Application of Customary Law in Uganda', p.23.

¹⁶ Tibatemwa- Ekirikubinza, 'Property Rights, Institutional Credit and the Gender Question', p.69.

¹⁷ Tibatemwa- Ekirikubinza, 'Property Rights, Institutional Credit and the Gender Question', p.69; Asiimwe, 'Making Women's Land Rights a Reality in Uganda', p.174.

¹⁸ Manyire, 'Gender and Housing Development in the Low Income Suburbs', p.5; Ntege, 'Women and Urban Housing Crisis'.

housing tend to be referred to by derogatory names like 'Nakyembekedde'.¹⁹ The above names also imply that unmarried women are 'self-assertive, unruly, and unmarriageable, and prostitutes'.²⁰ This derogatory naming is meant to discourage unmarried women from owning their own homes because culturally women are meant to be dependent on men for housing. When women own houses, they become independent and this is a challenge to the traditional norms of women's dependence on men. With economic power men are able to have control over women. To shift this power into the hands of women is to sign the men's death warrant.²¹ Some unmarried women have taken the negative cultural connotations of Nakyeyombekedde or 'I built my house' to an extent where they have sold off their inherited plot of land before they get married. It may not be surprising therefore to find that such derogatory names could discourage unmarried women from buying land and owning homes.²² It is reported that some unmarried women are forced to register land in the name of a male relative, for example a son or brother or even in a friend/boyfriend's name.²³

Traditional societies tend to discourage young unmarried women from advancing in education 'too far' for fear that that they might acquire too much money and too much property and hence reduce their chances of getting married, or if they get married fail to maintain a stable marriage.²⁴ As a result, successful homeowners tend to be single

¹⁹ Mulyagonja, 'Unravelling the Welfare Principle: The effects of the division of family property on custody decisions', p.39; Kwesiga, *Women's Access to Higher Education in Africa, Uganda's Experience*, p.125, The concept 'Nakyeyombekedde' literally means 'I built for myself'; According to Manyire, it has a derogatory connotation of unattached urban women who have their own sources of income, raise children without a resident male partner, and are free or male control and surveillance, hence 'can engage in unsanctioned, illicit and casual sexual liaisons', So detested is female ownership of houses that among the Bagisu or Eastern Uganda the equivalent term for 'Nakyeyombekedde' is 'Nakyombe', which implies 'the terrible one'! See Manyire, H., 'Gender and Housing Development in the Low Income Suburbs of Jinja Municipality, Uganda', p.2.

²⁰ Ntege, 'Women and Urban Housing Crisis'; Nkurunziza, 'Informal Land Delivery Processes and Access to Land for the Poor'.

²¹ Ntege, 'Women and Urban Housing Crisis', p.51; Oguli-Oumo, M., 'Property in Marriage Relations, Its Legal Implications for Women in Uganda, in Bond, J. (ed.) *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press, Durham, 2005, p.249; Nkurunziza, 'Informal Land Delivery Processes and Access to Land for the Poor', p.108.

²² Ntege, 'Women and Urban Housing Crisis', p.51; Manyire, 'Gender and Housing Development in the Low Income Suburbs', p.2.

²³ Kabanda, 'Women's Access to and Control over Land', p.344.

²⁴ Mulyagonja, 'Unravelling the Welfare Principle', p.36; Asimwe, 'Making Women's Land Rights a Reality', p.174.

women above 30 years because the young women tend to have high hopes in husbands' houses but the older women, based on their own experiences, tend to look at marriage as temporary.²⁵ However, the effect of societal cultural resistance will depend on the different socio-institutional situations in which unmarried women find themselves. These may include among others education level, employment status, income level, social upbringing and social interactions.²⁶ For example girls who grow up in female-headed households are most likely to be independent in thinking and therefore are likely to have their own homes than girls who grow up under male headed households. Therefore, while other unmarried women may be discouraged to own a home due to the norms society imposes on them; other unmarried women are ready to work around cultural impediments to own their own homes. With urbanization and women's emancipation the derogatory attitudes towards unmarried women may disappear with time. As more women become aware of the importance of ownership of a home, and acquire good education and hence good income, they are likely to purchase their own land and build their own homes or purchase already built houses.

In summary, statutory law does not prohibit unmarried women from ownership of a home. Therefore, unmarried women are free to purchase or construct their homes and make decisions with regard to whose name the title deed of the plot of land on which the home is built is to be registered. The Registration of Titles Act makes it clear that the person whose name appears on the title deed is the right proprietor of the said property. Although statutory law does not discriminate against unmarried women in terms of homeownership, customary laws in Uganda discourage unmarried women from owning land and housing by stigmatizing unmarried women homeowners. This is because according to customary views, women are meant to depend on men. The concept of an unmarried woman homeownership is culturally not acceptable. All women are expected to access housing through marriage. The following section discusses the institutional legal frame in which married women are expected to become homeowners.

²⁵ Ntege, 'Women and Urban Housing Crisis'.

²⁶ Manyire, 'Gender and Housing Development in the Low Income Suburbs', p.2.

4.2 Married Women and the Legal Framework

In this section we discuss laws that influence married women's legal benefits in the matrimonial home. Since marriage is a legal matter, all activities within it are legal in nature. As noted the chapter two, marriage is one of the ways through which married women become homeowners especially in developed countries and ownership through marriage is legally instituted. The interest in this section is to discuss the ways in which various laws in Uganda influence a married woman's right to the matrimonial home. It is through marriage laws at the institutional level that the gender contract for married people is manifested.²⁷ The sub-sections that follow present the various laws that influence a married woman's beneficial rights in the matrimonial home.

4.2.1 International Legislation

As noted earlier in this chapter, Uganda, like many countries has ratified most of the international and regional conventions that protect women against any discrimination. In these conventions there are particular clauses that protect married women as already discussed in chapter two. The interest in this section is to specifically look at the national legislation where the said conventions are reflected.

4.2.1 The 1995 Constitution

This section discusses the ways in which the 1995 constitution impacts on married women's beneficial rights in the matrimonial home. The 1995 Constitution came into effect on September 27, 1995 replacing the 1967 Constitution.²⁸ It is the major source establishing gender equality The 1995 Uganda Constitution is regarded as one of the

²⁷ Larsson, 'Housing as a Strategy for Urban-Rural Linkages in Botswana', p.133.

²⁸ Von Struensee, V., *The Domestic Relations Bill in Uganda: Potentially Addressing Polygamy, Bride Price, Cohabitation, Marital Rape, Widow Inheritance and Female Genital Mutilation*, Working Paper Series, Social Science, Research Network (SSRN), Social Science Electronic Publishing, Incl., 2005.

most gender neutral with regard to property rights in Sub-Saharan Africa.²⁹ 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.³⁰ Hence, Articles 21, 31, 32, and 33 of the Uganda 1995 Constitution are all aimed at rendering discriminatory provisions against women unconstitutional.³¹ In this regard the Constitution also provides a basis for other laws that were adopted thereafter, for example the 1998 Land Act. These laws have mainly promoted the increase of women in decision-making positions and the prohibition of all customs, and practices that prevent women from accessing land. The 1995 Constitution provides for both men and women to own property individually or with others.³² However, it is worth noting that the issue of the matrimonial home has not been specifically dealt with. Instead, the 1995 Constitution in general provides for equal rights for a wife and husband during marriage. For example, Article 31 (1) of the Constitution provides that men and women of the age of eighteen years and above have the right to marry and to raise a family and are entitled to equal rights in marriage, during marriage and at its dissolution.³³ Equal rights in marriage are assumed to mean equal benefits with regard to the matrimonial home. Since the Constitution does not provide the specific provisions regarding the matrimonial home, Parliament is expected to make specific laws regarding matrimonial property. Unfortunately, Parliament has shelved the Domestic Relations Bill for ages. Hence, whereas the Constitution provides broad protections for married women, the specific legislation does not exist hence making implementation impossible.³⁴ Although the

²⁹ Rugadya, M., Obaikol, E., & Kamusiime, H., 'Gender and the Land Reform Process in Uganda, Assessing Gains and Losses for Women in Uganda, Associates for Development, August 2004, p.5; http://www.unhabitat.org/publication/hs66702e/rr_chp.pdf.

³⁰ Okumu-Wengi, 'Women and the Law of Inheritance', p.5; Baguma, A., TheNewVision, Thursday, May12, 2005, p.12.

³¹ Wagubi, A., 'The Legal and Institutional framework Governing Inheritance in Uganda: A critique of the Law and Institutions, Wagubi A. '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, 2003, p.7.

³² Constitution of the Republic of Uganda 1995, The Law development Centre, Kampala, see section 26 (1), p.clxvi.

³³ Constitution of the Republic of Uganda 1995, LDC Publishers Printing Press, Kampala.

³⁴ Eilor, E., & Giovarelli, R., 'Gender / Family Issues and Land Rights Component, Grant No. PHRD/02/04, Rural Development Institute, February 2002p.19.

intent and language of the Constitution is impressive, in practice there is unequal treatment of married women beneficial rights in the matrimonial home hence a need for specific provisions within the law to handle the matrimonial home.

Some authors have expressed disappointment in the inherent ideological and practical contradictions exhibited in the 1995 'purportedly women friendly' provisions hence rendering the Constitution 'a mere paper tiger'.³⁵ The question that remains to be answered is to whether the 1995 Constitution supports the rights of women or the women friendly provisions are actually 'a mere paper tiger'. For example, although the Constitution provides for persons to own property either individually or in association with others, there is no legal framework in place for married persons to jointly own the matrimonial home.³⁶ Section 26(2) of the Constitution provides for non-eviction of any persons from the property unless the said property is under mortgage.³⁷ Section 26 (2) (ii) allows the Courts of law to decide whether the property (which in this case might be a matrimonial home) should be sold off or not and the Constitution seems to support Courts having access to property already mortgaged. By allowing credit institutions to attach the matrimonial home, the Constitution abdicates its role of protecting women. There seems to be no institutional framework in averting the matrimonial home being mortgaged by a husband. In some cases husbands have been known to mortgage matrimonial homes with credit institutions or individuals without any consultation with their spouses. An interview with one of the managers of a housing finance company revealed that it is not the duty of banks to ask their male clients to provide consent from their spouses before the bank grants a loan. According to the Housing Finance Mortgage manager, giving out loans is a business and therefore there is no need for a man and wife to consent unless the title deed is in both names. This means that the law does not protect the matrimonial home from being mortgaged with a bank. Perusing through some of the civil cases, this author found one interesting case that demonstrate what happens in practice when the matrimonial home is not legally protected as evidenced in High Court Civil suit No.

³⁵ Tamale, 'Riding the Paper Tiger', p.74.

³⁶ Rugadya, et. al. 'Gender and the Land Reform Process in Uganda, p.8.

³⁷ Constitution of the Republic of Uganda 1995, Section, 26 (2) (ii).

825 of 1996, Mrs. Jolly Mutengu against John Mutengu. The history of the case is as follows:

Ms. Mutengu was married in church to Mr. Mutengu in 1987. Before their marriage in church in 1987 (an indication that the couple first cohabited together), the couple jointly purchased a plot of land in Bukoto one of the prime areas in Kampala in 1982. The sale agreement was written in both names of the couple. The couple jointly built a matrimonial home though they did not complete it due to financial problems. For more than ten years the couple lived in Bukoto. Later, without Ms Mutengu's knowledge, Mr. Mutengu registered the title deed solely in his name though the sale agreement was in both names. When Ms Mutengu and Mr. Mutengu's became sour, Mr. Mutengu entered into a loan agreement with Mr. Sebudde in which the matrimonial home was secured for a loan of Uganda shillings (Ug.shs). 3,380,000/= (An equivalent of US \$1,836) which Mr. Mutengu was to pay within two months from the date of the agreement, but which he failed to do. Ms Mutengu then instituted a civil suit against Mr. Mutengu in 1996 under High Court Civil Suit (HCCS) No.825 of 1996 seeking an order to restrain Mr. Mutengu and Mr. Sebudde from selling the matrimonial home to recover the said loan. The Case was dismissed in 2000 due to Mrs. Mutengu's lawyers' failure to appear before court. In 2001 Mr. Sebudde registered himself as the owner of the matrimonial home and shortly thereafter he mortgaged the matrimonial home in favour of Luuka General Enterprises Ltd. In 2002, Ms Mutengu applied to Court to have the suit reinstated. The application was duly granted and the suit reinstated. In his judgment, in 2003 Justice Rwamisazi-Kagaba asked Ms Mutengu to pay all the money to Mr. Sebudde the moneylender in instalments to redeem the matrimonial home.³⁸ The above case law demonstrates that the legal framework in place does not protect the matrimonial home in cases where there is already a mortgage on the home. The Courts prefer to protect credit institutions rather than protect married women whose husbands mortgage homes with financial institutions without their wives' consent. The case law also demonstrates that once a married woman's name is not on the title deed she is at the mercy of her husband for her beneficial interest in the home. For married women to assert her

³⁸ High Court Civil Suit No.825 of 1996.

rights in the matrimonial home where her name is not registered on the title deed she must go through the tedious, time consuming and costly process in the court.

4.2.2 The Registration of Titles Act

This section focuses on one of the oldest and most crucial legislation in matters concerning ownership of property. The interest in this section is the way in which the Registration of Titles Act impacts on a married woman's beneficial interest in the matrimonial home. Although the 1995 constitution is the supreme law, at implementation level the Registration of Titles Act provides specific guides on how property should be owned. Therefore, any achievement or mistake made at this implementation stage, determines the luck or fate of an individual's beneficial interest in the property. In this regard, for married women, a name on the title deed is crucial if she is to have beneficial interest in the matrimonial home. The initial Registration of Titles Act was adopted in 1924. An amendment was passed in 1964. The 1964 Registration of Titles Act allows any Ugandan citizen to purchase and own land as long as the land is registered in his/her own name.³⁹ Hence, under the Registration of Titles Act ownership of personal property is determined by who bought the property and in whose name it is registered.⁴⁰ This means that if a married woman's name is not on the title deed, she may find it impossible to claim ownership apart from user rights. The Registration of Titles Act provides for 'joint ownership' and 'ownership in common'. Section 56 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 in any land, those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares' ⁴¹

The above section implies that in cases where land is jointly owned or owned in common, the persons whose names appear on the title deed are assumed to have equal

³⁹ Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*, p.44, See Registration of Titles Act Cap.230, LDC Publishers, Kampala, p.5081, Also see. Cap. 205 of the 1964 Laws of Uganda

⁴⁰ Registration of Titles Act, Cap. 230, p.5096.

⁴¹ Registration of Titles Act, Cap. 230, p.5095.

shares. However, under 'ownership in common' one is allowed to indicate how much in common is owned. Where no clause is indicated regarding the percentage of ownership in common then it is assumed that the persons whose names appear on the title deed have equal shares in the property. Hence, though Section 55 and 56 provides for joint ownership and ownership in common and transfer, this has to be explicitly stated at registration stage but should not be presumed.

The Registration of Titles Act further provides for the proprietors (owners) to decide on whether their entitlements are transferable to survivors. In this respect section 57 states that 'two or more joint proprietors of any land or of any lease of freehold land may by writing under their hands direct the registrar to enter the words 'no survivorship' upon the certificate of title or instrument relating to the property'. Section 57 (3) further states that where the words 'no survivorship' was signed by the registrar, it is illegal for any persons other than the proprietors registered on the title deed to transfer or deal with the property without an order of the high court.⁴² This means that a couple may decide not to transfer their interest to any third party apart from themselves. In a case where one spouse dies, the surviving spouse is the only person who can transact any business on the property. Although the clause 'no survivorship' exists, it is most unlikely that husbands would apply it since it is rare that a man dies without leaving behind any survivors. The Registration and Titles Act therefore gives liberty to individuals to decide how they would like to own property. There is no gender discrimination as far as registration of land is concerned. Although the process of registration is open to all persons regardless of gender, in Uganda few women hold titles to land.⁴³

Although the Registration and Titles Act does not protect the matrimonial home from being mortgaged, it provides for lodging a caveat whereby the wife may avert the action of her husband.⁴⁴ However, the wife can only do so if she is aware of the husband's planned action early enough and has a good reason to lodge a caveat before her husband mortgages the home. In many cases, married women tend to know that

⁴² Registration of Titles Act, Cap. 230, p.5095.

⁴³ Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*, p.44.

⁴⁴ Registrar of Titles Act, Cap. 230, Section 139, p. 5123-5125.

the home was mortgaged long after the transaction was made just as in Ms. Mutengu case demonstrated earlier. In such cases the only remedy for the wife to recover the matrimonial home is to pay the loan. Therefore, the Registration of Titles Act does not protect the home from being mortgaged. Nonetheless, the Registration of Titles Act provides all options for individuals to own property either solely or with others. It also provides an option for forbidding a seller to sell property or land if there is an interested party who has an objection to this.

Hence it is up to individuals to utilize these options. Since property ownership is a male domain, a married woman may find it difficult to convince her spouse to include her name on the title deed. She may fear or find it difficult to lodge a caveat on the matrimonial home early enough before her husband mortgages the home with credit institution. It is only when there is a crisis in marriage that a married woman may think of lodging a caveat and in some cases this may be too late. Since home ownership in Uganda is male dominated, married women can only negotiate having their names included on the plot of land on which the matrimonial home is built. Failure to use the Registration of titles Act as a safety valve will render married women homeless especially in times of divorce and separation. Since the Registration of Titles Act seems to be gender neutral, the question to be answered is how married women can strategically use the Registration of Titles Act to own or co-own the matrimonial home. What strategies can they employ? Under what circumstances can married women own or co-own the matrimonial home? What options are available for them to include their names on the title deed?

4.2.3 The 1998 Land Act

This section presents yet another legal instrument that impact on married women's right to homeownership. The land Act generally reflects most of the clauses found in the 1995 constitution. The Land Act is one of the statutory laws that seem to protect a married woman from being dispossessed from the matrimonial home. It only deals with land within a marriage or family situation. The Act provides a legislative framework for equitable ownership of land. Currently the Land Act is the only legislation that protects married women whose names do not appear on the title

deed.⁴⁵ However, women's land rights are likely to remain at risk because the Land Act does not in any way change the land holding systems for family land and clan land.⁴⁶ This implies that women whose names are not on the title deed can easily be dispossessed if the matrimonial home is built on the clan land. An important provision that gives a married woman some control over land is Section 40. In this section the Land Act specifically restricts a husband from selling, transferring, exchanging, pledging, mortgaging, leasing or giving away any land on which a wife and husband reside with the minor children and from which the family derive sustenance, without written consent of the wife or children.⁴⁷ The consent clause incorporated in the Act does not provide for co-ownership, as was initially intended. Hence the obligation to elicit prior written consent does not necessarily accord proprietary or ownership rights, but power to approve or disapprove a land transaction. However, consent where there is no ownership is meaningless since it is not clear on what basis a person who is not a registered owner derives the right to consent or deny consent. The 1998 Act also provides in (section 40 (185), that the consent must not be denied without a good reason. If the consent is denied the person denied consent can appeal to the land tribunal. The tribunal will then ask the husband or wife, adult children or the committee as the case may be to give reasons why consent cannot be granted. The tribunal can on its own without the consent allow the land deal to take place.

The Act also provides that a husband or wife or adult children can lodge a caveat (written warning) on the title deed implying that their consent is needed before any dealing in that land. In some cases, if the children are young, then the committee is allowed to lodge a caveat. The Land Act provides that if a person without any knowledge of whether the necessary consent was granted buys the land, the sale is not recognized under the law. However, the seller has to refund the buyer all his or her money.⁴⁸ The above provisions however do not affect any dealing in land by a person who acquired land as security or guarantee for a debt as reflected in the Section 40 (2) which states 'Subsection (1) of this section shall not apply to any transfer of land by a

⁴⁵ Mulyagonja, 'Unravelling the Welfare Principle', p.44.

⁴⁶ Kabanda, 'Women's Access to and Control over Land in Uganda' p.346.

⁴⁷ Mulyagonja, 'unravelling the Welfare Principle', p.44.

⁴⁸ The Land Act, 1998, Acts Supplement to the Uganda Gazette No.41 Volume XC1 dated 2nd July 1998, Section 40 (4), p.48.

mortgagee in exercise of powers under the mortgage'. This implies that where a husband mortgages the matrimonial home with the bank and he fails to pay, the wife will only to save the home if she pays the mortgage.

Currently there is no legal framework to stop husbands using title deeds of the matrimonial home to acquire loans, especially in urban areas. Interviews with financial institution managers revealed that it is business as usual. The application form of the loan does not require a husband to indicate whether the title deed used as security is for the matrimonial home or not.

4.2.4 Challenges to implement the land Act.

Although the 1998 land Act seems to protect the land and the home, and Ugandan Government has put in place a legal framework to protect women, practically this is not possible. The success of implementation of the Land Act depends on the effective co-ordination and contributions of a wide range of institutional stakeholders, for example financial institutions. It is not clear whether the public is aware of the contents and implications of the land Act. Secondly, the land Act does not explicitly mention ownership or co-ownership of land by spouses. Section 40's consent clause seems to imply that women have control over land and property in that their husbands cannot sell the home and the land without their consent. However, the land Act does not protect married women when there is separation, divorce, or widowhood. These stages of marriage life are instead handled in different legislation discussed later in this chapter.

Although the provision in the Land that a husband is not allowed selling land without the wife's consent is an important advancement for gender equality and provides security of occupancy, it does not provide for co-ownership. Nonetheless, many women activists realized the anomaly of not including the co-ownership clause in the land Act and made attempts to lobby Parliament to include this clause in the Act. The first major attempt to secure co-ownership rights in the land Act was during the debate on the 1998 land. The section that follows discusses the commonly known 'lost clause'.

4.2.5 The 'lost clause' and its impact on home ownership

As noted above, the 1998 Land Act does not protect married women on separation, divorce or widowhood. This section presents one of the clauses that could have protected married women in all stages of married life had it been incorporated in the 1998 Land Act. In 1998, before Parliament passed the Uganda Land Act into law, the Forum for Women in Democracy (FOWODE) and other groups that form the Uganda Land Alliance, a broad coalition advocating land rights for women, intensively lobbied Parliament to include provisions which would strengthen women's land ownership rights in the Land Act. Different women's groups made submissions to the Parliamentary Session Committee on Lands, Water and Environment, to influence the committee to adopt a clause on co-ownership of the matrimonial home in its report and the draft Bill to be debated in the full house. The 'lost clause' would offer married women a beneficial interest in land providing them with increased security, economic independence, improved access to credit, and protection of inheritance rights. It would also enhance married women's ability to remain in the family home in the event of divorce or widowhood. Surprisingly, the Bill as presented to the Parliament did not include a co-ownership clause. Again, the Uganda Land Alliance, Uganda Women's Network and other local women's groups, together with 'Equality Now' and its members, lobbied intensively for the reinstatement of the spousal co-ownership clause omitted from the 1998 Land Act without any success. There is a great resistance to the co-ownership clause by both men and women because both believe that the clause is likely to disrupt the family.⁴⁹

Hence, under the current provisions, a married woman whose name is not on the title deed is at the mercy of her husband. Even then her occupancy in the home is insecure. In case of divorce or death a married woman's occupancy on land and the matrimonial home is determined by other legislation discussed later in the subsequent sections of this chapter. The Land Act therefore continues to leave divorced and widowed women vulnerable.

⁴⁹ Asiimwe, 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform', p.58.

4.2.4 Married Women's Property Act

This section presents legislation currently in use that is meant to implement marriage provisions embedded in the 1995 constitution. Unfortunately, the legislation is based on the colonial legacy but not on the current constitution. Uganda was declared a British protectorate in 1894 and became independent in 1962. Before independence, the colonial state was superimposed on the heterogeneous Uganda society with its own laws that included marriage, divorce and inheritance laws.⁵⁰ The Married Women's Property Act of England, which recognized women's right to purchase and own property, has always been applied in Uganda.⁵¹ The existing law relating to marital property in Uganda is basically the common law of England of 1902.⁵²

The marriage does not specifically address married women's beneficial interests in the matrimonial except at separation and divorce. Hence one has to look at the divorce Act to obtain information on what a married woman is entitled to in marriage. Apart from the Divorce Act, statutory law is silent on marital property and more specifically the matrimonial home. It is only at Divorce that the matrimonial home is contested and discussed. In this case, the Courts of law determine how much each individual in the marriage benefits from the matrimonial home.

The Divorce Act section.4 (2) states that jurisdiction in divorce shall be exercised 'in accordance with the law applied in matrimonial proceedings in the High Court of Justice in England.'⁵³ Recently, a legal pressure group in the country succeeded in having the Constitutional Court declare some of discriminatory clauses in the Ugandan Divorce Act unconstitutional.⁵⁴ For this purpose no clauses from the Divorce Act have been included here because they are irrelevant to the current study. For

⁵⁰ Okumu-Wengi, 'Women and The Law of Inheritance', p.1.

⁵¹ Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*, p.44; Tamale, S., 'Law Reform and Gender in Uganda: A situation Report, a research report conducted for OXFARM, Kampala, 1993, p.12.

⁵² Mulyagonja, 'unravelling the Welfare Principle', p.42.

⁵³ Mulyagonja, 'unravelling the Welfare Principle', p.42.

⁵⁴ Constitutional Petition No. 2 of 2003 by Uganda Association of Women Lawyers, Dora Byamukama, Jacqueline Asimwe Mwesige, Peter Ddunga Matovu, Joe Oloka Onyango and Phillip Karugaba as Petitioners Versus The Attorney General as Respondent.

example there is nothing substantial in this Act that concerns the division of matrimonial home on divorce. This means that divorced women have to depend on the discretion of Court to exercise any benefit interests in the matrimonial home as demonstrated in Ms. Mayambala case law below:

Mr. and Mrs. Mayambala married in church in 1983. After the said marriage the couple lived together in rented houses in different places before they finally built their own home in Ntinda in 1991. The couple was blessed with two children aged 24 and 12 years from their marriage. Later, Mr. Mayambala committed adultery and became abusive forcing Ms Mayambala not only to move out of the matrimonial home but to file a petition against him seeking for orders for the dissolution of their marriage under the Divorce Act 215 and under Divorce Cause No.3 of 1998. In the petition Ms Mayambala prayed to Court for a beneficial interest in the matrimonial home jointly constructed with her husband although the title deed was registered solely in the husband's name. Ms Mayambala produced documents from National Insurance Corporation her employer where she had acquired a housing loan as evidence to show that she financially contributed to the matrimonial home.

In the judgment, Court was convinced that Ms Mayambala virtually financed the larger part of the matrimonial home though the husband carried out most of the supervision. Although the title deed was registered in the husband's name Court was convinced that it was the behaviour of the husband that had led Ms Mayambala to leave the matrimonial home leaving behind her husband in full occupation of the matrimonial home. The Court however observed that although in law if A spends money on B's property this does not give any interest in such property, nevertheless the doctrine of equitable may apply if a wife had incurred expenditure on property on the belief that she already owned or would be given some proprietary interest in it. This implied that in normal circumstances since Ms Mayambala spent money on the matrimonial home whose title deed was registered solely in her husband's name she legally did not own the home.

However, Court used the common law of equity to award Ms Mayambala benefits in the home. Court awarded Mayambala benefits in the home because she convinced Court beyond reasonable doubt that she financially contributed to the construction

costs. Court estimated Mrs. Mayambala's interest in the matrimonial home at 70 per cent and therefore in case the home is sold she gets 70 per cent of the market price. The Court further ruled that until the matrimonial home is sold the husband should regularly pay to Ms Mayambala 70 per cent of the market rental value. Furthermore, the registrar of Titles was instructed to amend the relevant parts of the title deed to reflect Ms Mayambala's 70 per cent interest in the matrimonial property.

The above case law demonstrates that in case a married woman does not have her name on the title deed of the matrimonial home, she lacks beneficial interest in the matrimonial home unless she has proof to show her contribution. The married woman's situation is worsened in situations where she moves out of the home especially in an abusive relationship when the matrimonial home is registered solely in a husband's name. Although Ms Mayambala was awarded 70 per cent beneficial interest in the matrimonial home implementation is most likely to be difficult. An interview with Ms. Mayambala who is a colleague and a friend at Makerere University revealed that she had never received any rental remittances from her husband, nor had she succeeded to have the matrimonial home sold. She later realized that her husband had mortgaged the matrimonial home with a financial institution and therefore she had to pay the loan before the bank could remove the caveat. She is pessimistic about evicting her husband from the home though she is determined to hire Court brokers for this purpose. However, she also fears for her life since Mr. Mayambala lives in the matrimonial home with another woman. The above case law demonstrates that even where Courts rule in favour of the married woman on divorce, in some cases implementation of the Courts ruling is impossible especially when the married woman moved out of the matrimonial home due to domestic violence.

In cases where the matrimonial home is jointly owned it does not matter who moves out of the home because all parties have beneficial interest in the home. Therefore neither a husband nor a wife can legally sell off the matrimonial home. In case of Mr. Mrs. Kironde in Civil Divorce Cause No. 006/2001, Mr. and Ms. Kironde jointly owned the matrimonial home. Ms Kironde filed for divorce due to her husband's adulterous behaviour. In this case, Mrs. Kironde did not present the matrimonial home, as a contentious issue because her name was on the title deed and therefore her husband could not evict her. All she wanted was to dissolve the marriage. In this case

the husband had moved out of the matrimonial home, and was living with another woman in another house. When Court dissolved the marriage, Ms Kironde remained in the matrimonial home. Mr.Kironde could not evict Ms Kironde because she had equal benefits in the home. Ms Kironde's case demonstrates that having one's name on the title deed protects the married woman against eviction in case of divorce. It is impossible for a husband to mortgage the home when it is jointly owned because he would need the wife's consent.

In summary, currently there is no specific marital law that addresses married women's benefit in the matrimonial home except at divorce. Even then, the married woman has to show proof of her financial contribution to the matrimonial home. Women cohabiters and women whose names are not on the title deed of the matrimonial home face more challenges. Subsequently various national NGOs have been on the forefront to urge Parliament to come up with a comprehensive law that would address all marital matters. Unfortunately, to-date the Domestic Relations Bill still lies in Parliament's file waiting to be tabled and passed into law. The section below discusses the contents of the Domestic Relations Bill and its likely impact on women's rights to homeownership if ever it is passed into law.

4.2.5 The 2003 Domestic Relations Bill

This section focuses on the latest marital Bill that has been shelved for years. Although the Bill has not been made into law, discussing it here helps us to identify the existing gap in the current law in regard to women's right to homeownership. Hopefully future researches will focus on the implementation of the Bill and its impact on family stability. In order to harmonize the Constitution with the existing family laws, for example the Divorce Act, and the 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.⁵⁵ The 2003 Domestic Relations Bill was meant to

⁵⁵ Asiimwe, 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform', p.57; Wagubi, 'The Legal and Institutional framework Governing Inheritance', p.9, see Cabinet Memorandum CT 2003, *The Domestic Relations Bill*, 2003.

be an amalgamation of all domestic related laws that is laws related to marriage, divorce, separation and inheritance.⁵⁶ The pertinent issue in the Domestic Relations Bill that is relevant to this study was the proposal that matrimonial property should include the matrimonial home or homes and that the matrimonial home acquired during marriage should be registered in the names of the husband and wife but owned in shares (in common). The shares on the matrimonial home would be determined by the number of years in marriage. For example, a spouse would own 20 per cent of the matrimonial home after 5 years in marriage, 30 per cent after 10 years in marriage and 50 per cent after more than 15 years of the marriage. And in case the matrimonial home was registered in the names of one spouse, it would be regarded as matrimonial property and owned in common.⁵⁷ The Bill further proposes that where the husband acquired a home before marriage or during the marriage and it was not part of the matrimonial property but the wife made a contribution towards the improvement whether in monetary or non-monetary terms, then she would acquire a beneficial interest in the home equivalent to the contribution she made. In this case, the question of the wife's non-monetary contributions to the matrimonial home is likely to be left to the discretion of the Court.

In case of polygamous marriages the Bill proposes that the first wife will own the matrimonial home. The matrimonial home acquired after the deceased married a second wife will be owned in common by both wives and the husband and the same principle shall apply to any subsequent widows. Under Polygamy, the Bill further proposes that where it was by agreement with the husband or through conduct that each wife had her own home in her name, the widow would then inherit that home.

Although there were a number of good provisions that could protect married women from dispossession of the matrimonial home in case of divorce or separation, Parliament adamantly refused to pass the Bill into law.⁵⁸ There are two major reasons that have been advanced by authors as to why there has been a delay in amending the Domestic Relations Bill. Firstly most Parliaments that have existed since

⁵⁶ Von Struensee, 'The Domestic Relations Bill in Uganda'.

⁵⁷ *Domestic Relations Bill* No.21, pp.34-35; See Section 65(1), (a) and Section 66 (1).

⁵⁸ Kawamara, S., East African Legislative Assembly member's Response to President Yoweri Museveni's view on the reform of the Domestic Relations Bill.

independence have been male dominated.⁵⁹ For example currently more than 75 per cent of Ugandan parliamentarians are men. The current Parliament of Uganda comprises three hundred and five (305) parliamentarians, out of which seventy-four, (74) are women.⁶⁰ Secondly, all members of parliament come from patrilineal and extend family communities.⁶¹ As a result, the law that would address women rights in marriage, divorce, and separation most likely will take a long time to be passed. The bill has been resisted because the issues it addresses are sensitive. Amending the law, as Nhlapo and Struensee put it, 'entails a head-on collision with patriarchy and commitment to dismantling a patriarchal framework'.⁶²

In summary, the proposal to have a new family law instated, which is referred to as the Domestic Relations Bill, was an effort to harmonize all family laws that include the divorce Act, and the Marriage Act. An attempt to harmonise these laws through the Domestic Relations Bill, has to go through Parliament. There are still unresolved issues in the Bill that various religious groups have protested to, before the Bill is passed and when these issues will be resolved is difficult to determine.⁶³ In the meantime the Bill has been shelved. As noted by some authors, while the 1995 Constitution seems to contain provisions that accord equal treatment and affirmative action to marginalized persons, transmission of these rights through Acts of Parliament has not been forthcoming.⁶⁴

4.3 Customary Law

This section presents the unwritten laws that impact on married women's right to homeownership in marriage, separation and divorce. Although the establishment of

⁵⁹ Okumu-Wengi, 'Women and The Law of Inheritance', p.11.

⁶⁰ <http://www.parliament.go.ug/mpdata/mps.hei>; <http://www.wougnet.org/parliament.html>.

⁶¹ Von Struensee, 'The Domestic Relations Bill', p.8, Kawamara, East African Legislative Assembly member's Response to President Yoweri Museveni's view on the reform of the Domestic Relations Bill; Kharono, E., Response to the President's views on the Domestic Relations Bill.

⁶² Nhlapo, T., & Eekelaar, J., (eds.) 'The Changing Family- Family Forms and Family Law', Hart Publishing, 1998, p.625; Von Struensee, 'The Domestic Relations Bill'.

⁶³ The New Vision, Thursday, 15th November 2007, The New Vision, Thursday, 30th August 2007.

⁶⁴ Wagubi, 'The Legal and Institutional framework Governing Inheritance, p.24.

British protection over Uganda brought with it the importation of foreign law and enactment of local laws based on English law principles, this did not in any way do away with indigenous customary law.⁶⁵ The interest in this section is to highlight the complexity of laws married women have to negotiate with to become homeowners in marriage. While unmarried women are faced with derogatory names that may negatively discourage them to become homeowners, married women are faced with much complicated cultural issues.

Uganda is a patriarchal society with various patriarchal cultural norms. The patriarchal nature affects the way in which married women are able to exercise ownership rights of the home. In general, customary law does not recognize married women's right to property.⁶⁶ According to custom, women marry into the clans of their husbands.⁶⁷ Upon payment of dowry women are regarded as the properties of men. A married woman is looked at as a worker, caregiver and homemaker. Based on this description, a married woman traditionally is not expected not to lay any claim to the matrimonial home, which traditionally is a male property.⁶⁸ Therefore, during marriage, a woman does not own any immovable property but she has user rights to the property. This means, if the matrimonial home is built on clan land, it belongs to the husband and when the husband dies, it reverts to the clan. Similarly, upon divorce, the wife cannot claim clan property even if she contributed to the home or made improvements to it. In patriarchal societies women do not belong anywhere. As girls in their father's homes they are regarded as being in transit to their husband's homes, and when they marry, they are considered outsiders (because they come from a different clan) and do not share in the clan decision making.⁶⁹

To dissolve a customary marriage, the wife's parents have to refund the bride wealth to the parents of the husband especially where the breakup of the marriage is regarded

⁶⁵ Kakooza, 'The Application of Customary Law in Uganda', p.27; See Morris, H., & Read, J. Uganda, The development of its laws and Constitution, 1966, pp.254-55.

⁶⁶ Nabwire, The Impact of Health User Fees on Women's role in Household Health Care Decision-Making in Mukono District, Uganda', p.215.

⁶⁷ Asiimwe, 'Making Women's land Rights a Reality in Uganda', p.175.

⁶⁸ Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*.

⁶⁹ Asiimwe, 'Making Women's Land Rights a Reality in Uganda', p.175.

as the wife's fault.⁷⁰ In a case where the wife's parents do not have the bride wealth to refund, the wife has to endure the bad marriage. As regards property upon divorce, the married woman goes back to her family home with nothing except her clothing. Hence in case of divorce, a married woman usually moves out with only the personal effects she came with. Whatever she would have contributed to her husband's home is valueless and forgotten. Division of matrimonial property is not recognized because 'property cannot own property' and also in case of divorce, the woman's exit means loss of labour for the husband. Unfortunately the statutory Courts do recognize customary marriages and their conservative norms. In some societies like the Baganda as noted previously, the divorced daughter is allocated a piece of land on which to build a home. In some conservative ethnic groups, the divorced woman is not allowed to come back home. As a result such women remain in the city and end up renting single rooms commonly known as 'muzigo'.

4.4 Inheritance Laws

As noted above, the state as an institution plays a big role in the transmission of property through its legal frameworks.⁷¹ Each state has rules governing inheritance matters based on whether a person died testate or intestate. Most of the rules governing inheritance are formalised in the Succession laws of each country. These rules determine whether a widow is entitled to the matrimonial home or not. It should be noted that a big variation in the inheritance regime exists internationally. For example, there exist Roman, Islamic, common laws and the various customary laws. Hence depending on the country, a widow's right to inheritance is determined by either civil law or customary law. In developing countries, customary law differs from one ethnic group to another and some of the customary laws are based on religion. While civil law is written, and has specific provisions to follow, customary law is unwritten and therefore there are no written provisions to guide inheritance matters. As a result the widow's right under customary law depends on the whims of the elders

⁷⁰ Mutyaba, R., 'Comparative Study of the Status of Women Under the Law of Divorce and of their economic status in Uganda, Britain, and Bangladesh' in Bond, J. (ed.) *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania*, Carolina Academic Press, Durham, 2005, p.222; Tamale, 'Law reform and women's rights in Uganda', p.173.

⁷¹ Narayan, et. al., *Voices of the Poor: Can anyone hear us?* .

who are custodians of the said law. A widow's right to inherit the matrimonial home depends on the social and cultural context.

Hence to understand the dynamics of widows' right to inheritance in Africa and Uganda in particular we need to look at the patriarchal inheritance customary laws in the country, most of which still exist today regardless of the existence of statutory law.⁷² Customary laws play a crucial role in the allocation of property because it is on these laws that decisions are sometimes based, especially when a spouse or parent dies.⁷³ As Ngwira and others have argued, customary laws on property ownership and inheritance have the effect of assigning entitlements. That is, they define whether women and men have rights, for example, in this case, whether they are entitled to own property.⁷⁴ In many African societies, customary law on inheritance is based on a patrilineal system of descent, which some authors refer to as agnatic descent as opposed to matrilineal or uterine descent and cognatic kinship inheritance.⁷⁵ In patrilineal descent, the inheritance of title, property, and position as family head is passed down through the male line of the family, for example from father to son.⁷⁶ Sebina-Zziwa argues that it is only in terms of succession and lineage tracing that the paternal side is automatically assumed.⁷⁷ She further argues that the discourse about property inheritance in the African context centres mostly on men regardless of whether women are involved in the acquisition of the property.⁷⁸ Giddens also affirms Sebina-Zziwa's argument that although there are variations in the roles played by men

⁷² Okumu Wengi, J., (ed.) *The law of succession in Uganda: women, inheritance laws, and practices: essays and case*, Women and Law in East Africa. Kampala, 1994, p.1.

⁷³ Unity, D., & Puseletso, K., *Women, Marriage, and Inheritance*, p.4.

⁷⁴ Ngwira, A., Kanyongolo, N., and Kayambazinthu, E., 'Upholding Women's Property and Inheritance Rights in Malawi: Changes required to meet the Challenges', A Paper Presented at the 8th Women's World Congress, Kampala, Uganda, 21-26 July 2002.

⁷⁵ Goldthorpe, J., *An Introduction to Sociology*, 2nd Edition, Cambridge University Press, 1974, Cambridge, p.61; Olatunde, T., & Ademola, A., *Sociology: An Introductory African Text*, Macmillan Education LTD, London, 1990, p.116.

⁷⁶ Browne, K., *An Introduction to Sociology* 3rd Edition, Polity Press, Cambridge, 2005, p.230; Ember, C., & Ember, M., *Anthropology, A brief Introduction*, Fifth Edition, Prentice Hall, Pearson Education, Inc. US, 2003, p.354; Olatunde, & Ademola, *Sociology*, p.116.

⁷⁷ Sebina-Zziwa, A., 'The Paradox of Tradition: Gender, Land and Inheritance Rights Among the Baganda', Dissertation for Doctoral of Philosophy in Anthropology, Faculty of Social Sciences, University of Copenhagen, June 1998, p.74.

⁷⁸ Sebina-Zziwa, 'The Paradox of Tradition', p.6.

and women, there is no known instance of a society where females are more powerful than men.⁷⁹ Hence in communities where custom dominates inheritance matters, widows tend to be deprived of inheritance rights. On the other hand, in communities where statutory law governs inheritance matters, widows are likely to exercise some inheritance rights.

In developed countries widows negotiate mainly with the state and the market around affordability due to rising housing prices and interest rates. In developing countries not only do widows have to negotiate around patriarchal inheritance laws but they also have to negotiate with their in-laws at interpersonal and cultural image and ideological levels whereby social and cultural factors take the centre stage. Therefore, while widows in developed countries where customary law no longer exists negotiate around inheritance rights at the institutional or state level, widows in developing countries negotiate at all the three levels: interpersonal, cultural image and ideological level and institutional levels.

4.4.1 Inheritance Customary laws in Uganda

Like many countries in Africa, Uganda practices two types of laws, customary and statutory. Before British colonialism, inheritance of land in Uganda was governed by patriarchal customs in many communities. The custom dictated that transfer of land to an individual had to be through a male relative. Decision on allocation of land was in the hands of men as heads of families or clan leaders. Even when the natal family gave land to a woman, she was not allowed to dispose it off to an outsider except the male or clan head.⁸⁰ As a result it was impossible for many women to inherit or own land from their natal families or marital families because of the patriarchal custom. Thus, in many cases women only had user rights to land. Widows did not inherit land from their spouses or girls from their male relatives. Hence after becoming a widow, women were just guardians or trustees for the male minors until they grew up and

⁷⁹ Giddens, A., *Sociology*, Polity Press in Association with Basil Blackwell, 1989, p.169.

⁸⁰ Bikaako, W. & Ssenkumba, J., 'Gender, Land and Rights: Contemporary Contestations in Law, Policy and Practice in Uganda'. In Muthoni-Wanyeki, L., (ed.) *Women and Land in Africa*, Culture, Religion, and Realizing Women's Rights, Zed Books, Ltd, London, 2003, p.239.

inherited the land.⁸¹ This meant that widows with adult sons were more likely to have land user rights than women with no sons. Because of her insecure position in the family, the widow with no sons would get married to her brother-in-law in order to continue having user rights to the home. Refusal to be 'inherited' by her brother-in-law meant losing user rights to the land.

Unfortunately, the colonial administrators did not change the patriarchal customs, but instead introduced a commercial economy with new property ownership laws where an individual had the right to own land. The colonial economy introduced new kinds of ownership of land, for example freehold and leasehold. As a result, the customary practice of giving land to a male heir was extended to the new-economic system whereby men acquired title deeds and upon their deaths, their sons inherited the home. In this system women legally did not have ownership rights. Upon the death of a husband the title deed was transferred to the male heir's name. When land became a commodity to be bought and sold at market value, men were free to sell land at will because the title deeds were registered solely in their names. Hence women were further marginalized. Although the new statutory law on land ownership could have benefited women, the colonial administrators did not change the patriarchal customary laws, which did not allow women to inherit land. Men used the new property laws to their own advantage to get title deeds. The commercialisation of land made women's user rights even more temporary than before because men now had title deeds, which they could use to get loans without consulting the women.⁸² However, in some patrilineal communities in Uganda, women used to inherit land through their fathers. In Central Uganda, (Buganda Kingdom) and some other Kingdoms, women from royal families could inherit land through their fathers. For example the King's mother and sisters from Buganda had a share in all the land in the Buganda Kingdom.⁸³ Similarly, among the Basoga, daughters of chiefs could inherit from their fathers. Among the Batoro, women could inherit from their fathers if there were no sons and

⁸¹ Bikaako & Ssenkumba, 'Gender, Land and Rights: Contemporary Contestations in Law', p.243.

⁸² Okumu-Wengi, (ed.), *The law of succession in Uganda: women, inheritance laws, and practices: essays and cases*.

⁸³ Bikaako & Ssenkumba, 'Gender, Land and Rights', p.235.

they could sell the land as they wished but if they were married, their husbands' could not inherit their land and if they divorced, they could go back to their land.

Today, Uganda is still largely a patrilineal society and therefore most of the customary beliefs and practices are based on patriarchal paradigm. Nothing in terms of cultural practices has changed since independence. Hence customary practices, which place women in an inferior position, continue to operate in many communities in spite of the statutory laws that condemn such practices. Women's inheritance rights still depend on the decisions of men.⁸⁴ If a father does not have a son, in most cases none of his daughters can become his heir but instead it is his nearest male relative, for example his nephew or brother who inherits the home.⁸⁵ However, daughters inherit the home in special and exceptional circumstances where there is no suitable male heir.⁸⁶ Customary law does not recognize any equitable contribution of a wife to matrimonial property.⁸⁷ The family property is presumed to belong to the husband and therefore if a woman dies even if she contributed to the matrimonial home, the widower will automatically inherit the home. Even if the woman left a will distributing her share of the matrimonial home if jointly owned, it is very unlikely that her natal family would get a share. If a man dies however, the widow may never have full inheritance rights of the matrimonial home because of the patriarchal custom laws. From the above discussion, we can agree that patriarchal customary law does not guarantee a widow inheritance rights. Since customary law is unwritten, the custodians of the law, who are mainly male, tend to apply the law as it fits them and in so doing they deny women their inheritance rights. When a married woman dies there is no property distributed because culturally the property is assumed to belong to her husband.⁸⁸

⁸⁴ Asiimwe, 'Making Women's Land Rights a Reality', p.175.

⁸⁵ Kanabahita, 'Report on Intestate Succession'; Kwesiga, J., *Women's Access to Higher Education*, p.136.

⁸⁶ Okumu-Wengi, (ed.); Guyer, J., 'Women and the State in Africa: Marriage Law, Inheritance, and Resettlement'.

⁸⁷ Guyer, 'Women and the State in Africa', p.4; Okumu-Wengi, (ed.), *The law of succession in Uganda*, p.45.

⁸⁸ Kanabahita, 'Report on Intestate Succession'; Asiimwe, 'Making Women's land Rights a Reality', pp.175-176.

4.4.2 Statutory inheritance Laws

There are two national statutory laws that govern inheritance matters in Uganda namely the 1995 Constitution and the Succession Act (Amendment) Decree No.22/1972. It is therefore necessary to critically look at each of these statutory laws and see how they translate themselves in guaranteeing the widow the right of ownership of the matrimonial home.

4.4.3 The 1995 Uganda Constitution and its relation to inheritance matters

The first and most binding law that deals with inheritance matters in Uganda is the 1995 Constitution.⁸⁹ According to the current Constitution, widows have a right to inherit their husband's property. However, it is upon Parliament to come up with a specific law that governs inheritance matters.⁹⁰ 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'.⁹¹ Since the matrimonial home is not specifically mentioned it is presumed to be part of the estate.

Since the Constitution gives general guidelines but does not deal with specific laws that govern inheritance matters, the onus is on Parliament to pass the relevant Bills, which specifically look at the detailed aspects of inheritance. In order to allow Parliament to make particular amendments and Acts, the Constitution further recognizes and provides for the existence of a Law Reform Commission (ULRC) under article 248.⁹² The Commission is a Government Institution set up in 1990 by an Act of Parliament, with the mandate of spearheading reform of the laws and legal system of Uganda. It is a Constitutional Commission because of its significant role in

⁸⁹ Kanabahita, 'Report on Intestate Succession', p.9.

⁹⁰ Article 31 (1) & (2) of the 1995 Constitution of Uganda.

⁹¹ Constitution of the Republic of Uganda 1995, LDC Publishers Printing Press, Kampala, p.clxx.; Clause (2) of Article 31.

⁹² Constitution of the Republic of Uganda 1995, LDC Publishers Printing Press, Kampala, cclxxxvi, See article 248.

harmonizing, updating, and consolidating laws in Uganda.⁹³ The Commission, whose composition and functions are prescribed by Parliament according to the Constitution, is supposed to publish periodic reports on its findings regarding the Constitutional amendments and submit these to Parliament. Any changes in the Constitutional Articles and clauses has to be done after consultations with the stakeholders, submitted to Parliament for debate and then approved by Parliament.

The Constitution goes ahead under Article 247 to indicate that the State should facilitate the administration of estates by making the Constitutional framework more accessible to ordinary people.⁹⁴ Therefore, although the Constitution seems to guarantee the widow the right to inherit the matrimonial property, this right can only be extended to her through an Act of Parliament. Apparently, Parliament has not passed a new Act that specifically handles inheritance and other family laws. This means that Courts of law continue to apply the old laws inherited from the British Government despite the various changes that have occurred since independence. The current succession law in place is the Succession Act Amendment Decree No.22 of 1972.

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

The Succession Act like many laws in Uganda dates back to 1904.⁹⁵ The 1972 Succession Act came after the Succession Ordinance of 1906, which was based on the English common law. The 1906 Succession Law for a long time applied to Europeans but not to Ugandans hence leaving Ugandans to handle most succession matters through customary law.⁹⁶ In 1966 the Attorney General at that time allowed the 1906 to also apply to Ugandan elites who had acquired land. However the 1906 could only apply to cases where person died testate. In spite of the liberal Success law that applied to all Ugandans the majority of Ugandans continued to apply the customary

⁹³ Uganda Law Reform Commission Supplement, The New Vision, Wednesday, April 6, 2005, p.25.

⁹⁴ Constitution of the Republic of Uganda 1995, cclxxxvi, Article 247 (a) and (b) Constitution of the Republic of Uganda provides for decentralisation of the department dealing with administration of estates; Article 247 (a).

⁹⁵ <http://www-cgi.cnn.com/WORLD/africa/9804/05/uganda.polygamy/>

⁹⁶ Wagubi, 'The Legal and Institutional framework Governing Inheritance, p.2, See the Succession Ordinance, 1906.

norms of inheritance as if there were no statutory law in place. Under many of these customary laws women did not inherit land or any other property including the matrimonial home.⁹⁷ This is because most of them were ignorant of the existence of the law and the customary norms were strongly entrenched in their communities and minds. It was not until 1972 that the 1906 Succession was amended by a Decree.⁹⁸ The succession Act (Amendment) Decree was a clear attempt to put in place a uniform law of Succession that would apply to both intestate and testate succession, brought about several radical changes.⁹⁹ The amendment of the Decree was aimed at addressing gender issues and customary laws.¹⁰⁰ As a result, all succession matters shifted from the hands of clan leaders to the Courts of Law. Subsequently, new set of rules of inheritance that could neither be classified as custom or fully statutory was created. 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). It is important to look at each of these sets of laws in relation to the matrimonial home.

a) Intestate Inheritance

This section looks at what the law of intestate succession in Uganda says on the beneficial interest of a widow in the matrimonial home upon the death of her husband and presents a critical analysis of the law in relation to the widow's inheritance rights concerning the matrimonial home. Intestate inheritance refers to situations where a person dies without leaving behind a valid Will disposing off his or her property. Although everyone above 18 years of age is allowed to make a Will, the majority of Ugandans die intestate.¹⁰¹ For example, only five out of every 100 cases reported to

⁹⁷ Okumu-Wengi, (ed.), *The law of succession in Uganda*, p.3.

⁹⁸ Nanyenya, P., (ed.), *A simple guide to the Law of Succession in Uganda. Introduction to Law Series No.3*, The Law Development Centre, Kampala, 1973. See Preface.

⁹⁹ Wagubi, 'The Legal and Institutional framework Governing Inheritance in Uganda', p.2, See Decree 13 of 1972; Okumu-Wengi, (ed.) *The law of succession in Uganda*.

¹⁰⁰ Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*, See, the Preface.

¹⁰¹ Okumu-Wengi, *The law of succession in Uganda*: p.41.

the Administrator General's office die testate. The reasons include among others the superstition that people attach to writing a will whereby many people believe that writing a will hastens one's death.¹⁰² Other reasons include lack of awareness on how to write a valid will and lack of attention to the importance of writing a will. Since the majority of people especially men with property die without any Will the law provides for the appointment of a personal representative of the deceased to administer and distribute the estate of the deceased persons according to defined and fixed percentages. According to the distribution schedule a widow acquires only 15 per cent of the entire estate; the children acquire 75 per cent, the legal heir one per cent while the dependants acquire nine per cent. The personal representative of the deceased, referred to as the administrator, acquires Letters of Administration before she or he can effect distribution of the property according to the schedule laid down.¹⁰³ However, the matrimonial home, legally referred to, as the principal residential holding, is not among the list of items distributed.¹⁰⁴

The matrimonial home is kept upon trust for the legal heir who is the eldest son of the deceased. In case there are no sons, any nearest male relative of the deceased inherits the home. The legal heir is defined as the nearest living male relative in patrilineal descent to a person who dies intestate. Lineal descent is that person who in a direct line of ancestry in an ascending line for example, a son and his father, grandfather, great-grandfather or in a direct descending line for example, between a man, his son, grandson, and great-grandson.¹⁰⁵ Since the intestate Succession law prefers the male child in the appointment of a legal heir, it can be argued that the law promotes patriarchal inheritance customs, which in many cases discriminate against women.

¹⁰² Kanabahita, 'Report on Intestate Succession', p.15.

¹⁰³ Letters of Administration are legal documents that High Court gives to the person chosen by the deceased family to administer the deceased estate. They are usually given in cases where the deceased died without leaving a valid will, see Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*, p.20, Qn.62. See, Schedule 2, para.9 (1) of the Succession Act (Amended) 1972.

¹⁰⁴ Kanabahita, 'Report on Intestate Succession'; Rukimirana, V., & Bateson, A., *Laws of the Republic of Uganda* (In force on 31st December, 2000) Revised Edition, 2000 Volume VII, Prepared under the authority of The Laws (Revised Edition) Act by the commissioner of law revision.

¹⁰⁵ Rukimirana, & Bateson, *Laws of the Republic of Uganda*.

While one would expect the inheritance statutory law to protect the widow, instead it supports the cultural image ideology that encourages male dominance. The intestate succession law guarantees the widow only the user rights to the matrimonial home and the eldest son of the deceased inherits the matrimonial home.¹⁰⁶

The intestate law does not recognize the widow's financial contribution to the matrimonial home. The Law looks at a widow as a dependant and not as a contributor to the home. Since very few male Ugandans leave behind valid wills, the administration of most estates, which include the matrimonial home, no doubt would be handled under intestate succession laws.¹⁰⁷ Since under intestate succession the matrimonial home is not among the items distributed, we can conclude that the majority of Ugandan widows are unlikely to inherit the matrimonial home unless there are special circumstances.

As if denying the widow inheritance rights to the matrimonial home is not unjust enough, the widow's plight is made worse by making her occupation of the matrimonial home conditional. The widow loses her user rights to the matrimonial home if she decides to re-marry, if she leaves the home of her own free will, if she dies or if she fails to keep the matrimonial home in good condition.¹⁰⁸ The widow is not allowed to build another house on the same plot of land where the matrimonial home is located without the consent of the legal heir. For example the widow is not allowed to make any changes on the matrimonial home without the legal heir's consent. The widow can have user rights as long as she does not break any of the above provisions of the law. The user rights of the widow to the matrimonial home are more protected if she gets a Certificate of Occupancy from the court.

The Certificate of Occupancy shows that the widow has a legal right to occupy the matrimonial home. If the matrimonial home has a title deed and is registered in the Titles Registry, the Certificate of Occupancy is then a notice to everyone who may

¹⁰⁶ Wagubi, 'The Legal and Institutional framework Governing Inheritance, p.37. See Second Schedule of the Decree; Okumu-Wengi, *The law of succession in Uganda: women, inheritance laws, and practices: essays and cases*, p.10.

¹⁰⁷ Kanabahita, 'Report on Intestate Succession'.

¹⁰⁸ Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*, p.20, Qn.62. See, Schedule 2, para.9 (1) of the Succession Act (Amended) 1972.

wish to buy, rent or otherwise occupy the matrimonial home that the person named (the widow or heir) in the certificate has a priority right to occupy it. Furthermore, according to the intestate Succession law a widow of man who dies intestate loses her interest in the matrimonial home if at the time of the husband's death she was separated from him unless such separation was due to study leave abroad. In addition, the intestate succession law does not cater for cohabiting women.¹⁰⁹ These provisions show that a widow who is separated or who was cohabiting loses all her contribution to the home when her husband dies intestate. The intestate law is unclear on the inheritance rights of a separated wife whose name is on the title deed. Does this mean that a widow who was in joint ownership of the home but separated from her husband before he died cannot claim her share of the matrimonial home because the matrimonial home legally belongs to the heir, the eldest boy who may not even be her own son? All the above conditions are entrenched in the law as if to indicate that the widow did not contribute anything to the home. What makes the law contentious is that it does not cater for matrimonial homes that are jointly owned by married women with their husbands. The intestate succession law is also silent on who inherits what when a married woman dies. The Succession law therefore assumes that the matrimonial home belongs solely to the husband and therefore upon a wife's death, the husband automatically inherits the home.

Whereas the Constitution is gender sensitive, a number of the existing statutory laws on inheritance have not been harmonized with the Constitution. For example the intestate Succession law still displays elements of customary law ideology in its provisions. The Succession law provisions still emphasize male dominance that disregards a woman's contribution to the home. Unlike marriage laws where a married woman can present her case before the judge with proof of her contribution, in succession law there is no one to make a defence after a husband's death. Since husbands do not make wills to specifically cater for their wives' contribution, widows have no choice but to depend on the unfair distribution coded in the intestate law. The intestate law does not take note of the different residential areas, urban and

¹⁰⁹ Kanabahita, 'Report on Intestate Succession', p.18; Wagubi, 'The Legal and Institutional framework Governing Inheritance', p.44.

rural. The law ignores the contribution married women make to home projects in urban areas.

Therefore, granting the matrimonial home in the city to the eldest son of the deceased instead of the widow deprives the widow of her lifetime's contribution to the home project when her name is not on the title deed. Unfortunately, Parliament has not made substantial reform in the family laws over the years, although there has been a demand for change from NGOs and other women civil society groups representing women's rights.¹¹⁰

4.5 Recent challenges on the intestate Succession Law

This section presents recent attempts by some women organisations to address the contradictory provisions under the intestate succession law. The aim is to show how Ugandan women have taken up initiatives to change the dominant gender homeownership contract whereby it is the male heir that inherits the matrimonial home by challenging the legal provisions. What is debatable though is how the women are able to change the dominant inheritance contract at the interpersonal level where patriarchal customary beliefs still prevail. Recently, the Law and Advocacy for Women in Uganda, one of the NGOs in Uganda, petitioned the Constitutional Court to declare a number of clauses in the Succession Act unconstitutional. On April 5, 2007 the Constitutional Court declared Section 27 of the Succession Act, which guarantees a widow only 15 per cent of the value of the estate and Rule 8 (a) of the Second Schedule that provides for a widow's right of occupancy only until she remarries, unconstitutional. The lacuna created in the Succession law as a result created an opportunity for lawyers to successfully argue their cases for widows.

Although the Constitutional Court declared these provisions in the Succession Law unconstitutional, what remains to be seen is whether Parliament will change the law. Legislation needs to be put in place to address the widow's per cent ages in the entire estate of her deceased husband and the inheritance of the matrimonial home. The Constitutional Court only declared unconstitutional the occupation of the matrimonial

¹¹⁰ <http://www-cgi.cnn.com/WORLD/africa/9804/05/uganda.polygamy/>

home clause that states a married woman loses occupation if she marries. But the clause that states that the matrimonial home should not be part of the estate to be distributed remains contentious. Questions on the widow's right to transfer the matrimonial home into her name after her husband's death remain unanswered. Since the widow is unable to transfer the title deed of the matrimonial home into her name, it becomes difficult for her to use her husband's title deed as collateral for a loan. The widow is left in an inflexible position regarding the way she can utilise the matrimonial home to generate more income for the family. For example, in a case where a husband leaves a big matrimonial home in a prime area, the widow may find it difficult to sell the large home and buy a smaller one and invest the remaining money in business ventures. Hence a widow's freedom to utilise the matrimonial home is curtailed. It is not surprising; therefore, that individuals and civil society groups have tried to urge Parliament to approve the Domestic Relations Bill in order to address such inequalities in ownership rights.¹¹¹

b) Testate Succession

This section discusses the ways in which widows whose husbands die leaving valid Will are affected in terms of inheritance rights in the matrimonial home. The question this section addresses is whether widows whose husbands die testate are guaranteed of inheritance rights of the matrimonial home under testate law. Testate inheritance refers to a situation where a deceased person dies having written a statement that legally is called a will.¹¹² In the Will, a person expresses his/her wishes regarding the disposal of his/her property and other rights or obligations.¹¹³ In the Will the person making the Will (testator) is expected to name an executor or executors of the Will

¹¹¹ Kawamara, East African Legislative Assembly member's Response to President Yoweri Museveni's view on the reform of the Domestic Relations Bill; Kharono, E., Response to the President's views on the Domestic Relations Bill; LaShawn, R., Ugandan Bill Would Save Lives, Letter to the Speaker of the Parliament of Uganda, June 1, 2005.

¹¹² A will is a statement, usually only valid if made known in writing, made by a person during his lifetime in which he directs how his property should be shared out after his death. See Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*, p.24.

¹¹³ Okumu-Wengi, *The law of succession in Uganda: women, inheritance laws, and practices: essays and cases*, p.33.

and the beneficiaries of the estate.¹¹⁴ The main strength of the rules of testate succession in the Succession Act is that they allow a person to dispose off his/her property as he so wishes without following defined rules for distribution of the property.¹¹⁵ Hence a husband is free to bequeath the matrimonial home to his legal wife if he so wishes. Therefore, the testate statutory law makes provisions that are fair to a widow if a husband bequeaths the matrimonial home to her.¹¹⁶ What is debatable though is whether a husband names his wife as the sole beneficiary of the matrimonial home and as a sole executor. In trying to identify case laws where husbands made Will among the many files in the archives at the High Court, the researcher found one file in 100 containing a Will. This confirmed with the information the researcher obtained during an interview with the Administrator General where she revealed that few men make valid Wills.¹¹⁷ This was also evidenced by the long queue at Administrator General's office. According to the Administrator General, in a situation where the deceased left a Will, one does not open a file on the deceased with the Administrator General. Instead the person files the case straight away with the High Court and obtains letters of probate from the High Court. The fact that there were long queue at her office demonstrated that the deceased persons did not leave behind valid Wills and therefore relatives needed Letters of Administration.

Since the testate law of succession gives individuals freedom to dispose off their property in any way they wish, husbands are then free to bequeath the matrimonial home to their wives if they so wish. For example the testate succession law does not dictate on whom the testator should name as the executor or the beneficiary of the estate but only gives guidelines on who should not be excluded in the Will.¹¹⁸ This therefore implies that in situations where the matrimonial home is not jointly owned,

¹¹⁴ An executor (s.3 (1) of Succession Act) is a person named in the Will of the deceased to manage the estate. To manage the estate he or she obtains legal documents known as letters of probate from the High Court authorizing him or to administer the estate. See Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*.

¹¹⁵ Rukimirana, & Bateson, *Laws of the Republic of Uganda*, p.3810, See Chapter 162 of the Succession Act Part VII, Section 36(1).

¹¹⁶ Okumu-Wengi, *The law of succession in Uganda: women, inheritance laws, and practices: essays and cases*, p.39. See Chapter 162 of the Succession Act, Part X, Section 54 (1), and p.3818.

¹¹⁷ The researcher held an interview with the Acting Administrator General and Public trustee Mrs. Jane Byakutaaga Kiggundu at 8.a.m on Plot No. 43 Jinja road on 31 March 2004.

¹¹⁸ Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*.

it is the way a husband writes the Will that determines a widow's beneficial right in the matrimonial home. The way a husband writes the Will reflects his intentions based probably on social-cultural and economic factors. There are different ways in which a husband may write a Will and this determines how easy or difficult it might be for a widow to have any beneficial interest in the matrimonial home upon the death of her husband. A valid will may contain various provisions on how the estate should be managed and these include the following possibilities: - A valid will where the deceased names the widow as both the beneficiary and the executor of the will.¹¹⁹; 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 wife as the executor of the will but names only his children as beneficiaries; 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; and a Will where the widow is not mentioned at all. Hence, while testate succession would be one way in which a widow would inherit the matrimonial home, she is at the mercy of her husband's intentions and wishes. The discussion that follows analyses the different scenario of Will writing to show how complicated the issues of testate are and their implication on a widow's right to inheritance of the matrimonial home.

i) Where the widow is sole beneficiary and sole executor.

This is a situation where a husband bequeaths all his property including the matrimonial home to his wife. In this situation the widow is legally allowed to transfer the matrimonial home into her name without any interference once she acquires letters of probate from the High Court.¹²⁰ At the High Court the researcher failed to identify any case where husbands named wives as sole beneficiaries and sole executors. This was not a surprise because as noted earlier the few men that make Wills seldom make their wives sole beneficiaries and sole executors.

¹¹⁹ An executor is a person named in the Will to administer the deceased estate See Nanyenya, *A simple guide to the Law of Succession in Uganda*, p.9. Also see (s.3 (1) of Succession Act).

¹²⁰ Letters of probate are legal documents from the Court authorizing the person named in a Will to administer the deceased estate. See Nanyenya, *A simple guide to the Law of Succession in Uganda*, p.9. Also see (s.3 (1) of Succession Act).

ii) Where the widow is a beneficiary but not the executor

This is a case where a husband dies leaving a valid Will but does not fully bequeath all his property to his wife. In such cases the husband tends to specify what benefits the wife has in the marital property because there are usually other beneficiaries mentioned in the Will besides the wife. For confidential purposes examples of Wills cannot be attached to this thesis as appendix. However, extract from the Wills are used to demonstrate how widows are deprived of inheritance. The researcher read through some of the Wills found in files of the archives of the High Court and came across the following extract

‘I appoint my brother the head of Nakisinge clan, my advocate at Kampala, my sister, my friend Mr. x... and my grand father my trustees/executors. If my grandfather dies or is unable to be my trustee/ executor, the remaining trustees/executors will continue to carry out duties imposed upon them. I bequeath my ancestral land of 80 acres and the house therein to my daughters and their mother will be assisting them to look after this estate. I order that none of the trustee has power/authority to sell or rent this land’. The extract above demonstrates how men prefer to trust their property with their relatives or male friends. Although the widow in this case seems to be a beneficiary, in actual sense the ancestral land is bequeathed to the daughters. The widow’s role was to ensure that the land was not sold off. In the other files I came across, the researcher noted that in many cases husbands preferred to bequeath the matrimonial home to wives on trust of the children. In the Wills husbands clearly indicated that their wives should be allowed to live in the homes until they died or remarried. In the Will, husbands took care to state in strong terms that the wives should never at any time be evicted from the matrimonial home. Interestingly, the benefits of the wife had nothing to do with inheriting the matrimonial home.

In most of the Wills husbands bequeathed only user rights but not inheritance rights of the matrimonial home to the wives. This is an indication that even at death men preferred the matrimonial home to remain in the male line. In terms of the execution of the Will, most of the Wills the researcher read revealed husband’s clinging to the male line. Most of the executors named for example were male friends, uncles, brothers, or sisters an indication that the deceased males regarded the male line as a

crucial criteria in naming the executors. Although by law, the executor only holds property in trust for the beneficiaries, he or she has all the authority over management of estate in terms of transactions regarding immovable properties like land and housing. For example with the letters of probate the executor registers all real property in his or her name. The executor for instance is legally allowed to transfer the title deed of the matrimonial home into his or her name on trust of the beneficiaries. The executor can for example sell the matrimonial home if he or she is convinced it is the right thing to do. All she or he has to do is to make an inventory or a report to the High Court showing all activities carried out on the estate since he or she obtained letters of probate. For example cases may arise where children of the deceased lack school fees and the only source of money is the matrimonial home in the urban area. In such situations the executor has authority to justify to High Court for his actions.

In case of sale of land or housing, it is the role of executor to sign transfer forms in the names of the buyer. Hence, in a case where the widow is not the executor she is at the mercy of the executor. With all the authority over management of a deceased estate including the matrimonial home the executor can easily mismanage the estate. The case law No.1570 of 1995 demonstrates how the executor mismanaged the deceased estate even though the wife was named as a beneficiary and High Court found it difficult to stop the mismanagement. The deceased, who was a senior lecturer at Makerere University, died testate and appointed one of his brothers, as executor of his will and named his wife and four children as beneficiaries of the whole estate. In the Will the deceased made clear provisions the executor had to follow. The Executor then acquired letters of probate to manage the estate as indicated in the Will. Only 2 months after the death of the deceased, the widow had misunderstandings with the executor regarding implementation of the Will. The executor took control of the whole estate to an extent of taking some of the deceased property without any consultation with the widow. For example the Executor took away deceased's vehicle to the rural village leaving the widow with no transport for the children. The widow then reported the matter to the Administrator General's office.

The Administrator General applied Court to revoke the executor's letters of probate without success. Court later upheld the executor's way of management of the

deceased estate on the basis that the Will of the deceased spelt out clearly how the executor was to manage the estate and therefore the deceased was conscious of what he wrote in the Will. Court further indicated that the Executor needed time to collect the whole estate of the deceased as provided for in the Succession Act before he can file an inventory. Court further held that since the executor had already obtained letters of probate of the will of the deceased he had the authority to distribute all the assets of the deceased vested in him to the beneficiaries of the estate. Eight months after the above ruling the widow sued the executor under High Court Miscellaneous Application No .682 of 1996 and prayed to Court to revoke for the letters of probate. Although the Court finally revoked the letters of probate most of the estate had been squandered. The above case law demonstrates the implication of a widow being only a beneficiary but not an executor. The case also demonstrates how husbands prefer to trust the male kin other than their wives to ensure that property remains in the male line. The case demonstrates how the power of the executor can easily be abused at the detriment of the widow. As noted by some authors, more often than not, the people who obtain the letters of probate do not act as required by law.¹²¹

iii) Where the widow is the executor but not a beneficiary

In this scenario a husband names the widow as executor of the Will but not a beneficiary of the estate. In such cases, the widow is expected to implement whatever is written in the Will. One of the Wills the researcher came across in the files at the High Court read as flows

I appoint my wife... (Name withheld for confidentiality) to be the executor and trustee of this my will; and in the event of her death, or if she predeces me, then I appoint my two to be joint executors and trustee of this my last will. I give, devise and bequeaths my said property in Kampala to my two sisters (names withheld for confidentiality) upon trust to hold the property for all my children, particularly for the purpose of providing for their educational needs, until such time as the youngest child has attained the age of twenty one years or has completed her studies, whichever is the later; and the property shall then be vested in all my children, who shall on their part decide on what to do with the property; to manage and administer the property

¹²¹ Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*, p.27.

(including matters of rentals) in their discretion albeit for the benefit of my children as aforesaid, but not to sell mortgage or assign such property or any part thereof for any purpose’.

The above extract from the Will demonstrates how a husband could deprive the wife of the matrimonial home. It demonstrates how husbands trust their relatives than their wives in matters concerning property. It also demonstrates the widow’s vulnerable position when she is named just as an executor of the Will but not a beneficiary. The situation is complicated in situation where there are children of different mothers. In this case the husband had five children of different mothers with only one home in the city. Since there was no other source of income to cater for children’s school fees, he could not bequeath the matrimonial home to his legal wife. As a result the wife had to look for alternative accommodation.

iv) Where the Administrator General is the Executor of the Will

This is a case where the deceased names the Administrator General as sole executor of the Will and names the children and wife as beneficiaries of the estate. In this scenario the Administrator General presents the original copy of the Will at High Court and applies for letters of probate.¹²² He or she follows the same procedures of application as any other executor. The Administrator- General can also administer a deceased estate where the Will omits to appoint an executor, or where an executor dies before the testator and the testator does not appoint another executor, or where letters of administration are not obtained within two months of the death of the testator.¹²³ In all these situations the Administrator General has to apply to the High Court for permission. In this case the widow is at the mercy of the Administrator General.

Cases where Administrator General’s officials have mismanaged deceased persons’ estates are quite common. A good example is the case of Maliya Nanyonga Vs the

¹²² Letters of probate are legal documents from the Court authorizing the person named in a Will to administer the deceased estate. See Nanyenya, *A simple guide to the Law of Succession in Uganda*, p.9. Also see (s.3 (1) of Succession Act).

¹²³ S 5 (3) Administrator General’s Act.

Administrator General & Another person (buyer).¹²⁴ The accuser (plaintiff) who was the widow of the deceased applied for cancellation of the sale of the house purportedly done by the Administrator- General without her consent on the ground that it was fraudulent and without justifiable reason. According to the lawyer representing the widow, the Administrator General exercised his discretion illegally and that it was just fair and equitable for the children and widow of the deceased to have somewhere to live in. The Administrator General argued that the widow was wasting the estate; that the house in question has never been the matrimonial home of the widow as it was being rented out to another person; and that the deceased was survived by three widows, eleven children and a dependant father all of whom were entitled to the proceeds from the house. On the other hand, the buyer of the home asserted that he had bought the house without consideration of any foul play.

The Judge Byamugisha L.J at that time held: ‘the issues, which this court has to determine, are whether the sale of the house was fraudulent. Section 17 of the Administrator General’s Act cap 140) empowered the Administrator General to sell any property of an estate under his administration. The Administrator General may subject to any wishes which may be expressed by the next of kin of the deceased, dispose of the property of an estate under his administration either wholly or in part and either by public auction or private treaty as he in his discretion may deem to be in the best interests of the estate. The section in my view gives discretion to the Administrator General, which must be exercised well and in good faith for the benefit of the estate and the beneficiaries. He has to take into account any wishes, which may be expressed by the beneficiaries. The Administrator General though empowered to dispose of the property, had an obligation to consult the family of the deceased before selling the house. Failure to consult the beneficiaries especially the widow has caused her hardship because it has deprived her of a source of income. The Administrator General did not act in good faith in my view. The position of the buyer is no better. He was aware of the circumstances surrounding the house since he was in the house as stated before the deceased died, and continued to pay rent to the Administrator General until the house was sold to him. He cannot be described as a bona fide

¹²⁴ Maliya Nanyonga Vs The Administrator General & Another, Administration Cause No. 107 of 1983, not yet incorporated in High Court Bulletin.

purchaser for value without notice. He has nothing to lose if the house is reverted to the widow since money he paid for the house in 1984 would probably have been paid to the estate as rent. All in all, I am satisfied that the widow has had a case in which the court can exercise discretion and rescue the sale of the house. There will be no order as to costs’.

The above case further demonstrates how a widow can be deprived of inheritance of the matrimonial home if her husband does not name her as sole executor and sole beneficiary.

v) Where the Deceased Appoints the Guardian of the his Offspring

This is a situation where the deceased makes a valid Will but appoints his relatives to be the guardians of his young children. Section 47 of the Succession Act allows a father to appoint a guardian for his minor children. In this case, if the widow is not mentioned as the guardian of the children, then it is most likely that the guardian will claim occupation or management of the matrimonial home to take care of the children.¹²⁵

vi) Where the Widow is not mentioned in the Will

This scenario presents a situation where a widow is not named among the beneficiaries of the deceased estate. If a husband dies and, for example, leaves his wife with nothing in his will, she can apply to the Court within six months for a lump sum payment from the property of the deceased person or for periodic payments.¹²⁶ The court will consider the financial position of the wife, her past conduct in relation to her husband, and the husband’s reason for not bequeathing her anything. When the court has done its own investigations it will decide whether or not a payment or payments should be made. However, application of this provision depends on a number of factors that have to be considered by the courts. For example she has to prove that she was financially dependent on the deceased. Furthermore, the Court

¹²⁵ Eilor, and Giovarelli, ‘Gender / Family Issues and Land Rights Component’, p.32.

¹²⁶ Rukimirana, & Bateson, *Laws of the Republic of Uganda*, p.3810, See Chapter 162 of the Succession Act Part VII, Section 38 of the Succession Act; Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*, pp.5, 25 Qn.94.

considers her past behaviour in relation to her husband and other relevant matters and more so why her husband decided not to bequeath her anything in the will.¹²⁷ Although there is a provision for a widow to contest the Will, she is unlikely to inherit the matrimonial home. The best she can benefit from her husband's estate may monies or movable items. Moreover, the widow has to revert to a time- consuming and costly procedure to redeem the matrimonial home if she has something to claim. She has to convince the court that she has a legitimate claim.

4.6 Summary on legal framework of ownership

This chapter specifically discusses the various laws that influence homeownership rights for unmarried and married women in Uganda. Homeownership in Uganda is determined by two legal regimes, namely statutory law and customary law. A plural legal system still exists in Uganda and this mostly affects married women. For example though statutory laws do not seem to discriminate against women; customary law tends to offer little protection to married women. The 1995 constitution, the 1998 Land Act and the Registration of Titles Act seem to protect married women from dispossession of the home. However, these statutory laws do not provide the legal framework through which a married woman can automatically co-own the matrimonial home with her husband. The laws governing marital property are not clearly stated in statutory laws. For example, while the 1995 constitution contains gender sensitive provisions on married women's right to homeownership in marriage, separation and divorce, there is no specific legislation in form of Acts of Parliament to implement these women- friendly provisions.

The current marriage and divorce laws are outdated. Married women's ownership rights in the home are only contested on divorce. Even then, the married woman whose name does not appear on the title deed has to show proof of her financial contribution. Similarly, while the 1998 Land Act seems to protect women from dispossession, the same law protects the credit institutions in case the matrimonial

¹²⁷ Nanyenya, (ed.), *A simple guide to the Law of Succession in Uganda*, pp.5, 25, See Section 46B of the Succession Act.

home is mortgaged. Hence, though statutory law gives a right to individuals to own property this seems to empower unmarried women more than married women.

Ownership of property during marriage has continued to be a subject of considerable debate in Uganda and this debate seems to have no end. All attempts to address the inequality in property ownership in this regard have been geared towards reforming the existing statutory laws and addressing the existing discriminatory customary laws. Whereas legal reform may not necessarily solve women's problems, and legislation alone may not bring about women's equality with men, putting in place specific legislation that favour women is an important step to women's total emancipation. Therefore, without any legal foundation, discrimination of women can continue with impunity and lawyers would find it difficult to protect the women from unjust treatment. The only marital law that could safeguard married women from dispossession of the home is the Domestic Relations Bill. Unfortunately, the said Bill has been shelved for the last 20 years.

On inheritance, the 1995 Constitution seems to guarantee the widow the right to inherit her husband's property. However, it does not specify the type of property the widow is supposed to inherit and hence it is assumed that it includes the matrimonial home. The current laws on inheritance contradict with what is provided for in the constitution. While the right to inherit the matrimonial home seems to be guaranteed under the Constitution, this same right reflected in the Succession laws does not guarantee a widow inheritance rights especially under intestate inheritance. While on the surface intestate succession law seems to grant a widow the right to inherit the property of the deceased, close scrutiny of these intestate rules reveals that the widow does not have inheritance rights to the matrimonial home but only user rights. The matrimonial home belongs to the legal heir who is the eldest son of the deceased. The widow is legally allowed to continue staying in the matrimonial home as long as she keeps it safe and tidy and she does not re-marry.

There are conditions under which she can have even user rights of the matrimonial home. The intestate law does not to recognize the financial contribution of the widow to the matrimonial home. It is not clear in the succession Act what happens to the matrimonial home when the widow had joint ownership of the matrimonial home with

her husband. The intestate law is not clear on whether the widow automatically claims both her share and her husband's share in the home or inherits half of the value of the matrimonial home. The Registration of Titles Act, the Succession Act and the Constitution seem to contradict each other.

Although testate inheritance seems to be a sure way for the widow to inherit the matrimonial home it depends on the way a husband writes a will. The widow is assured of inheritance of the matrimonial home only when the husband names her as the sole beneficiary and sole executor. Information from High Court files and Administrator General's office show that few men make Wills. Interestingly the few men, who make Wills, rarely name their wives as sole beneficiaries and sole executors. Even when the husband bequeaths the matrimonial home to the widow as the sole beneficiary and sole executor she may not easily inherit the home due to the meddling of the dependant relatives of the deceased who can easily contest the Will if it is not written in their favour.

Nonetheless, the widow can be guaranteed inheritance rights if her husband names her as the sole beneficiary and the sole executor where the deceased relatives do not contest the Will. In cases where a husband names the widow as a beneficiary but not an executor, she is at the mercy of the executor. The case laws have demonstrated how executors can mismanage the estate. In cases where the widow is named as an executor but not a beneficiary, she is at the mercy of the beneficiaries. Even if she is to contest the Will, this may end up as a costly and time consuming process because the testate succession law gives the testator the authority to make the will in the way he feels. The widow has to show cause as why she should be one of the beneficiaries of the estate. In case the deceased named the Administrator General as the executor of the Will, the widow is at the mercy of the Administrator.

In situations where the widow is not named as the guardian of the young children, she is mostly likely to lose the matrimonial home to the guardian. Hence testate succession is also complex because there are many dynamics involved. In summary, the widow's ability to inherit the matrimonial home under the statutory law especially where her name is not on the title deed laws is curtailed by many dynamics. The laws that could have protected the widow's right of inheritance are within themselves

contradictory. The only sure way in which the widow can inherit the matrimonial home is having her name on the title deed of the matrimonial home.

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CHAPTER FIVE

UNMARRIED WOMEN AND THE HOMEOWNERSHIP CONTRACT

'Even if I no longer have him, I now have my own home' (Unmarried woman's response to the question: Are you still together with your male partner?)

5. Introduction

This chapter discusses the ways in which unmarried women with low incomes become homeowners. The argument made here is that in spite of their low-income status; unmarried women were able to become homeowners in the middle-income areas. Firstly this was possible because of the income they received from their married male adulterers, and secondly because they were able to make independent decisions on housing investment. The evidence on the above revelations is demonstrated in the life stories of unmarried women. The life stories reveal that in spite of the fact that married male adulterers single handily funded their female lovers' home projects; they were not concerned to have their names included on the title deed of the plots on which their female lovers built the houses. First it will be demonstrated how the unmarried women's control of income enabled them to become homeowners.

Although married male adulterers advanced money to their female lovers, they did not have control over how it was spent. Even when it was spent on housing investment, they were not interested in having their names included on the title deed. As a result, unmarried women were able to register the homes solely in their own names without any interference. Secondly, it will be demonstrated that to a large extent the unmarried women's independence in decision making on housing investment was a gateway to homeownership. They did not have to consult with their married male adulterers on whose name the title deed of the plot of land on which they built the home was to be registered. The chapter later discusses the findings from the life stories in relation to what other studies in developed and developed countries have found on unmarried women homeownership dynamics. This chapter gives us a point of departure from which we can discuss the married women homeownership gender contract. This is

because it is difficult to understand married women homeownership gender contract without looking at unmarried women homeownership contract, as this is likely to leave the story of the gender dynamics in homeownership incomplete.

Against the above background therefore, this chapter presents the unmarried women's gendered home ownership contract. The chapter presents the home ownership contract that is created as unmarried relate with their married male partners, the strategies they applied and the outcomes. The discussions following the above introduction provide evidence through life stories the ways in which unmarried women become homeowners. The purpose is to identify the different elements of the unmarried women's gendered home ownership contract created as they negotiate the gender system.

5.1 Sole ownership due to financial support from a married lover: The story of 'Betty':

This is a life story of a poor unmarried woman, Betty, who became a homeowner in a middle-income area through a married male adulterer. She was able to convince her married male adulterer to advance her money not only to buy a plot of land but also to meet the construction costs of her house. In spite of the fact that the married male adulterer met all the construction costs of the house he did not at any time advance the idea to have his name included on the title deed of the house. Betty lives alone in the three bed-roomed iron roofed home, Fig.6. There is electricity in the home and water in the courtyard. Betty has two children but they are grown up and live independently. Her first-born boy child completed 16 years of education and is now in the construction business while her second child attended only seven years of primary education and then undertook a tailoring course.

Figure 6: ‘Betty’s’ home in Kiwatule, registered solely in her name



Betty, aged 52, was born in Bulamba Bwanyanya village, Makulubita sub-county, Katikamu County, Luwero District, to a poor family of nine siblings. Because of the poor family background, Betty did not acquire good education. She had only five years of primary education before she dropped out of school. With little education Betty had little chance to acquire a formal job and earn a reasonable income. Similarly, her chance to earn a good income in the informal sector was slim because she lacked capital to start a business. When Betty dropped out of school, she cohabited with Kezia with whom she had two children (a boy and a girl). After two years of cohabiting, Betty learnt that Kezia was involved in a relationship with another woman. She fell out of the relationship with Kezia and went back to her parents in Katikamu. In 1979, Betty's brother advised her to join him in Kampala where he could help her acquire some skills. Betty's brother, who lived in Makindye, had low income due to poor education and hence he could not immediately help Betty acquire skills. Betty lived with her brother for four years before her brother advanced her money to undertake a tailoring course at Katwe community centre. On completion

of her tailoring course in 1985, Betty left Makindye and joined another brother in Ntinda where she worked as a shop assistant in her brother's shop. While she attended to her brother's shop she continued with her tailoring. The money from tailoring was inadequate to buy food and pay school fees for her two children. To supplement her income, Betty would sell sweet bananas and water. In spite of her struggles to improve on her income her single life was not easy. For example she would at times fail to earn adequate income to buy food and pay school fees. To solve her income problem she established a good relationship with the head teachers of the school where her children attended. Whenever she would have a financial problem she would request the head teacher to be patient with her.

Betty met John, a married man, in 1985. In their relationship, Betty did not have any child with John. In the interview Betty was very reluctant to talk about John. Because of the secret relationship Betty had with John she did not want to reveal his personal details. After probing however, Betty revealed that not only did John advance her money to purchase a plot of land, but he also met all the construction costs of the house on her request. Betty registered the land solely in her own name. Asked whether John insisted on having his name on the title deed, she said, 'How could he ask to be included on the title deed, we were just lovers'. Betty was able to register the plot of land solely in her name because she was in full control of the money given to her and was free to make independent decisions with regard to the ownership status of the home.

Secondly, John did not pressurize her to include his name on the title deed. John was not concerned about his name being included on the title deed most probably because he was a married man and therefore he did not want to jeopardize his marriage. This also implies that even if John had been involved in the purchase and registration, he would most probably have registered the plot of land solely in Betty's name. As Ntege observes, men usually want to show their lovers their purse power. In so doing they continue to enjoy the company of their lovers.¹

Therefore, John's lack of interference in the registration process of the land could be attributed to the nature of relationship he had with Betty.

¹ Ntege, 'Women and Urban Housing Crisis', pp.46-.62.

Betty started construction work of her home in 1997. Since the land on which the home was built was registered solely in her name, she legally owns the home. Therefore, John cannot claim ownership of the home even though he met the construction costs. Hence, Betty was able to become a homeowner because of the financial support she received from her married male lover. Had Betty not received financial support from John, she would most likely not have become a homeowner. This is because her tailoring job could not generate enough income even for food and school fees.

As a single income earner she would most likely have found it difficult to save any money to buy a plot of land, let alone build a home in Kiwatule a middle-income area. Betty had poor education, and hence could not acquire a good job to earn good income. This is reflected in her failure to pay school fees for her children. Asked whether she is still in love with John who enabled her to become a homeowner, she laughed and said 'Even if I no longer have him, I now have my own home'. Betty's statement is an indication that the love was good while it lasted and now she can live on her own.

Although John did not have any children with Betty, this did not deter him from financing the housing project. This story demonstrates that married men are willing to finance a housing project for their mistresses even if they do not have children in the relationship. Betty's story demonstrates an interesting case where an uneducated unmarried woman with no income was able to own a home in her own names. She was able to register the plot of land on which John constructed her home solely in her name because John did not interfere in the decision-making regarding whose name the title deed of the plot of land had to be registered. John did not interfere in decision-making probably because he was a married man and therefore he saw no need to have his name included on title deed of his female lover as he had his marriage to protect.

This is an indication that married men adulterers in good relationships with their wives would most likely not want their wives to know about their mistresses and therefore one way not to reveal their adulterous behaviour is not to put their names on the title deed. Putting their names on the title deed would imply that they had a sexual exchange outside marriage. They would find it difficult to defend themselves against

adultery before their wives especially where they co-owned the home with their mistresses.

Betty's story demonstrates that unmarried women are able to become homeowners because of total control of income, lack of interference from men and hence independent decision-making. In so doing they are able to register the land solely in their names. Betty's story demonstrates that it is easier for an unmarried woman to make independent decisions even when her male lover is present. In this case the married male adulterer has no control in any decision making in the home because he does not have any commitment to the female lover as a wife but just as a lover. Hence married male adulterers most probably do not see any reason to have their names included on the title deed.

Betty's story further demonstrates the problem of poor education and poor income as factors that deprive unmarried woman homeownership. The story demonstrates how uneducated women end up in informal sector activities, which usually generate low incomes. Hence, compared to the educated unmarried women, unmarried women with low education and low income are most likely to find it difficult to own a home unless they get help from male lovers. Betty would most probably not have owned a home had she not sought financial help from her married male lover.

5.2 Sole Ownership where there are children: The Story of 'Josephine':

This is another life story that demonstrates how an unmarried woman became a homeowner. In comparison to the earlier life story, in this case the unmarried woman had children with the married male adulterer. The interest in this story is the independence this unmarried woman had to register the plot of land solely in her name without any interference from her married male adulterer even when she had children with him.

Josephine is a poorly educated unmarried woman who was able to own a home of her own through her married male lover. Josephine lives in a three bed roomed house in

Banda with her three children, two boys and one girl aged 15, 13 and 11 years. The house is iron roofed, with water and electricity (Fig.7).

Figure 7: Josephine's home built by her married male partner



Josephine, aged 40 years, was born to a poor family of four siblings in Wakitaka rural village in Kamuli, many miles away from Kampala. Josephine's mother was uneducated and poor while her father was an alcoholic and hence spent the entire household's money on alcohol. As a result Josephine's mother divorced him and went back to her natal family in Kampala leaving Josephine in Kamuli when she was still very young. Josephine's father took her to her paternal grandmother in Kamuli where she lived until her mother came for her in 1976 and took her to Kampala.

Josephine had seven years of education at Kamuli Primary School from 1969 to 1976 before she joined Hill Grammar Secondary School in Kampala. Unfortunately she dropped out of school in her third year due to pregnancy. Dropping out of school marked the end of Josephine's chance to acquire a formal job and earn a reasonable income just as Betty's case in the earlier story. With ten years of education Josephine

had no employable skills and therefore she could only be self-employed. After delivery of her first-born child, her mother took her for a tailoring course. Josephine never completed the tailoring course due to lack of school fees. She remained at her mother's home practicing the little knowledge of tailoring she had acquired. Just like Betty in the earlier story, Josephine ended up as a self-employed tailor but earned little income which could not afford her a home of her own.

Josephine met James a customarily married man in Kampala in year she does not remember. Customary marriage is polygamous and therefore a man is allowed to marry more than one wife.² Although Josephine continuously requests James to formalize their marriage through custom law, James adamantly refused. Josephine and James have cohabited together for the last twenty years and they have three two children two boys and one girl. Josephine lived in a rented house in Banda before she asked James not only to advance her money to buy a plot of land but to meet the construction costs of the home. When Josephine bought the plot of land, she registered it solely in her name but James did not ask her as to why she did so.

Therefore, Josephine was able to register the home solely in her name because she was personally involved in the purchase and registration of the land and was free to make an independent decision. Had James been involved in the purchase and registration of the plot of land, most probably he would have registered it in his children names. James's lack of involvement in the purchase and registration of the land on which he built the house could also be attributed to the non-committal relationship he has with Josephine. Although James has children with Josephine he does seem to regard her as his second wife.

James financed all construction costs of the home. He bought cement, iron sheets, timber and other construction materials. He would also help in the supervision of the work. Since the plot of land on which James built the home is solely registered in Josephine's name the home legally belongs to her. She was therefore able to construct a home because of the financial help she received from James.

² A compendium of Laws relating to Domestic Relations in Uganda, Reproduced by LDC Publishers, Kampala, Section 4(2) p.5527. Also see Chapter 248, the Customary Marriage Registration Act.

Josephine's life story demonstrates the lack of involvement of married male adulterers in their female lovers' homeownership status. What is questionable though is why James accepted to fully finance Josephine's home project without taking care of his interests in the home. Can we assume that James met all the construction costs of Josephine's home project because of the children he had with her? Then the more reason he should have insisted to have his children's names included on the title deed to ensure that his interests were taken care of. This may not be convincing enough because Betty's story demonstrated earlier revealed that married male lovers are willing to finance their female lovers' home project even when they do not have children with them. Josephine's life story demonstrates yet another situation to show how unmarried women are powerful in decision-making even when their male lovers are present and meet all the construction costs of the home.

The above stories demonstrate that unmarried women are able to become homeowners through married male adulterers and interestingly the married males are not concerned about their personal interests in their female lovers' home projects. While a married male adulterer meets all the construction costs of his female lover's home project and prefers not to have his name included on the title deed probably to protect his marriage, it is difficult to justify why a married male who has no marriage to protect does not have any interest to have his name or his children's names included on the title deed. We can probably conclude that the above stories demonstrate that unmarried women have a different kind of gender contract with their married male adulterers.

5.3 Discussion of findings

This chapter presented evidence on how unmarried women become homeowners through married male lovers. In this section, the findings are analysed in light of available literature. The section discusses the gendered dynamics of unmarried women and married male adulterers noting the ways in which unmarried women relate with the married male adulterers in terms of homeownership. First it is argued that control of income is a precondition for homeownership. Secondly, it is further argued that independence in decision-making is vital for unmarried woman to become

a homeowner. Studies on unmarried women have mainly focused on the comparative analysis between unmarried women and unmarried men as groups in terms of their ability to become homeowners in their own right. In this respect they have looked at age, education, income, type of employment differentials as factors determining homeownership. These studies reveal that unmarried women find it more difficult than unmarried men to become homeowners due to their low income that comes along with poor education and unemployable skills.³ These studies leave a gap in the literature on how low income women become homeowners. Other studies however have looked at unmarried women and unmarried men at interpersonal level but not on a group level. These have explored the relationship between unmarried women and unmarried men at personal level in terms of the gender relations in homeownership.⁴ These studies reveal that unmarried women receive support from their unmarried male lovers or 'live-in men' to enable them to become homeowners. For example some unmarried male lovers meet some of the construction costs of the home. Interestingly while unmarried men lovers contribute and sometimes meet the major construction costs of their female lover's project they do not demand to have their names to be included on the title deed.⁵ However, in some cases, unmarried men are reluctant to contribute to female lovers' home project especially where they do not have a child in a relationship.⁶

The studies also focused on unemployed unmarried lovers some of who lived with their unmarried female lovers because they had neither employment nor income. Since the unmarried male lovers did not have income, they had no control over the ownership status of the home. Although these studies enlighten us on the unmarried women relationship with their unmarried male lovers, they do not provide us with information on how unmarried women related with married male lovers in terms of homeownership. Other studies compare the homeownership gender relationship

³ Sedo & Kossoudji, 'Rooms of One's Own'; Little, *Gender, Planning and The Policy Process*, p.157; Watson, *Accommodating Inequality*; Larsson, *Women Householders and Housing Strategies*; Miraftab, 'Shelter as Sustenance'; Grant, 'Moving and Coping: Women Tenants', pp.169-189; Moser, & Peake, (eds.) *Women Human Settlements and Housing*.

⁴ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction'.

⁵ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', p.264.

⁶ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', pp.263-264; Kalabamu, 'Gender Neutral Housing Delivery Systems', p.71.

between unmarried women and married women. These studies reveal that unmarried women with adequate income in developing countries are in a better position to become homeowners than married women.⁷ This is mainly because unmarried women with adequate income are able to make independent decisions without interference from any male partners. The studies further reveal that educated unmarried women with good income for example, prefer to remain single in order to remain owners.⁸ This is because in unmarried women are not allowed to own property. Much as these studies enlighten us on the gender contract of unmarried women and married women and hence relevant this study, they do not provide us with the mechanisms through which unmarried with low-income become homeowners.

This study goes beyond the general perception that unmarried women with income find it easier to become homeowners than their married counterparts and provides evidence on not only how unmarried women become homeowners and goes further to show how this comes about. The study further demonstrates that different gender contracts exist between unmarried and married women. Lastly, other studies explored the relationship between low-income unmarried women and rich married male adulterers in terms of homeownership dynamics.⁹ These studies show that unmarried women with children not only received financial assistance from their married male lovers but they also went ahead to oblige their married male lovers to provide a home for them and their children.¹⁰ Hence, unmarried women capitalized on the children they had with their married male lovers to become homeowners. Although earlier studies show that unmarried women capitalised on children as a gateway to homeownership, there is no evidence to support this argument. Married male adulterers, who resisted provision of a home, were threatened by the unmarried women to disclose the secret relationship to their wives. To avoid embarrassment and

⁷ Gwebu, 'Housing Provision and Home-ownership Schemes among Low-income Groups:'p.31; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property'.

⁸ Larsson, et. al. *Changing Gender Relations in Southern Africa: Issues of Urban Life*, p.277.

⁹ Manyire, 'Gender and Housing Development in the Low Income Suburbs'; Lee-Smith, 'My House is My Husband'; Ntege, 'Women and Urban Housing Crisis, Impact of Public Policies and Practices; Moser, *Gender Planning and Development, Theory, Practice and Training*, p.18; Obbo, 'East African Women, Work, and the Articulation of Dominance', p.236.

¹⁰ Manyire, 'Gender and Housing Development in the Low Income Suburbs; Lee-Smith, 'My House is My Husband'.

to protect their marriages, the married male adulterers were forced to build homes for their mistresses.¹¹ In these cases married male adulterers were not interested to have their names included on the title deed though they fully funded the home project of their female lovers in order to protect their marriage.

However, in cases where married men adulterers were not concerned about saving their first marriages and were in a steady relationship with the female lovers, they were concerned about the ways their female lovers spent the money they gave them. For example in cases where an unmarried woman bought land without the married male adulterer's knowledge and he later came to know about it, the married male adulterer would quarrel and sometimes the quarrel led to a separation.¹² As the married male adulterer entrenched himself in the home and regarded the mistress as his second 'wife' he became more possessive of decision making on housing investments. We can conclude that married men who were in sort of a committal relationship had a different gender contract with their female lovers.

The studies also reveal that some unmarried women would save part of the money they received from their married lovers and use it to buy plots of land in the city secretly. The unmarried women would acquire separate houses or properties most probably to secure their future in case the married male adulterer stopped the financial favours.

This study however focuses on unmarried women gender contract in relation to married male lovers and therefore the discussion that follows specifically focuses on this particular gender contract. Findings in this study contribute to the understanding that married male adulterers are not interested to have their names included on the title deed though they fund home projects of their female lovers in order to protect their marriages.

¹¹ Ntege, 'Women and Urban Housing Crisis', pp.46-.62; Obbo, *African Women: Their Struggle for Economic Independence*, p.219.

¹² Obbo, *African Women: Their Struggle for Economic Independence*.

The findings further reveal that even where a married male adulterer was not concerned about saving his first marriage and was in a steady relationship with the female lover he had no interest to have his name included on the title deed of his female lover's home project. This implies that whether the married male adulterer entrenches himself in the female lover's home and regard the mistress as his second 'wife' he does not necessarily become possessive of decision making on housing investments. We can conclude that married male adulterers in this study were more liberal than married male adulterers in earlier studies.

Findings of this study partly differ from earlier findings on the issues of children as the gateway to homeownership. Findings in this study reveal that having children with the married men did not necessarily influence unmarried women's homeownership. This study provides evidence to show that married male lovers were ready to meet construction costs of their mistresses' houses and allow them to register the home solely in their names regardless whether they had children with the female lovers or not. The married male lovers were uninterested in controlling the resources of their female lovers. Findings of this study provide evidence that unmarried women have the power become homeowners through married men regardless of whether they have children with their married male adulterers or not. Unmarried women in control of income have the power to register the homes solely in their names without any hindrance from their married lovers. There is evidence to show that married men are willing to let go their male power and control in circumstances where they are not in a committed relationship with female lovers hence demonstrating a different gender contract.

The above discussions present the gender contract that exists between unmarried women and married male adulterers. Married male partners do not have any control over ownership of the home of their female lovers and mistresses even when they build the home.¹³ In such situations the female lovers make independent decisions with regard to whose name the title deed of the plot of land on which the home is built

¹³ Ntege, 'Women and Urban Housing Crisis: Impact of Public Policies and Practices in Uganda'; Obbo, *African Women: Their Struggle for Economic Independence*.

is registered. Ironically married male partners are not concerned about having their names included on the title deed even when they finance the home project.

The life stories of unmarried women demonstrate that a different gender contract exists. The findings reveal that unmarried women have the power to register the home solely in their names without any interference from their married male lovers even when the married male adulterer meets all the construction costs of the home project. This is regardless of whether the married male lover has children or not with the female lover. This is possible because they are in control of the income and at the same time they are able to make independent decision on housing investment. In these cases the married male lover is more interested to save his marriage than the female lover's home project.

The findings in this chapter contribute to the understanding of the complex dynamics in the unmarried women and married male lovers' homeownership contract. The findings confirm the findings in earlier studies in Kampala that revealed that unmarried women became homeowners through married male lovers.¹⁴ However, earlier studies in Kampala show that unmarried women not only used non-confrontational means to manipulate men for their money but they manipulated them to build homes for them and their children. The life stories in this chapter reveal that children did not necessarily play a large role in enabling unmarried women to become homeowners.

5.4 Summary

The prevailing gender contract between married men and their mistresses reveal that unmarried women make independent decisions regarding the ownership status of their homes without any interference from their married lovers. As a result they register the homes solely in their own names and become sole owners even when the married male adulterers meet all the construction costs of the home project. The role of this chapter to presents a background on which we are able to understand the gender homeownership contract among married women. Hence there is need to find out how

¹⁴ Ntege, 'Women and Urban Housing Crisis'.

husbands relate to their wives in the household in relation to homeownership. The next chapter discusses the homeownership gender contract among married women.

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CHAPTER SIX

MARRIED WOMEN WITH ONLY USER RIGHTS TO THE MATRIMONIAL HOME

'When you are single you do not have problems. It is when you get married that problems begin since you require your husband's consent for almost everything that you do' (A married woman's sentiments expressed in response to the question as why she could not register for home-ownership').¹

6. Introduction

The previous chapter constructed an account of how unmarried women became homeowners through married men adulterers even when they had low income. Although married male adulterers met all the construction costs of the home project, they were not interested to have their names included on the title deed of their female lover's home project. It is on this basis that this chapter provides an account of how married women relate with their husbands in terms of homeownership. The aim is to explore how and why married men were more interested to have their names on the title deed than married men adulterers hence denying their wives ownership rights.

Therefore, this chapter builds from chapter five as reflected in the quote 'When you are single you do not have problems. It is when you get married that problems begin since you require your husband's consent for almost everything that you do'.² The aim is to identify the different elements of the marriage contract created as married women negotiate the gender system. In so doing we explore how and why married women remain in a subordinate position in terms of ownership rights. Later on in the chapter, the married women gender contract is compared with the unmarried women gender contract in order to identify the differences.

Studies in developed countries reveal that married women are not deprived of homeownership.³ The legal structures guarantee married women co-ownership of the

¹ Gwebu, 'Housing Provision and Home-ownership Schemes Among Low-income Groups', p.31.

² Gwebu, 'Housing Provision and Home-ownership Schemes among Low-income Groups', p.31.

³ Sedo & Kossoudji, 'Rooms of One's Own'; Lundy, 'Race and Gender Inequality in Homeownership' p.607.

matrimonial home regardless of whether or not they financially contribute to the home project.⁴ Hence on separation or divorce many women acquire homes through divorce settlements.⁵ Studies in developing countries on the contrary reveal that an unequal gender relation in homeownership exists among married couples where men dominate in major decision making on housing investments.⁶ However, little is mentioned on the specific mechanisms through which the unequal relations in homeownership come about. Many authors attribute the unequal gender relations to institutional, economic, social-cultural, and psychological (perception) factors.⁷ However, some authors question whether these factors still persist in Africa in spite of urbanization, globalization and information flow.⁸ In developing countries the legal structures and customary practices regulate ownership of property within marriage, separation and divorce. Studies in South African countries reveal that by statutory law, married women are not allowed to have their names included on the title deed. Instead, their names are presumed to be included. In other cases, marriage laws are not clear on the married woman's beneficial interests in the home except at divorce. On divorce, married women are at the mercy of Courts to benefit from the matrimonial home. Sometimes women obtain less value of the matrimonial property than expected while in others women are compensated for their labour during marriage.⁹

In addition, there is contradiction between marital laws; laws that govern property acquisition for example Land Acts and Registration of Titles Acts; and the Constitution; in regard to married women's right to matrimonial property.¹⁰ In a

⁴ Lundy, 'Race and Gender Inequality in Homeownership' p.607; Little, *Gender, Planning and The Policy Process*, p.158; Brion, M. & Tinker, A., *Women in Housing: Access and Influence*, The Housing Centre Trust, London, 1980, p.11-12.

⁵ Smith, 'Income, Housing Wealth and Gender Inequality'; Little, *Gender, Planning and The Policy Process*.

⁶ Larsson & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231; Matere-Lieb, 'Basotho Women's role in Urban Housing'.

⁷ Asimwe, 'One Step Forward, Two Steps Back'; Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', pp.245-268; Ntimo-Makara, & Makara-Khatleli, 'Gender and administrative conflicts over land in peri-urban areas'; Tamale, 'Riding the Paper Tiger'; Larsson & Schlyter, 'Changing Gender Contracts and Housing Conflicts'; Musyoki, 'Perceptions on Gender and Access to Housing in Botswana', pp.266-285; Munalula, 'Choice of Law'.

⁸ Musyoki 'Perceptions on Gender and Access to Housing in Botswana', pp.282-283.

⁹ Munalula, 'Choice of Law', pp.204-205.

¹⁰ Larsson & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.220; Munalula, 'Choice of Law', p.196; Matere-Lieb, 'Basotho Women's role in Urban Housing', p.63.

number of countries customary laws exists side by side with statutory law.¹¹ In some countries women are culturally regarded as 'minors' and hence they cannot register the plot of land in their names without consultation with their husbands.¹² In many African countries a woman marries in a man's clan and therefore all the property belongs to the husband and his clan.¹³ In terms of economic factors, there is a general consensus that lack of income due to poor education limits a married woman's ability to negotiate with her husband for equal rights in the ownership of the home.¹⁴ Even then, there is a general consensus that in many households, men make the decisions on housing investment while women's decisions are restricted to decisions on the day-to-day matters of the family.¹⁵ This is regardless whether the husband is present or absent.¹⁶ Hence, homeownership involves negotiation, consensus, cooperation, sometimes assertiveness, and women's confidence to make choices.¹⁷ In relation to economic factors, other studies suggest that the way married women spend their money impacts on their ownership rights to housing.¹⁸ For example husbands spend their income on housing and their children's education while wives spend their income on day-to-day items like food, clothing and other domestic goods.¹⁹ Hence

¹¹ Munalula, 'Choice of Law', p.200.

¹² Mapetla, N., & Sakoane-Songca, R., 'Perceptions on property and inheritance rights, p.155; Ntimo-Makara, & Makara-Khatleli, 'Gender and administrative conflicts over land in peri-urban areas', p.199; Matere-Lieb, 'Basotho Women's Role in Urban Housing', pp.59-63; Larsson & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

¹³ Asimwe, 'Making Women's Land Rights a Reality in Uganda', pp.173-189, 2; Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*.

¹⁴ Deshmukh-Ranadive, 'Gender, Power, and Empowerment: An Analysis of Household and Family Dynamics', p.113; Gwebu, 'Housing Provision and Home-ownership Schemes Among Low-income Groups', p.32; Afshar, H., (ed.) *Women and Empowerment*, pp.2-3; Rowlands, 'A Word of the Times, but What Does it Mean?', pp.11-34; Agarwal, 'Bargaining' and Gender Relations: Within and Beyond the Household', pp.1-51; Kabeer, 'Reversed Realities, Gender Hierarchies in Development Thought'; Sen, 'Gender and Cooperatives Conflicts'.

¹⁵ Kalabamu, *Changing gender contracts in self-helping Housing Construction*, pp., 245-68; Behice, 'Women's Efficiency in Decision Making and Their Perception of Their Status in the Family', pp.65-70; Cubbins, 'Women, Men, and the Division of Power, p.1065; Agarwal, 'Bargaining' and Gender Relations', pp.1-51; Sen, 'Gender and Cooperatives Conflicts'; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

¹⁶ Schlyter, *Women householders and housing strategies*, p.146.

¹⁷ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.229.

¹⁸ Moser, *Gender Planning and Development, Theory, Practice and Training*, p.27.

¹⁹ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?', p.36; Vogler, 'Cohabiting couples: rethinking money in the household; Narayan, et. al., *Voices of the Poor: Can anyone hear us?*, p.175; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts',

upon separation or divorce, a married woman has nothing to show as proof of her contribution to the matrimonial home.

On psychological factors, authors argue that the attitudes of women themselves and about men; attitudes of men about women and about themselves contribute to women's deprivation of homeownership. For example, women themselves tend not to value their work and their contribution to the home project.²⁰ For example women tend to identify themselves as homemakers, the keeper of the family, responsible for the well being of their children.²¹ On the other hand women regard men as breadwinners and decision makers on housing investments even when these roles have changed as a result of social and economic changes.²² As a result, even in situations where they could assert their rights in homeownership they do not see it as an important issue so long as they are happily married.²³ Men take advantage of this attitude of married women to exclude them from co-ownership. It is most likely that at divorce they realize the mistakes they made. By this time it is probably too late to reverse the situation. Hence, the way a married woman looks at life and her role in the family determine her ownership rights in the home.²⁴ The way married women perceive themselves also depends on the various networks they belong to.²⁵

While studies in other countries help us to understand the ways in which married women are deprived of homeownership they were carried out in different contexts. Some of the contexts are difficult to change because they are pre-determined by the

p.218; Moser, *Gender Planning and Development, Theory, Practice and Training*, p.24; Dow, & Puseletso, *Women, Marriage and Inheritance*, Women and Law in Southern Africa, p.103.

²⁰ Miraftab, 'Shelter as Sustenance: Exclusionary Mechanisms Limiting Women's Access to Housing', p.225; Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter', pp.143-160; Schlyter, *Women householders and housing strategies, the case of George, Zambia*, p.74.

²¹ Behice, 'Women's Efficiency in Decision Making and Their Perception of Their Status in the Family', pp.65-70; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.218; Sen, 'Gender and Cooperatives Conflicts'; Senauer, 'The Impact of the Value of Women's time on Food and Nutrition'.

²² Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, p.175; Larsson, A., 'Theoretical and Methodological Considerations', p.218; Musyoki 'Perceptions on Gender and Access to Housing in Botswana', p.276.

²³ Oruwari, 'The Invisible Contribution of Married women in Housing Finance', p.117.

²⁴ Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter', p.229; Sen, 'Gender and Cooperatives Conflicts'.

²⁵ Griffiths, A., *In the Shadow of Marriage: Gender and Justice in an African Community*, p.225.

legal structures in place. As a result, some of the studies do not explicitly show the complex processes of how and why and under what circumstances married women are deprived of homeownership to end up with only user rights of the matrimonial home even where they contribute financially to the home project. As Schlyter and Zhou observe, in some cases women and men's actions are implicitly explained without looking at how and why women and men behave the way they do.²⁶ The analysis in this chapter therefore makes a contribution in filling up this gap.

Against the above background therefore, this chapter presents evidence on the ways in which married women ended up with only user rights of the home even in situations where they financially contributed to the home project. The argument will be made that in contrast with unmarried women, married women are engulfed in the gender power relations with their husbands. The ways in which married women are deprived of homeownership produce diverse homeownership experiences. These were influenced by lack of regular income, lack of awareness of one's homeownership rights and husbands' cultural ideologies.

In a case where a married woman did not have regular income to co-finance the home project she was unable to include her name on the title deed of the plot of land on which the matrimonial home was built even when she had the opportunity to do so. This was mainly because she was at cross roads either to include her name on the title deed and end up without a home or register the title deed solely in her husband's name to enable him acquire a housing loan. In the end she had the title deed registered solely in her husband's name to enable him acquire a loan from his employer because she did not have any other alternative. On the contrary, in cases where married women had substantial income to contribute to the home project but were not aware of their ownership rights, their husbands automatically registered the homes solely in their names.

In cases where the home was already registered solely in a husband's name it was difficult for the married women to assert ownership rights especially where they had nothing substantial to contribute to complete the home project. In this case it was difficult for married women to convince their husband to include their names on the

²⁶ Schlyte, & Zhou, 'Gender Research on Urbanisation, Planning, Housing and Everyday Life', p.14.

title deed of the matrimonial home. For a married woman to convince her husband to have her name included on the title deed of the plot of land already registered in his name, the husband must be in a financial crisis to complete the home project hence in dire need of financial help from his wife.

In cases where the plot of land on which the matrimonial home was built originally belonged to the married woman's in-laws, their husbands could not include their names on the title deed. In such cases husbands were unwilling to include their wife's names on the title deed even when they were free to do so under the pretext that the land belonged to the clan. Husbands were adamant to include their wives' names because of the patriarchal beliefs that property should remain in the male line. In such non-negotiable situations married women were left with only user rights of the home even when they indirectly contributed to the home project. The evidence is captured through the life experiences of married women as presented in their life stories of different marriage situations and supported with case laws from High Court.

This chapter demonstrates that while married male adulterers are not interested to have their names included on the title deed probably due to the non-committal relationship, on the contrary, husbands prefer to register the matrimonial home solely in their names. This indicates that there is a difference between homeownership gender contract between unmarried women with married male adulterers and married women with their husbands. The difference could be attributed to the gender power relations in committal type of relationship. This chapter therefore, contributes to an understanding of the different homeownership gender contracts between unmarried and married women specifically looking at how and why married women ended up with only user rights of the home. The discussions that follow this introduction present evidence of how and why married women were deprived of homeownership.

6.1 Loss co-ownership rights through lack of a regular income and choice making: The story of 'Flora'.

This is a life story of a relatively educated married, who ended up with only user rights of the matrimonial home even though she contributed financially to the home project. The life story demonstrates how lack of regular income and the choice an

individual makes can easily deny a married woman homeownership. Flora lives in a four bed-roomed house in Banda with five of her children. The home has a corrugated iron roof, single storied, with water and electricity (Fig.8).

Figure 8: Flora's home built by her late husband.



Flora paid the larger percentage of the purchase price of the plot of land on which the matrimonial home was built using her retrenchment package, and therefore had the opportunity to include her name on the title deed, which would have guaranteed her ownership rights. Although she had a choice to include her name on the title deed of the plot of land and wait until her husband acquired enough money to build the family a home, Flora preferred to register the plot of land solely in her husband's name to enable him acquire a housing loan from his employer. Flora took this painful choice because she was unemployed at the time and hence she had no regular income to co-finance the home with her husband. In addition, she wanted the family to have a home of their own and save money spent on rent.

Hence, the financial contribution she made when she purchased the plot of land is not reflected since the titled deed is registered solely in her husband's name. In case of separation or divorce, Flora would have to produce evidence in court as proof of her contribution. Even if the Court ruled in her favour, Flora's share in the home would depend on whether she remained in the home or moved out. Her benefits in the matrimonial home would also depend on the kind of marriage she had with her husband. Since Flora was married under customary law, she would most likely not acquire any benefits in the home. This is because under customary law a married woman is not entitled to any benefits in marriage.²⁷

Born in 1964, Flora is the first-born in the family of eight siblings. Flora was born and grew up in a middle class family in Kampala. Flora had only eleven years of education. She attended Kiswa Primary School in Kampala for four years of primary education before joining Mary Immaculate boarding primary school in Lira District where she completed the seven years of primary education. She then joined St Catherine Secondary School in Lira where she completed four years of secondary education in 1986. Although she was born into a middle-income family she could not advance in her studies because of early pregnancy. Flora's early pregnancy marked the end of her education, which had consequences for her career. With little education, Flora could only be employed in low-paid jobs and this would in future determine her decision-making and home ownership rights.

In 1987 Flora married under customary law to James, who was working as a banking officer in Bank of Uganda. Since James worked in a reputable organization he had good income. The couple had five children, four boys and one girl. The couple resided in a bank owned house in Mbuya before they moved to a rented a house in Banda. In the meantime, Flora undertook a secretarial course at Uganda College of Commerce in Nakawa where she qualified as a secretary. With her qualification Flora acquired a job in the Prime Minister's office as a secretary where she worked for one year and was then transferred to Ministry of Education as a secretary where she worked for ten years. Flora was able to acquire a job and earn an income because of her education

²⁷ Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.200.

without which she would most likely have had to depend on James. Nonetheless, her income was lower than that of James.

Flora was retrenched during the restructuring of the Ministry in January 1999 but was paid a retrenchment package. Flora saved all her retrenchment package in her account for a rainy day. Loss of a job implied that she had to totally depend on James for everything including housing investment. After renting for five years, Flora realized that most of the family's income went on rent. She then advised James to buy a plot of land in Banda, (in the same neighbourhood where the couple rented) and build a home. For a long period Flora pleaded with her husband to buy a plot of land in Kampala but he was more interested in building a home in Kitgum District, a rural village

In the end, Flora categorically told James that she would never live in the rural village because she was born in Kampala and therefore she was a town woman. It is surprising to note that though Flora was concerned about James's expenditure on rent James did not look at the rent issue as important. Studies show that in many cases it is women who encourage men to build homes.²⁸ Flora's action to put pressure on James to provide a home reflects the cultural gender roles whereby women expect a man to provide a home for the family. In any case, since Flora no longer had a regular income she could not negotiate with James on housing investment on the same footing, as she would have done if she had a job and income.

When Flora continued to put pressure on James to buy a plot of land, James advanced her money far less than the expected amount to buy a plot of land in Banda. Although James's action to give Flora some money was a good gesture on his part, the action was more of getting rid of Flora's unending pressure to provide the family with a home. On realizing that the money James gave her was inadequate, Flora withdrew her own savings from the bank, added it to what James gave her and bought a plot of land in 2000. Flora was able to buy the plot of land because of her savings. In this case however, her financial contribution did not necessarily mean joint ownership. Although Flora had a plot of land, she did not have any more money to start on the

²⁸ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction, pp.245-268.

construction of the home because she did not have a job and had spent all her savings on the plot of land.

Flora later came to learn through James' friends that James's employer provided housing loans to the members of staff who had titled land in their sole names. Surprising to note here is that although James was aware of the housing loan benefit from his employer, he did not inform Flora about it. Had it not been Flora's informal network with James' colleagues, she would most probably never have known that James' employer provided a housing loan. With the information she received from James' colleagues about the housing loan, Flora advised James to apply for a housing loan from his employer.

For James to benefit from the housing loan scheme, he needed a title deed registered solely in his name. This is because it was the employer's policy not to give loans on jointly-owned land. Since Flora had not yet processed the title deed of the plot of land she bought, she decided to register it solely in James' name. Although Flora was aware of her rights to co-own property, she was in a fix. She had four options to decide on: either to register the plot of land solely in her name and end up without a home since James would most likely have questioned the land registration since he had also contributed and therefore would most likely not have built a home on her plot; or register the plot of land in both James and her name and wait until James changed his mind to build a home in the city; register the land in both names and also end up without a home because the bank would not accept a jointly-owned title deed, and she could not co-finance the home project because she had no job; or register the land solely in James' name that could enable him acquire a housing loan from his employer.

Hence, Flora's decision to register the plot of land she largely financed in James' name was the only quicker way she could have a home under the circumstances. Flora revealed to the researcher that her decision to register the plot of land solely in James' name was a painful one. Had Flora had a steady job and income, she would most likely have made a better decision in her favour. For Flora it was better to have a roof over her head regardless of to whom the roof belonged than to have no home. Flora's

unemployment and her strong desire to have a home in Kampala denied her the chance to include her name on the title deed.

Although in patriarchal families it is a man's role to ensure that the family has a home in this case James was more interested to build a home in the rural village but not in the urban area. Due to James' adamant behaviour not to build a home in Kampala, Flora took over James' role as home provider. Although Flora's switch of roles could have enabled her to include her name on the title deed, she was unable to do so because she did not have regular income to co-finance the home project and the loan her husband acquired had conditions attached to it. However, she had a choice to either register the land in both her name and her husband's, or wait until her husband changed his mind.

Flora's life story demonstrates how a married woman can deny herself homeownership even in a situation where she financially contributes to the home project. The story points to lack of regular income due to poor education that leads to poor paid income jobs and the issue of making right choices. Poor income limits a married woman's ability to contribute to the home project and to negotiate at the same footing with her husband even in a situation where she has the opportunity to have her name included on the title deed. As a result she ends up with only user rights of the home. In addition, the choices individuals make, and strategies individuals use determine their beneficial rights.

In a situation where a married woman has an opportunity to include her name on the title deed but prefers to register the title deed in her husband's name for the family to have a home, she suffers the consequences when marriage breaks down. Hence, the tendency for married women to work for the common good of the family deprives them of homeownership.

The married woman's beneficial interest becomes complex in situations where she is customarily married.²⁹ On separation or divorce she finds it difficult to assert her ownership rights. According to customary law, a married woman is property herself.

²⁹ Matere-Lieb, 'Basotho Women's role in Urban Housing', p.64.

Since is 'property' she cannot claim any property because 'property cannot claim property'. During the existence of the customary marriage a woman does not own immovable property. The married woman is regarded as a caregiver, worker and homemaker in the home but not a homeowner.³⁰ According to customary law, land and housing belong to men and married women only have user rights of the immovable property.³¹ Under customary law division of matrimonial assets is not recognized and alimony after divorce is not payable to a wife. This is because divorce amounts to loss of labour power by the husband and it is expected that the wife who leaves with her labour would apply it to her own benefit or to her new husband.³²

Although the 1995 Constitution provides for all discriminatory customary practices to be eliminated, such a provision remains on paper because its implementation is very difficult in practice. The 1995 Constitution recognizes customary laws of marriage and at the same time it does not support discriminatory customary practices against women. Since customary law is not written, statutory law cannot apply in such marriages. In spite of all attempts to resolve the conflicting customary and statutory marital laws, the East African Courts have not come up with any solutions.³³

The dual legal system that exists in Uganda deprives married women under customary marriage of their ownership rights. The fact that there was no divorce cases of married women under customary law reported at the High Court implies that women married under customary does not take their cases to the Courts of Law. It also implies that most probably such married women do not benefit from the matrimonial home they could have contributed to. Most likely when such women separate from their husbands they end up as renters or become homeless. The few divorce cases the researcher found in court files were for women who had married under statutory law. The researcher did not come across any case where customary marriage was involved.

³⁰ Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*, p.64.

³¹ Matere-Lieb, 'Basotho Women's role in Urban Housing'.

³² Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*, p.42

³³ Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*, Uganda Law, p.47.

6.2 Deprived of co-ownership due illiteracy, lack of income and patriarchal cultural beliefs: The story of ‘Martha’

This is a life story of an illiterate woman who was unable to co-own a home with her husband. The life story portrays the way lack of income can deny a married woman homeownership rights. Martha is an uneducated housewife who does not co-own the matrimonial home with her husband. She does not have her name on the title deed of the plot of land on which the matrimonial home was built partly because she is illiterate with no substantial income and partly because of her husband's patriarchal belief that a home belongs to the man as head of the family. Because Martha is illiterate and did not have substantial income to contribute to the home project, she did not have the capacity to negotiate with her husband on equal terms to have her name included on the title deed. However, her husband entrusted her with the title deed of the home for safe custody. Her husband's entrust of the title deed with her could be interpreted in two ways: First, probably because Charles knows that Martha can do nothing about the title deed since she is illiterate. Secondly, it could be a sign of trust and recognition of her indirect contribution to the home project. Martha lives in a three-bedroom home in Kiwatule with her husband and their only son aged three years. The house is iron roofed, with water and electricity, but is still under construction (Fig.9).

Figure 9: The home in which Martha resides



Martha aged 42 years was born to a rural poor family in Senya village, Masaka District with 12 siblings. Her father was killed during the 1986 guerrilla war. When her father died, her mother went back to her natal family and the children were distributed among different relatives. Her paternal aunt who lived in the village adopted Martha.

By the time Martha's parents died she was in her first year of primary education. Although Martha's paternal aunt took her back to school, her husband did not like the idea. Whenever her aunt's husband found out that Martha had attended school he would beat her aunt. As a result, Martha dropped out of school at an early stage. The level of education which Martha has means she can hardly read or write.

With almost no education at all, Martha had little chance of acquiring any formal employment. This also implies that her level of income would in future be low. Her limited education would also determine her decision in the home on marriage. When

life at her aunt's home became unbearable, Martha went back to her parent's home in 1985.

In 1987 Martha left for Kabale to look for some kind of employment. She started a small business selling green banana (locally known as matooke). Since Martha did not have any education, she could only be self-employed in the informal sector. Although a number of women can be successful businesswomen in the informal sector, this depends on whether they have the initial capital to inject into the business. Martha did not belong to this category of women. Within a short while of living in Kabale, Martha met Charles a well-educated man who at that time worked with Total Petrol station as a claims officer.

Charles a well-educated man was originally a grade-three professional teacher. He is currently employed with Total Uganda as a claims officer where he has worked for more than 22 years. Charles aged 46 years was born into a middle-income rural family of nine siblings in Bushenyi District. His parents were peasants but with a good income with which to educate all their children. Charles had five years of primary education at Mayanja church school from 1966 to 1971 before joining Kabira Girls School from where he completed the seven years of primary education in 1974. He says at that time young boys were allowed to study at a girl's school. In 1974 Charles joined old Kampala senior secondary school where he completed senior four in 1978. He did not advance in studies because as the first born of the family he had responsibility to look after his siblings.

Advancing in studies would deny him money and also deny his siblings education. Hence he became a licensed (unqualified) teacher. During this time a person with eleven years of education was allowed to teach in any primary school as a licensed teacher. The licensed teacher syndrome has been a common phenomenon until recently when the Ministry of education phased out all licensed teachers out of the education system as more teachers became qualified. As a licensed teacher, Charles taught at Buharambo primary school in Bushenyi district from 1987 to 1981 before he joined Mayanga primary school in 1982. While at Mayanga primary school Charles enrolled in service teachers college in Kabale where he completed a grade- three teacher's course in April 1985. On completion of the course Charles taught for less

than a month and left teaching because teaching was a poorly paid job as reflected in his own words, 'I left teaching because of obvious reasons. If I hadn't left teaching, I wouldn't even have been here. I wouldn't have managed to build a house of my own. Yes I am saying so because I have friends I was teaching with but up to now they haven't made any developments. If you look at the people I was teaching with who remained in the teaching profession I am totally different from them now. They are still poor.' In June 1985 Charles joined Total petrol station in Kabale on a temporary basis but was later confirmed as a claims officer. It was at Kabale that Charles met Martha, the rural village woman who never went to school. Judging from Martha and Charles's educational backgrounds, there was already a sign of inequality. This would later affect the way they would relate in future in terms of decisions in the home.

The couple first cohabited but later they legalized their marriage through customary law in 1986. For more than eighteen years in marriage, the couple failed to have a child until 2003 when they were blessed with a baby boy. Although the couple has only one child, Charles has many dependants from both Martha's and his side he looks after. As a result he has failed to complete his home. Although Martha is involved in an informal business, her income is small and can only meet a few domestic expenses. Before owning a home of their own the couple rented houses in different places. Because of the nature of Charles's job, he worked in different areas, including Kabale, Mbale and Kasese, where the couple lived in company houses.

When Charles was finally transferred to Kampala he was paid a housing allowance. He rented a two-roomed house for ten years as he saved part of the housing allowance. Charles was wise to rent a cheap house in Bukoto and save part of the money. Had he rented an expensive house, he would most likely have not been able to save to buy a plot of land and build a home as reflected in his own words. 'I never wanted to lead a luxurious life by renting a good house that would take all the money given to me as rent. I never wanted to spend all the money given to me as housing allowance on renting'. Martha also revealed how she encouraged Charles to save for a home as reflected in her own words 'we rented a house on Bukoto Road for nine years. The only problem I had was that the house we were renting was small and we used to get many visitors. That used to disturb me but we decided to do this so that we were able to save some money and build our own house. So most of the time, I never

cared about what we ate. My interest was to see that we acquired a house of our own. Yes I contributed because we worked together with my husband to see that we achieve what we wanted, that is to own land and house. Because we would use the little I earned to meet the home needs, for example food, and the husband's money would be spent on building. My husband's income had to be saved so that we bought building materials. My income would be used to buy home necessities and even taking care of my brother's child whom we stay with here. My contribution can't be equal to my husband's because my income is very low compared to his. Because I don't earn a salary, my financial contribution was small'.

Although Martha did not directly finance the home project, she indirectly co-financed it by spending her little earnings on food and other domestic expenses. She also had to put up with poor living conditions in order for her husband to save money to finance the home project. It is difficult to equate this kind of sacrifice with money. Unfortunately, this contribution in form of sacrifice cannot be reflected in home ownership terms. Surprising however, Martha does not seem to value her contribution. She only looks at the financial contribution because her husband earned an income while she did not. She does not seem to value the overcrowding she had to endure for the years they rented a home in Bukoto. She does not seem to know that poor housing and overcrowding leads to poor health. Martha sacrificed to enable Charles to save his money for their home. In the meantime Martha spent the little income from the informal business on consumables. Martha's action to allow Charles to save for the home is part of a cultural image and ideology whereby women believe that it is a man's responsibility to provide a home for the family.

This shows that an indigenous gender contract that views a man as the provider of the home still prevails among married women even in urban areas. Since Martha's income was small, she was unable to make a substantial contribution to the purchase of the plot of land. Had Martha put her contribution to the purchase of the plot of land she would probably have better bargaining power to ask Charles to include her name on the title deed.

In 2000 Charles bought a plot of land in Kiwatule and registered it solely in his name.

When I asked Martha whether Charles consulted her before processing the title deed, she said, 'Yes he did. I allowed him to register it in his name and the son'. Probed further why she accepted that, she said 'I was not aware and because I did not know how to read and write and therefore I could not sign on the transfer forms. If I knew how to read and write, I would have asked my husband to include me on the title deed and my husband would have accepted' Interviews with Charles however revealed that he did not consult Martha about the title deed. Charles registered the title deed solely in his name because to him this was the norm as reflected in his own words 'I have the land title, the land title is in my names, I just knew that the land title is supposed to be in my names, that's what I thought'. His friend's wife, who is a lawyer, helped Charles to process the title deed. Surprisingly, the woman lawyer never advised Charles to include Martha's name on the title deed. Did the woman lawyer see this as none of her business? How often do women help their fellow women in matters concerning property ownership? Asked whether not including Martha on the title deed could cause any problem in the future Charles said, 'I don't see any problem with it. Like which problems? 'No, I don't think she can be upset'.

Charles's action to register the title deed solely in his name shows the cultural image whereby a man believes that the home belongs to him regardless of a wife's indirect contribution. Although Martha met part of the domestic costs Charles did not acknowledge her contribution. Even if he acknowledged Martha's contribution his cultural conscience convinced him that as a head of the household the home belonged to him. Although the title deed is registered solely in his name Charles still thinks that Martha has a part in the ownership, as reflected in his own words 'Yes we have it [the title deed], we have the land title'.

The 'we' seems to imply that Martha co-owns the home and this was confirmed when Charles gave the title deed to Martha for safe custody. As soon as Charles completed processing the title he gave the title deed to Martha saying, 'Please keep your title deed'. Martha says she always checks on the title deed to make sure that she has it. Charles's good gesture to entrust Martha with the title deed is a sign that he recognizes her indirect contribution and stake in the matrimonial home. If he were a typical patriarchal man, he would never have entrusted the title deed to her. This behaviour is difficult to explain. Why did Charles entrust the title deed deeds to

Martha when he failed to include her name? Did he look at Martha as a custodian of family property for the sake of their only child? Since Martha keeps the title deed, Charles has to give Martha reasons why he needs the title deed or else she may refuse to give it to him. Although Martha keeps the title deed, she legally does not own the home but as custodian of the title deed she can ensure the property is never bonded without her knowledge. In 2003, the couple moved to their own home in Kiwatule where they still live. Martha's life story demonstrates that illiteracy, lack of income and husband's patriarchal cultural beliefs can easily deny a married woman homeownership rights. Martha was unable to co-own the matrimonial home with her husband because she was illiterate with no substantial income to contribute to the home project, which could enable her to negotiate with Charles. Martha's poor educational background also put her in a weak position to negotiate on the same footing with Charles. In addition, Martha's husband did not recognize her indirect contribution to the home project. Furthermore, Martha's husband had patriarchal cultural beliefs where a home belongs to the man as head of the family. Martha's story demonstrates how a woman's economic status and education has an impact on family decision making. The story also demonstrates the patriarchal male ideology whereby husbands believe that the home belongs to them regardless of a wife's indirect contribution.

6.3 Deprived of co-ownership rights due to lack of awareness of one's ownership rights and misplaced trust in a husband: The story of Reggy.

This is a life story of a highly educated woman who was unable to co-own a home with her husband. The life story demonstrates how a married woman's lack of awareness of her ownership rights, poor attitude towards life in marriage and misplaced trust in a husband can deny a married woman homeownership rights.

Reggy is a highly educated, employed married woman who was unable to become a homeowner although she contributed half of the costs of the home project. Reggy ended up as a user of the home she contributed to because she was not aware of her ownership rights, and trusted her husband to take care of her interests. As a result, her

school education. She later attended two years of higher education at St. Mary's College Namagunga where she studied Sciences.

Reggy was then admitted to Makerere University for a five year Bachelor of Science Degree course in Medicine. While at Makerere University Reggy became pregnant in her first year and produced a child out of wedlock but her parents were very supportive. She left her baby of seven days with her mother, and went back to the university to continue with her studies until she completed her Bachelor of Medicine Degree. Later Reggy obtained a two-year Master of Science Degree in Medicine at Makerere University. Thereafter she attended various professional short courses.

As an educated woman one would expect her to be aware of her rights at work and in other contexts. Similarly, as an educated woman with good income one would expect her to have equal power in decision-making in the home, especially with regard to ownership of the home. Many authors have argued that good education and income helps women to have power to negotiate their rights in the home.³⁴ Reggy acquired a job with Ministry of Health. She was posted to Hoima Hospital as a doctor where she worked for three years before she was transferred to Kampala to the Ministry of labour in the occupational Health and Hygiene department.

In 1999 Reggy began work with International Labour Organisation as an Occupational Health and Hygiene Consultant. Reggy was able to acquire a good job at the ILO because she was highly skilled. As a consultant Reggy earns a good salary. With a good salary, Reggy had a better chance of negotiating the gendered marriage contract.

Davie, aged 51 years, was born in Hoima District. He is a Senior Lecturer at Kyambogo University. Davie hails from a middle class family in Hoima. Davie's father was a member of the clergy, and his mother was a housewife. The fifth born in a family of ten siblings, Davie grew up in an Anglican Christian family with strong Christian values. Davie had 19 years of formal education. He had three years of

³⁴ Deshmukh-Ranadive, 'Gender, Power, and Empowerment; Kabeer, 'Resources, Agency, Achievements'; Sen, A., 'Gender and Cooperatives Conflicts'.

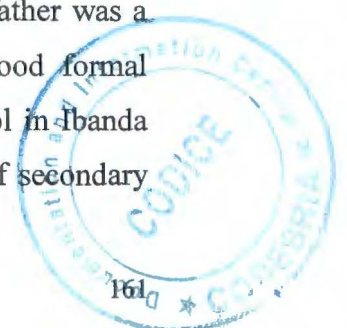
husband failed to recognize her financial contribution to the home project probably due to patriarchal cultural ideology that a home belongs to the man.

Reggy, aged 52, was born in Ibanda District. She is a medical consultant with the International Labour Organization (ILO). She lives in Banda with her husband Davie and five of their children (one child is Reggy's from a previous relationship), in a three bed-roomed house. The house is well built with expensive finishing. It is iron roofed, with water and electricity but the yard is not yet fenced (Fig.10).

Figure 10: Reggy and Davie's matrimonial home in Banda Parish



The first born in the family of fifteen siblings, Reggy grew up in a caring and protective middle-class catholic family with strong catholic values. Her father was a teacher and her mother was a housewife. Reggy had 20 years of good formal education. She had seven years of education at St.Tereza Primary School in Ibanda before joining Mary Hill High School where she completed four years of secondary



primary school education at Bulindi Primary, one year at Duhaga Primary School and two years at Kabalega primary school where he completed primary five and six. He then joined Duhaga Boys Primary School for one year where he completed his primary education. In 1968 Davie joined Kings College, Buddo where he had four years of education. In 1973 he enrolled at the University of Nairobi for a Bachelor of Science Degree in Civil Engineering, which he completed in 1976. Later Davie completed a Master of Science in Civil Engineering at Nairobi University.

Reggy and Davie are a highly educated couple with good jobs and hence with good income. With dual income one would therefore expect them to have equal contribution to domestic expenses and equal interpersonal relationships. Reggy met Davie in 1980, and they wedded in church in the same year. The couple is blessed with four children, now aged between 17 and 23 years. The couple first lived in a College owned house provided by Davie's employer before they shifted to a rented house in Ntinda in 1993. Both Reggy and Davie contributed to the rental expenses because they had a joint account from which either of them could withdraw money independently. However, in cases where the couple had to commit big sums of money to buy a family asset say land, they would first agree.

On agreement any of the two could withdraw money and pay for that particular asset. There was consensus on domestic expenditures at interpersonal level because both Reggy and Davie earned. Had Reggy had no income to contribute to the home budget, she would most likely have had no role in any decision-making on how Davie spent money. Therefore, Reggy's economic status was a strong key to her participation in family decisions.

In late 1980, Reggy and Davie agreed to buy a plot of land in Banda. It is on this agreement that Davie withdrew money from the joint account to pay for the plot of land. Since in a patriarchal family, it is man's role to provide a home for the family, Reggy regarded it as normal to entrust everything regarding the home to Davie. Reggy's action to entrust Davie with the role of home provision could be attributed to gender role socialization. Had Reggy behaved in a different way by taking over the role of home provision, most likely a new gender contract would have been created. Reggy's action to stick to her socially transcribed role was an indication of

maintaining the generally accepted gender contract whereby women look at men as the providers of the home. As a result she ended up with only user rights of the home. When the couple agreed to buy a plot of land in Banda, Davie withdrew money from the couple's joint account and paid a deposit on the land. Although Davie withdrew money from the joint account to which Reggy contributed, the sale agreement was made solely in his name. Davie's action to have the agreement made solely in his name demonstrated the dominant gender contract whereby men believe that a home belongs to the man regardless of whether the woman contributed to its purchase or not. Davie's action at this initial stage demonstrated that he did not see Reggy as an equal partner in the matrimonial home acquisition. On the day of the final payment, Reggy accompanied Davie and again the sale agreement was made solely in Davie's name as Reggy looked on and even signed as a witness.

Although Reggy was present at the time Davie paid the final instalment for the plot of land, she did not suggest to Davie to include her name in the sale agreement. Reggy's action to sign as a witness to the purchase deal without asking Davie why the agreement was being made solely in his name when she also contributed shows that Reggy did not see Davie's action as a problem. To her, it was normal for a man to solely own the home as the head of the family. Reggy did not see her contribution to the purchase of land as important. Instead, she looked at home provision as Davie's sole responsibility and hence looked at Davie as a provider of a home as the head of the household regardless of her contribution to the home project as reflected in her own words: 'No! No! No! , That is one thing which I have always told my friends even not for purposes of this interview. You know right from the beginning, that I came to make a home with Davie. It does not matter where the money comes from, it is our money, and these are our children'.

Reggy's statement clearly shows that she believes in the traditional gender contract whereby the home belongs to the head of the household. She thinks she is included in the home and yet she is actually excluded from ownership. Although Reggy is educated and contributed payments for the matrimonial home, she does not seem to realize that there is something wrong with Davie having sole ownership of the home. She shows ignorance of her ownership rights with regard to the home.

Further interviews with Reggy reveal why she behaves the way she does. Reggy's statement can be attributed to the way she was socialized in her natal family, as reflected in her words 'My father had so many pieces of land and he always used to go with my mother to sign the agreement. I never saw anywhere where my father had a piece of land or property and my mother was not aware of or my mother was trying to do her own little business which my father was not aware of. When two people marry the resources belong to both and I saw that when I was growing up. I have always believed in that, I don't know why but it doesn't bother me. And putting the plot of land in his names is not something that really bothered me, or that I am not in it or what, so 'we' have been slowly building this house, when we get money we put in this house and life continues. Because I believe it's ours it's our land, for our children, for us. It has never occurred to me that my name should also be there'. Reggy's mother is a role model for Reggy. She seems to repeat what her mother did without question. As Papanek observes 'women often teach their children inequality, even if this involves their own remembered pain'.³⁵

Reggy's attitude towards life in her marriage is an attribute of her upbringing. She seems not be aware of what is happening outside her marriage and the community at large. One is made to wonder whether she reads newspapers to know what is happening in the world around her.

While Reggy does not seem to bother why her name is not included in the title deed, Davie on the other hand seems to be apologetic for having excluded Reggy's name from the title deed, as reflected in his own words, 'Well it is historical because when I acquired this plot, well may be let me say it was a mistake right from the beginning. But when I obtained contact for this plot it was booked in my name so introducing her name in the middle when we had not finalized payment I thought it would bring confusion between the landlord and me. But it is something we can easily alter. Well, I do not know whether government would charge me to introduce her name or it is just, I do not know'. Davie's apologetic statement is an indication that had Reggy

³⁵ Papanek, H., 'To Each Less Than She Needs, From Each More than She Can Do: Allocations, Entitlements, and Value', in Tinker, I. (ed.), *Persistent Inequalities: Women and World Development*, Oxford University Press, 1990, p.164.

asked him to include her name in the sale agreement and later on the title deed; Davie would most likely have agreed to do so.

In 1990, Davie acquired the title deed of the plot of land registered solely in his name. Davie's action to exclude Reggy's name from the title deed shows the male cultural image ideology whereby men find it normal to believe that a home belongs to them as the heads of the household. Davie's action therefore is a reflection of the dominant gender contract whereby women are regarded as homemakers but not homeowners. When Davie acquired the title deed, he gave it to Reggy to keep in safe custody, as reflected in his words 'Yes in fact she is the one who keeps the title deed'. Although Reggy keeps the title deed, she has no legal control over the plot of land she contributed to because legally the plot of land belongs to Davie. Davie's action to entrust Reggy with the title deed is a sign of giving her some control over the home and to recognize her contribution to the home. Since Reggy keeps the title deed Davie would have to give a justification in case he wants to use it as collateral for a loan.

In 1993 the couple embarked on the construction of their home. All the finances for the home project came from the joint account in which both Reggy and Davie had their salaries and allowances but Reggy contributed more money than Davie because she had a better job. For example Reggy borrowed a loan twice from her bank against her salary. The couple partially completed the home and moved from their rented house in Ntinda to their uncompleted home in Banda in 1994. For the last ten years the couple has struggled to complete the home and by the time of this study, construction was still incomplete.

Although Reggy met most of the construction costs of the home, and kept the title deed of the plot of land on which they built the matrimonial home, she legally has no control over the home. Although Davie is aware that legally the home belonged to him, he seems to imply that Reggy is also included as reflected in his own words 'Although the title deed of this plot is in my names but we own it jointly and we have been building the house jointly. Well, legally it is in my names but for all practical purposes it belongs to both of us and we have been contributing money building the house jointly. All the money we used for building came from our salaries'.

In summary, although Reggy is a highly educated woman with good income most of which she contributed to the home project, she did not have her name included on the title deed. This implies that education and income do not necessarily guarantee a woman ownership rights because there are dynamics involved. Reggy's lack of concern to have her name included on the title deed could be attributed to her social upbringing whereby she grew up knowing that property belongs to the man as the head of the household. She learnt from her mother that women can only witness to the purchase of property but cannot co-own the property with their husbands. Although Davie seems apologetic, he acted in a patriarchal way. Legally the home belongs to him alone because the plot of land on which the couple built the matrimonial home is registered solely in his name.

The Registration of Titles Act does not differentiate between the landowner and the homeowner. Ownership of personal property is determined by who bought the property and in whose names it is registered. Since Davie acquired the title deed solely in his name, he denied Reggy ownership rights. This means that Reggy's financial contribution to the purchase of the plot of land and contribution to the construction costs is not recorded. Hence, legally Reggy has only user rights to the home she substantially contributed to. Upon divorce or separation, Reggy has to prove to Court that she financially contributed to the home. This rule was settled by the High Court in 1991 and 1996 in Civil Suit No.203: Aida Mukasa vs. Thomas Mwebaza, Constance Kayaga Mukasa, and Emmanuel Grace Mutagejja, and Civil Suit No. 825: Jolly Mutengu versus John Mutengu and Albert Sebudde.³⁶ These were cases where the wives and their husbands had jointly bought land but the title deeds were registered solely in the husbands' names because of the mutual trust that existed between the couples. Later the husbands sold the homes and transferred them to other persons.

In case No.203 the Court ordered cancellation of the transaction in favour of the wife and Court did not award refund of the money to the buyer of the home. This is because the buyer had not mortgaged the home with any financial institution. In case

³⁶ These files can be found in the Archives of High Court. They are not incorporated in the High Court Bulletin.

No.825 of 1996 however, the wife had to pay the buyer all his money before she could redeem the matrimonial home. In this case the buyer had mortgaged the home with the bank. In both cases it took a Court's decision before the wives could benefit from the homes they contributed to. This therefore illustrates that in cases where a wife's name does not exist on the title deed, a husband can easily do anything with the title deed without the wife's knowledge. The wife is at the mercy of the Court to gain a share in the home.

Although Davie sounded apologetic and willing to change the ownership status of the title deed from sole to joint ownership, we cannot guarantee that he will do it in the future. Davie's action demonstrates that when men are in control of the purchase and registration of the land, they are most likely to have the plot of land registered solely in their names. It also demonstrates the dominance of the male cultural image and ideological conscience that the home belongs to the man as the head of household. Hence a husband's presence can be a hindrance to ownership. If a wife's name is to be included on the title deed the wife has to assert her ownership rights, as we shall see in the next chapter. While Davie acted in patriarchal manner, similarly Reggy also acted in stereotypical manner in that she believed husbands are the owners of the home while women are users. Reggy did not regard Davie's action as abnormal because her father owned all the family property while her mother only witnessed all the transactions in acquisition of family property.

6.4 Deprived of ownership owing to ignorance of one's ownership rights: the story of Patricia Tindatine

This is another life story that demonstrates how an educated married woman can be deprived of homeownership rights even in a situation where she substantially finances the home project if she is ignorant of her ownership rights. Patricia is a retired public servant while Kosia works for a dairy company as a driver. Patricia and Kosia live in Kiwatule in a three bed roomed house with their grandchildren. The house is iron roofed, with water and electricity (Fig.11).

Sezibwe road in Kampala. While working as a tailor a white woman admired his tailoring skills and took him on as a personal tailor at her home in Kololo one of the prime areas in Kampala to make dresses for her and friends. Kosia's employers later transferred to Mbarara.

Patricia and Kosia met each other in Mbarara in 1957. Later, Patricia resigned her job in the Bank and together with Kosia moved from Mbarara to Kampala. The couple first lived in Namugooona at Patricia's brother in-law's residence before they rented a house around Makerere. The family rented a house in Luzira and in Ntinda before they moved to their uncompleted house in Kiwatule. The couple was blessed with nine children, five boys and four girls but two girls and two boys have so far died.

In 1963 Patricia acquired a job with East African Distillers as a telephone operator where she worked for 28 years but was later retrenched in 1993 when the company was sold off. Patricia was paid a good pension after her retrenchment. With the retrenchment package, Patricia started a liquor selling business as an agent where she earned a good income. Kosia on the other hand continued with the tailoring job but later changed to a dry fish mongering business in 1962. He later acquired a job in Progressive Transport Company as a driver before he became a taxi driver in 1979. Due to the war between Amin and Obote he abandoned the taxi business and acquired a job with the French embassy as a driver until 1990. He later joined Dairy Co-operation as a driver where he still works. Patricia and Kosia bought untitled land in Kiwatule, Ntinda in 1986.

While Kosia reported that he paid for the land, Patricia said that she identified the land and paid for it. Nonetheless, Kosia agrees that Patricia paid 100 per cent of the construction costs as reflected in his own words, 'we started building our home in 1988 but at that time I did not have money so it was my wife who was financing the construction. For example she borrowed money from her work place to buy iron sheets. Building the home was not an easy task I owe all the efforts to my wife. I appreciate my wife's innovativeness and her determination to have a home for the family'. Kosia's concept of 'we' seems to imply that Patricia is an equal partner in the ownership of the home and therefore one would expect him to have her name included on the title deed.

Figure 11: Patricia's home



Patricia, 70 years old, was born to a middle-income rural family of five siblings in Mayanda Village, Bushenyi District. She had eight years of education. She attended six years of primary education at Nyakibare Primary School. She then joined Nyamitanga Teacher Training College for a two-year teacher-training course but did not complete the course. Patricia then attended a two-year telephone-operating course in Nairobi. She then acquired a job in Barclays bank in Mbarara as a telephone operator and earned a good income.

Kosia, 74 years old, was born in a poor peasant polygamous family of 12 siblings in Kyasa Singo in Kiboga District. Kosia had nine years of education. He attended three years of primary education at Kibuye Primary School before he joined Lubiri Primary School for two years where he completed six years of primary education. He then joined Namungoona Secondary School but completed only three years because his family could not afford the school fees. Kosia then attended a tailoring course at Namungoona. Qualified as a tailor, Kosia acquired a tailoring job at Abayita Ababiri

Patricia met all the construction costs of the home using her pension money and profits from her business as reflected in her own words, 'Although my husband contributed to the construction, the bigger portion of financing the construction of the home was all from my pension savings. In addition I had two big wholesale shops in Nakawa and Ntinda selling beer, soda, and other liquors where I earned a lot of money and invested it in the house construction. I even borrowed money from my work place because I was in a big position. I bought the bricks, iron sheets and almost everything. I financed almost 100 per cent of the construction cost. The only house my husband constructed is the servants' quarters whose rentals I even do not know where he puts it'. Although in a patriarchal society like Uganda, it is a man's role to provide the home for the family, Patricia took over this role. Since she took over the role as a home provider, one would expect her to have a big stake in the ownership of the home.

In 1988 the family moved to their uncompleted home. The house had no windows. Patricia met the construction costs until the house was completed in 1990. Patricia did not keep receipts of all the expenditures she incurred on the house because she found it difficult to keep receipts. In any case the purchases were made a long time ago. In 2005, the owner of the land on which Patricia and Kosia built the matrimonial home allowed them to legalize their occupation on the land by paying the current price in order to acquire a title deed.

In order to raise money, Patricia and Kosia sold off part of the land. At the time of registration of the land Kosia informed Patricia about his plan to acquire the title deed. However, Patricia denies the fact that Kosia informed her. Nonetheless, judging from Patricia's own words, it appears she knew about the registration of the plot. Patricia did not suggest to Kosia to include her name on the title deed. The failure of Patricia to suggest to Kosia to include her name on the title deed was due to ignorance as reflected in her own words translated from Luganda, a local language, 'Whatever I do, I register everything in his name, I don't know why. My husband and my son did the processing of the title deed. They acquired three titles from the big chunk of land, one for my husband and two for the two sons. My husband never consulted me on whom to register on the title deed. When he brought the title deed and showed me, I never asked him why he had registered it only in his name'.

Although Patricia financed the construction costs of the home almost 100 per cent, and Kosia acknowledges her big contribution, Kosia registered the home solely in his name in 2005. Since the title deed is registered solely in Kosia's name, this leaves Patricia with no ownership rights in the home though she substantially met all the construction costs. Kosia registered the home in his sole name because to him it is children who inherit parents' property and therefore there was no need to include Patricia's name on the title deed as reflected in his words translated from Luganda: 'Whether the title deed is registered in my name or my wife's name is a non-issue because when we produce children we believe that they will inherit our property. My wife knows where the title deed is kept and immediately I completed the title registration process I gave it to her to keep. I would never chase my wife away from the home because we have children and whatever we are doing is for the children. The good thing is that I have one wife and she has not divorced, if I die before her, she will keep the title deed for our children because she will remain in the home. And if she dies the children will remain with the title deed. I have already allocated land to all the children regardless of sex. I plan to make a Will to clarify issues on our home before I die.'

Kosia registered the home in his sole name because he believed that property belonged to the male family and children only inherit through the male line. Including Patricia's name on the title deed would mean removing the property from the male family. If he died, the property would go the Patricia's family line.

When Kosia acquired the title deed he entrusted it with Patricia. Kosia's good gesture to entrust Patricia with the title deed indicates that he wants her to have control over the home and therefore he would be answerable to Patricia if he asked for the title deed and he did not return it to her. Since Patricia keeps the title deed Kosia would not sell the home without her knowledge. She can stop Kosia by refusing to give him the title deed. This confidence is reflected in her words translated from Luganda 'I think he may not sell off the home, because when he brought the title deed he gave it to me. I looked at it, read it, put it back in its envelope and I kept it'.

However, at one time Patricia asked Kosia to change the title deed to both names. Patricia feared that Kosia might sell off the home as reflected in her words 'The issue

of my name not being on the title deed has always given me sleepless nights. At one time I thought of hiding the title deed but then I dropped the idea and in any case I have never quarrelled with my husband since we were married and therefore I did not want to start the quarrels because of the title deed’.

Although Kosia assured Patricia that he would not sell the home there are signs that he might in future sell the home as reflected in Patricia’s words ‘Recently he is suggesting to take the family to Wakiso, in the village where he bought a big chunk of land so that we can rent out the current home but I have told him first to construct a good house in the village before I shift’ Although Kosia is the legal owner of the home, he cannot sell it without Patricia’s consent unless he steals the title deed and sells the home secretly. However on separation or divorce she can only claim her beneficial interest in the home through Courts of Law.

Since she is legally married in church the Courts can apply the 1882 Divorce Act and common law. A Court precedence that can apply to Patricia’s case was set by the High Court in 1998 in Divorce Cause No.3: Mayambala versus William Mayambala.³⁷ In this case Mrs. Mayambala substantially contributed to the home project but the title deed was registered solely in Mr. Mayambala name. Since Mrs. Mayambala name was not on the title deed, she had to produce evidence to show that she financially contributed to the home project. It was only after convincing Court of her financial contribution that Court awarded her 70 per cent of the sale value of the home.

Mayambala case law implies that in cases where a married woman’s name is not on the title deed, it is only Court that decides on her beneficial interest in the home. Similarly, since Kosia legally owns the home, Patricia can only claim ownership of the home if she produces evidence of her contributions in the form of receipts of purchase of building materials. In some cases married women acquire less benefit in the home than expected.³⁸ In case of Mrs. Mayambala, the Court was very generous but then the problem would be the implementation of the Court ruling since Mrs.

³⁷ Divorce Cause No.3 of 1998, Mayambala versus William Mayambala before the Honourable Mr. Justice Mukanza can be found in the High Court Archives. It has not been inserted in the High Court Bulletin.

³⁸ Larsson, & Schlyter, ‘Changing Gender Contracts and Housing Conflicts’, p.221.

Mayambala had already moved out of the home. Secondly, Mr. Mayambala had already mortgaged the home with the financial institution. Hence Mrs. Mayambala must have the caveat removed by paying the bank before she can approach Court brokers to evict Mr. Mayambala. Mrs. Mayambala's case shows that where a married woman's name is not on the title deed, she is at the mercy of her husband and the Court.

Therefore, a married woman's beneficial interest in the home is more assured in cases where she jointly owns the home with her husband. In a jointly owned home, the husband finds it difficult to sell or mortgage the home. In cases of divorce where the home is jointly owned the married woman is at least assured of 50 per cent of the sale value of the home. In terms of implementation of the Court ruling the married woman whose name is on the title deed is at an advantage.

The importance of having one's name on the title deed was clearly demonstrated in High Court in Civil Divorce Cause No. 006/2001: Annet Nakalema Kironde versus Apollo Mukasa Kironde and Moses Zizinga before Honourable. Mr. Justice V.A Rwamisazi-Kagaba.³⁹ In this case Mr. and Mrs. Kironde jointly owned the matrimonial. Mr. Kironde was involved in a relationship with another woman and he finally moved out of the home leaving Mrs. Kironde in the home. On divorce, Court ruled that since the couple jointly owned the matrimonial home there was no need to decide on beneficial interest of each party in the home.

Tindatine's story demonstrates that a married woman can be deprived of ownership if she is not aware of her ownership rights even when she is educated and has good income. The life story therefore demonstrates that education and income do not necessarily guarantee a married woman ownership rights. Although Patricia was educated, and contributed substantially to the home project, she was unable to have her name on the title deed of the matrimonial home because of ignorance. If Patricia knew about her ownership rights at that time, she would most likely have asked Kosia

³⁹ Civil Divorce Cause No. 006/2001: Annet Nakalema Kironde versus Apollo Mukasa Kironde and Moses Zizinga. Before Hon. Mr. Justice V.A Rwamisazi-Kagaba can be found in High Court Archives. The case is not yet incorporated in the High Court Bulletin.

to include her name on the title deed and Kosia most likely would have listened to her because he acknowledged and appreciated Patricia's main contribution to the home project. Entrusting her with the title deed evidences this.

The life story also demonstrates that a husband prefers to register the home solely in his name without any due regard to the wife's contribution. Kosia registered the matrimonial home in his sole name because he believed that property belongs to the male line. To include Patricia's name on the title deed would mean removing the property from the family. The fact that the title deed of the matrimonial home is registered solely in Kosia's name means he legally owns the home. On divorce and separation, Patricia can only be guaranteed of her beneficial interest in the home upon producing evidence of her financial contribution.

6.5 Deprived of co-ownership rights because of a husband's mistrust: the story of 'Annet'

This life story demonstrates that a husband's mistrust of women coupled with patriarchal beliefs can deny a married woman ownership rights even if she indirectly contributes to the home project. Annet is an uneducated cohabiter who does not co-own the matrimonial home with her husband. Annet is unable to co-own the matrimonial home with her husband because her husband does not trust women in general and the matrimonial home is built on the land that originally belonged to her in-laws. Although Annet's husband legally inherited the land and therefore was free to include Annet's name on the plot of land if he liked, he does not want to do so because he does not trust women anymore because of the bad experience he had with his first wife and more so he is a conservative patriarch. Annet lives in Kiwatule in a three bed-roomed home with her husband and their six children, three boys and three girls, the eldest aged 18 years. The house is iron roofed with water and electricity (Fig.12).

In spite of Annet's pleas to Ahmed to formalize their marriage, Ahmed has adamantly refused. Hence, Annet is a cohabiter with no legal entitlements in the marriage. Before Ahmed married Annet, he had another wife but they separated because she could not give him a child. On separation, his first wife took most of the items in their rented house without his knowledge. The experience with his first wife was later to impact on his behaviour towards other women. Ahmed, 53 years old, was born in Kyaluga village, Mukono District into a polygamous middle-income family of 35 siblings most of whom refused to attend school although Ahmed's father had reasonable income to educate all of them. Ahmed's father, for example, had a lot of land in Kampala and Kiwatule in particular.

Ahmed started his education at an early age of five years in 1958 because all his other siblings refused to attend school. Ahmed had 11 years of education. He had primary school education at Mpumu Primary School where he completed eight years of education. In 1965 he joined Kamuli Secondary School where he spent two years of secondary education before he joined Seta College in 1967 to complete the four years of secondary education. Although he attempted to join a technical school in Masaka, at that time technical schools would only take students who had completed seven years of primary education.

In 1973 Ahmed acquired a casual job in the post office as an office attendant. He later attended a two- year course at Uganda Management Institute where he acquired skills in painting and design. With the acquired skills, he was promoted to the position of craftsman. Ahmed worked in the post office from 1973 to 1998 when he was laid off. He was, however, paid a retrenchment package.

In 1995 the couple embarked on the construction of their home. Although Ahmed met most of the construction costs, Annet contributed to the home project in many ways. For example Annet made 11,000 bricks on part of Ahmed's plot of land to construct small houses for her poultry project that Ahmed took to complete the matrimonial home on the promise that he would pay money; but he never did. As a result Annet could not expand her poultry project. She then sold all off layer birds in the hope of expanding her business but Ahmed took all the money from her under the pretext that he would pay her back. Annet expressed bitterness that whenever Ahmed learned that

Figure 12: Annet's home



Annet, aged 41 years, was born in a Namasenene village in Luwero District in a poor polygamous family. Annet is the second born in a family of 11 siblings. Because of the guerrilla war in Uganda in the 1980s Annet's parents divided up the children among relatives. Annet grew up with her maternal grandmother in Namutamba village in Kiboga District before they moved to Bweyogerere where they lived until the guerrilla war ended in 1986.

Annet had only four years of primary education. Because of her minimal education one would expect Annet's income opportunities to be very poor. First of all she has no employable skills and secondly she would most likely find it difficult to acquire capital to start any form of business. Annet met Ahmed 1984 in Bweyogerere. However, the couple lived together from 1987. Annet and Ahmed lived in a rented house in Kiwatule for more than ten years. When Ahmed's father died, the land in Kiwatule was distributed among all the children. Ahmed as the heir was given 20 decimals of land.

she had money; he would find ways of getting it away from her on the pretext that he needed to buy materials to construct the matrimonial home. Ahmed's behaviour in taking away Annet's income is a demonstration that he did not want Annet to control any money or to be independent. Ahmed's continued behaviour of taking away money from Annet made Annet more dependent on him financially.

In 1997 the couple moved from the rented house to their own home. In 2005, Ahmed transferred the title deed of the matrimonial home from his father's name to his name excluding Annet. Although Annet contributed to the home project in terms of building materials, Ahmed did not recognize her contribution to the home project to include her name on the title deed. Ahmed did not see anything wrong in excluding Annet's name from the title deed judging from his response (translated from Luganda) when I asked him why he did not include Annet's name on the title deed: 'Why should I include Annet on the title deed? You women are thieves; you are very cunning and difficult these days. That is why men no longer want to co-own houses with you because you can easily turn around and say this is our house, we built it together. A man may have a project he would like to undertake and may want to sell the house to undertake the project but the woman may refuse. This is why men no longer include wives on their property. One would rather die with his property because the situation has changed and women have become thieves or grabbers'.

Although Ahmed does not explain his action of excluding Annet's name from the title deed in terms of the cultural image and ideological belief that women's names cannot be included on clan land, this cultural belief cannot be ruled out. Ahmed's behaviour could probably be attributed to the cultural belief that the plot of land on which the matrimonial home was built belonged to the clan and therefore there was no way Annet's name could appear on clan land.

Ahmed could not include Annet's name on the title deed when the land belonged to his father. Because the land belonged to his father it meant the land belonged to the clan and therefore had to remain in the family line. If he included Annet's name on the title deed, it would mean that upon his death the land would revert to Annet's clan. Since the title deed is solely registered in Ahmed's name the home legally belongs to Ahmed and Annet only has the usage of it. On being probed further on whether he

thought that his wife did not contribute anything to the home project he said 'Ok thanks so much, does preparing food mean building a house? She has never slept hungry, in some homes a woman can forfeit eating well, for example taking tea without sugar, food without salt in order to buy say a missing door in the house. But my wife has never missed anything of that sort, I have given her everything she needs, then in that case what will she have contributed to the house?'

The above quotation show that Ahmed did not recognize Annet's work and building materials she contributed. Asked what would happen to his wife if he died, and the relatives tried to evict her, he said, 'Since Annet is not on the title deed everything in the house is mine and no one would be interested in them, and by that time my children would be old enough to decide what to do'. Ahmed does not want Annet to know the whereabouts of the title deed because he believes she would try to hide it away from him as reflected in his words 'if I tell her and then she steals the title deed from me? You women are very difficult; you decide once to kill your husband. Even when a woman just hears rumours that her husband has an affair with another woman, she can decide to kill you, or can steal the title deed but for the men it takes time to kill your own wife.' Ahmed's strong statement indicates that he cannot trust Annet to such an extent that he does not want her to know where he keeps the title deed.

Although Ahmed has acquired forms to draw up a will, he has not yet done so. He has not yet decided on whom he wants as heir because he does not know whether his children's behaviour may change as they grow up. Secondly he has not yet identified a trustworthy friend with whom he can entrust a copy of the Will and who will not reveal its content. He said he intends to build rental rooms and will give two of them to Annet to earn income.

In summary, Annet was unable to co-own the matrimonial home because her husband did not trust her basing on the previous bad experience he had with his first wife. In addition, her husband is a patriarch who does not believe in women owning property. Ahmed has negative feelings about women who grab property and therefore even if the land did not belong to his father, there was no way he would co-own a home with a wife. Ahmed did not include Annet's name on the title deed most probably because he inherited the land from his father. Ahmed believes that although he transferred the

title deed of the matrimonial home from his father's name to his sole name, the land still belongs to his father and the clan. Since Annet was not from his clan there was no way she could benefit from the patriarchal family property. If Ahmed included Annet's name on the title deed this would mean removing the patriarchal family property and taking it to another clan. Even though Ahmed used the bricks Annet made and the money from her sale of poultry in the construction of the house, Ahmed did not recognize her contribution because he believed that whatever accrued from the family land belong to him. Even if Annet had her own income from other sources, and contributed to the construction costs of the matrimonial home, it is most unlikely that Ahmed would include her name on the title deed of the matrimonial home.

6.6 Deprived of co-ownership rights because the land belongs to the clan: The story of 'Amina':

This is another story that demonstrates that a married woman is unable to become a homeowner when the land belongs to the husband's clan. Amina is a young uneducated cohabiting woman who was unable to co-own the matrimonial home with her 'husband'. Amina could not co-own the home with her partner because the land on which the home was built belonged to her in-laws. Amina lives in Kiwatule in a three bed-roomed home with her husband and her two children aged 11 and 9 years. The house is iron roofed, with water and electricity. (Fig.13)

Figure 13: Amina's home



Amina, who is 27 years old, was born to a single mother in Bakuli, Kampala. Her father a Tanzanian, left for Tanzania when she was young and hence she does not know him. When her mother later married in Kiwatule she moved in with her. Amina had only 10 years of education. She studied at Kazo mixed school and Bukoto Muslim School where she completed seven years of primary education. She then joined Kalinabiri Secondary School for her secondary education but could not complete ordinary secondary school level because she became pregnant. As a result, she dropped out of school and went back to her parents. Dropping out of school marked the end of Amina's education career and this later affected her future job opportunities and income potential. Later, Amina's mother and stepfather evicted Amina from their home and advised her to join the man who had impregnated her. Amina then moved into her boyfriend's home.

Robert, the young man responsible for the pregnancy, was also a student still under his parents' care. Aged 30 years Robert was born to middle income family of seven siblings in Kiwatule as reflected in Robert's own words 'In fact our family wasn't poor. Our grandfather was a rich man. This is because those days a man who could buy land and have the land title was rare. But our grandfather bought a land with a land title. Our grandfather was a farmer and a businessman. Robert grew up with his grandparents in Kiwatule.

Robert's father was also a prosperous polygamous businessman with good income to educate all his children. His mother was a housewife. Robert's parents lived in Kungu a few kilometres from Kampala on Entebbe road where they also had large pieces of land. Robert, just like Amina is not a well-educated man and hence does not have formal employable skills. He had only 11 years of education instead of the average 16 years. He completed seven years of education at Kamuli Primary in Banda, and then attended Kololo High School where he completed four years of secondary education in 1994.

When Robert's grandfather died in 1981 his father inherited all his land. Robert's father then moved from Kungu to Kiwatule to take care of the land. Robert and Amina started living together in Kiwatule in 1994. They first lived in Robert's grandparents' servants' quarters until 1996 when Robert built a two-roomed house on his grandfather's land. Because of low education, neither Robert nor Amina could acquire formal jobs. While Amina spent most of her time farming on her in-laws land and selling part of the produce, Robert helped his aunt at the shop in Kampala where he earned some income to feed his family. Later, Robert obtained financial capital from his paternal aunt to start a business. Robert attempted different types of businesses, for example selling livestock, running a take-away food business, but all of these collapsed when friends cheated him. He then worked as a conductor in a taxi for two years before he joined a construction company as a trainee. He later built shops, which he rented out to generate income.

In 1995 Robert's father died after he had allocated him a piece of land in Kiwatule on which to build his matrimonial home as reflected in his words 'Our father divided up the land and each child was allocated a part. My father showed me where I was to build a house of my own. He did that when he was still alive'. When Robert's father died, Robert was appointed as heir. As heir, his role was to take care of all his siblings and the land.

In 2000 Robert transferred the plot of land that his father gave him solely to his name. Robert transferred the land solely into his name probably because he had received the land from his father and therefore the land belonged to the clan as reflected in his words, 'Because this land is like a gift from my father. I had to leave the land title in my name. I cannot put her [Amina] name on the title deed because I do not want our property to get out of our family. She has, for example, two children and all of them are girls. I want each of these children to have a share of this land. If the houses on it are rented out, I want all the children to share that money. I don't want our land to get out of our family'.

The above quotation implies that Robert has patriarchal beliefs that the land should remain in the male line. By mentioning that Amina has only girls further emphasizes his patriarchal sentiments. Hence, even if Amina had income to contribute to the home project Robert would not include her name on the title deed. Her negotiation on the matter would not yield any positive response unless the couple had independent land. There was no way Robert could have included Amina on the title deed because the land belonged to the clan and his patriarchal cultural beliefs would not allow him to do so. He still retained the cultural image that the land belonged to his grandfather who later left it to Robert's father from whom Robert inherited.

Therefore, since land is passed on through the male line, Amina could not fit into the equation. Including Amina on the title deed would imply giving the patriarchal property to another clan. Robert's action to exclude Amina's name from the title deed of the matrimonial home clearly demonstrates that Amina does not belong to the clan and therefore she cannot inherit family property although her children can.

When Robert processed the title deed, he gave the title deed to Amina to keep for safe custody as reflected in Amina's words 'What I remember is that he was given certain documents concerning the land. When he was given the document for this land, he gave me a copy and I kept it. That document states that he is the owner of this land'. Robert's good gesture to entrust Amina with the title deed, shows that he has given her some control of the property and Robert is answerable to any queries in case he wants to use the title deed.

However, although Amina keeps the title deed, she legally has no control over the home. Asked how she feels not having her name on the title deed, Amina said, 'I don't feel anything. It doesn't make me feel bad'. Amina does not seem to foresee what lies ahead but even if she cared to worry about her future, she can do nothing about the ownership status of the home. She has no justification whatsoever to ask Robert to include her name on the title deed. First of all the land originally belonged to the clan and therefore even if Robert has liberty to include her name on the title deed, he is culturally inclined to ensure that the home remains in the patriarchal family. Secondly, even if Amina had substantial income to contribute to the home project how could she ask Robert to include her name on the title deed of the plot of land that he inherited from his father?

In 2001 Robert embarked on the construction of the matrimonial home. Robert built the home within a year because he had good income from different income generating projects he ran as reflected in his own words 'I was then running my businesses and they were doing well. I would do different things at a time for example work as a broker and even do my other businesses. I managed to build a house and the shops in front on the main road'. While Robert generated money from the different businesses and met all the construct costs of the house, Amina also generated income from sale of crops from the gardens. However she spent her money on domestic expenses as reflected in her words 'No I haven't put in any of my money on the house. I spent most of my money on household items'. Although Amina indirectly contributed to the home project, she does not value her work. Robert revealed that Amina did not contribute to the construction costs of the home and even if she was able to contribute,

he would not accept her contribution as reflected in his words 'As you see me here, I don't want to eat any woman's money. So I made sure all the money spent on this house was mine. If I use a woman's money, I feel as if I have become an irresponsible man. That is how I was created. I don't like it and I feel shy to use the wife's money'. Robert's statement implies that he does not recognize Amina's work as an important contribution to the home project. Robert's statement also implies that Robert sees himself as a home provider and as a man it is his responsibility to provide a home for the family.

Hence, Amina's contribution would mean that he has failed in his duty. This demonstrates the male cultural image that a man is the head of the household, home provider and homeowner. This also implies that even if Amina contributed to the home project, Robert would most likely exclude her name from the title deed. Although Amina met some of the domestic costs she does not have any ownership rights over the home but can only exercise user rights. All her money is spent on consumables. Hence this leaves her with no security in the event of separation or divorce. Amina's marital status as a cohabiter puts her in a vulnerable situation.

In 2002 the family moved from the two bed-roomed- house to the big house where they now live. To protect Amina from being evicted by his relatives, Robert has made a Will. In the Will he has indicated that Amina is entitled to stay in the home with her children as reflected in his words 'I have suffered so much with my wife and she has endured all the situations we have gone through. So I am planning to leave all the things here for my wife. They are hers together with her children. I even remember when I was building this house one of her children who is now ten years used to change the bricks so that they dry. I don't want anyone to tamper with the property here. This property is for my wife and her children. I had to put that in a Will and in fact I had to because you never know I can die anytime for example in an accident. The good thing is that the Will is there in ink. The things are hers with her children'.

In this quotation Robert reveals that he has indicated in the Will that all his property including the matrimonial home belongs to his wife and children. Although Robert

has bequeathed all his property to his wife and his children, the hidden underlying point is for Amina to keep the property in trust for her children. Robert has already indicated in the story that he cannot include Amina on the title deed because the land belongs to the clan.

Therefore, Amina can only have user rights, not inheritance rights of the home upon the death of her husband. In addition Robert's relatives can easily contest Amina's user rights of the matrimonial upon the death of her husband because she is not legally married. Robert has not regularized his marriage to Amina because he fears commitment as reflected in his words 'what I fear most is to commit myself and fail to keep the commitment. As you know youth, you never know I may change my mind and get another woman. My current wife has been patient for long and she has endured all the situations we have gone through because we started when we were poor. We were not rich as we are now. What I don't want is to legalize a marriage and at the end the marriage breaks. I have seen many people wedding but after some time they separate. I don't want that to happen. I fear legalizing our marriage because it hasn't really entered into my mind. I don't want to deceive myself. I think people who would be right to legalize their marriages are those who are about 50 years because at that age they can be committed. My advice is that people of young age shouldn't commit themselves into legalized marriages because they still have many other things other people of opposite sex admire'.

This quotation implies that Robert is not ready to settle for marriage and therefore he is not ready to co-own the home with Amina just in case he decides to marry another woman. On separation and divorce or widowhood, Amina does not have any beneficial right in the home.

Although Robert is not willing to legalize the marriage, he does not know the insecure situation he is putting Amina into. Since he may marry another woman, then the will he is talking about is likely to be contested. Robert revealed that he had already three extra children from other women. Since Amina is not legally married and Robert is reluctant to legalize the marriage, Amina's user rights of the matrimonial home can

easily be jeopardized. Therefore, on separation or divorce Amina leaves with only her personal belonging and the marriage law cannot protect her in this. On widowhood, Amina can only stay in the home as a guardian of the children. Although Robert has made a Will authorizing Amina to remain in the matrimonial home, children from other relationships can easily contest his Will.

In summary, Amina, just like Annet in the previous story, is unable to co-own the matrimonial home with her husband. This is because the home is built on the land that originally belonged to the clan. Although Amina indirectly contributed to the home project Robert would not include her name on the title deed because the land belonged to his father and therefore he believes it should remain in the patriarchal family. Inclusion of Amina's name on the title deed would mean removing the property from the family. Upon separation or divorce, Amina goes away with only her personal belongings and the marriage law would not protect her.

Although Robert has made a Will to protect Amina from being evicted from the home, Robert's relatives can easily jeopardise her user rights because she is not legally married to Robert. An interview with the Administrator reveals that a woman is regarded as married under customary, civil, religious marriages. Hence a married woman who does not have any marriage document under the three mentioned types of marriage cannot administer the deceased man's estate. Amina's user rights of the home can further be jeopardised by either her in-laws or the other children Robert had from previous relationships. Although Robert has made a Will, it can easily be contested by his children from his other relationships and relatives.

6.7 Inability to change ownership status when the title deed is already in a husband's name: The story of 'Joyce' Kimbugwe

This is a life story in which a married woman is unable to become a homeowner when the title deed is already registered in a husband's name. Joyce is an educated but unemployed married woman who is unable to co-own the home with her husband. By the time she was married, the home was already registered in her husband's name.

Joyce lives in Kiwatule, in a three-bedroom home with her husband and two children aged five years and nine months. The home is tile roofed, with sitting room, dining room, garage and electricity but plumbing has not been completed. (Fig.14)

Figure 14: Joyce's home



Joyce, aged 36 years, was born in Kalungu sub-country, Masaka District to a middle-income family of more than 20 children. Joyce is the first-born of her mother with four other siblings. Her father had reasonable income to educate all the children. Joyce had sixteen years of education. She had seven years of primary education at Buddo from 1980 to 1986 before she joined Kako secondary school where she had four years of secondary school education until 1990. She later joined Masaka High College from 1991 to 1993 where she completed two years to obtain a high school certificate. She then attended a two-year secretarial course at the Institute for Accountancy at Nankulabye where she obtained a certificate in secretarial studies.

As a qualified secretary she acquired a secretarial job with a firm of advocates where she worked for two years before she joined Kiwatule Parents School as a secretary in 2001. Joyce was able to acquire the different jobs because she was a qualified secretary without which she would most likely have found it difficult to apply for a job. With a job she was assured of income. In 2003 she was laid off and her retrenchment left her dependent on her partner, Samuel.

Joyce met Samuel in 1996. In 1999 Samuel formalized their marriage through the customary law. The couple is blessed with two children aged five years and nine months. Samuel, aged 45 years is a highly educated person. He was born to a middle class family of 12 children in Bukulula sub-parish in Masaka District. His father and his mother who are still alive had reasonable income to educate all the children. Samuel had more than 18 years of education. He attended Kako primary school where he completed seven years of education in 1975 before he joined Masaka Secondary School for four years of secondary education until 1980. In 1980 he joined St. Henry Kitovu for a two-year high school certificate, which he completed in 1983. In 1983 Samuel joined Makerere University for a five year Bachelor of Science Degree in agriculture with a focus on Animal husbandry, which he completed in 1987.

Soon after graduation Samuel joined the Ministry of Animal Industry and Fisheries as a livestock officer before joining ActionAid Uganda International where he worked for two years. He then joined Co-operative Union as a trainee production manager and after two years he was promoted to production manager. In 1996 he was appointed as acting secretary manager before he was appointed the full secretary manager in 1997. He worked in the position of secretary for only two years, before he left for Makerere University to pursue a Masters degree in Agric- Business Management, which he completed in 2003. Since 2003 Samuel has worked part-time for a pesticide initiative programme based in Brussels. He trains farmers on the safe use of pesticides, and food hygiene.

By the time Joyce was married to Samuel, he had already bought a plot of land registered it solely in his name and built a home on it. He however believes that he is ready to include Joyce's name on the title deed because they have worked together to improve on the home. He admits that Joyce has contributed financially to the home

project. For example at the time she joined him, the house was not plastered inside but with her contribution, he has been able to plaster it. According to him, Joyce has so far contributed about 12 per cent of the construction costs. Asked whether including her on the title deed is based on her contribution, Samuel said 'Whether in her name, whether in mine, it is something for the children'. Samuel's focus on the children as the main reason why he should include Joyce's name on the title deed implies that if she did not have any children with him, he would not include her on the title deed. Samuel argued that he would rather include Joyce's name on the title deed than include his sisters or brother's names because if he died, they would take away the home from the children. However, he expresses fear that a wife can be untrustworthy and sell off the house.

To give Joyce some control over the home Samuel entrusted her with the title deed. Whenever Samuel wants to secure a loan from the bank, he requests for it from her and returns it to her after payment of the loan. By entrusting Joyce with the title deed it looks as if Samuel is trying to recognize Joyce's contribution to the home by giving her some control over dealings with the home. Although Joyce keeps the title deed, legally, however, she still has no rights to the home.

The story demonstrates that shifts in attitudes are the beginning of shifts in behaviour. This story is evidence of a gradual shift from complete patriarchy to gender equality. In this case Samuel and Joyce occupy a middle ground that is neither gender equal nor completely patriarchal. The question to ask is: Why is this marriage not completely patriarchal? It is true that the couple occupies a middle ground. Just as Robert in the previous story, Samuel seems to appreciate and recognize Joyce's contribution. However, whether Joyce's keeping the title deed guarantees that Samuel cannot retrieve it from her and use it the way he wants in future is unknown and trying to get an answer from Samuel at this material time may not help.

It is difficult to ascertain whether what Samuel says today may not change tomorrow. Joyce believes that as long as she keeps the title deed, Samuel cannot mortgage the home. She feels secure at the moment because she has children with him and he has no other children and no other woman. She does not believe that Samuel should include her name on the title deed but says 'When I tell him to put the title deed in my

children's name that one can help'. The statement implies that Joyce looks at her children as security of ownership of the home. Nonetheless, although Joyce has a right to use the home she will probably never co-own it. Hence, upon divorce or separation, Joyce is most likely to lose whatever she has contributed to the home for nine years. Since Joyce is married under customary law, she cannot defend her contribution in Court of Law. As noted earlier, under customary law, a married woman is like property and therefore she cannot own property. On divorce or separation she can move out with only her personal property.⁴⁰ On separation or divorce, Joyce's user rights of the home will depend on who moves out of the home. In case Samuel walks out on her and leaves her in the home, she could only have the usage of the home, but she can never own it. In case she moves out, she loses the user rights. In contrast to Mrs. Mayambala case that acquired 70 per cent of the value of the matrimonial home through the Court, Joyce is not entitled to anything because of the type of marriage.

Joyce's story demonstrates that in cases where the title deed of the plot of land on which the matrimonial home is built is already registered solely in a husband's name, a married woman may find it extremely difficult to convince her husband to include her name on the title deed. It is possible only in special circumstances whereby the husband badly needs a wife's financial contribution for the home project, as we shall see later in the next chapter. Although Samuel seems to appreciate Joyce's role and contribution to the home and willing to include her name on the title deed, we cannot guarantee that he will do it in the near future. Also an interesting finding is that Samuel does have a patriarchal ideology. The story also raises the issue of single income. For the last 10 years, the couple has not been able to complete the home because the wife does not work hence the family relies on single income.

⁴⁰ Okumu-Wengi, *Women's Law and Grass roots Justice in Uganda*.

6.8 A Cohabiting situation when the title deed is already in a husband's name: the story of 'Mary'.

This life story demonstrates that a married woman can be deprived of homeownership rights in case where the home is already registered in a husband's name. The married woman's user rights are more at stake if she is not in any legally recognized marriage. Upon separation or divorce, the married woman can only move out with her personal property and the law will not protect her. Mary is a young uneducated cohabiting woman. She lives in Banda in a three bed-roomed house with her partner and three children aged 10, 8 and 4 years.

The home is iron roofed with water, electricity with a perimeter wall (Fig.15).

Figure 15: Mary's home



Mary, aged 35, was born to a poor family of ten siblings in Kashenshero rural village, Nyakitoma Sub/county, Bushenyi District. Mary is not legally married, and therefore

we can regard her as a cohabiter. Mary works at Kyambogo University farm as a poultry attendant.

Mary had only eight years of education. She dropped out of school in her eighth year because her father did not have enough money to pay school fees. Since Mary is uneducated she did not have any employable skills and therefore could not acquire any formal employment or earn a good income. When she dropped out of school Mary lived with her uncle in Mbarara, a few kilometres from Bushenyi District, before she joined her brother, who worked in State House in Entebbe. She later moved to Kampala and stayed with a relative who worked at Nabisunsa secondary school. When her relative left for greener pastures in Kenya Mary lived with a friend who later helped her acquire a job at Kyambogo University farm as a poultry attendant in 1992. Because of her lack of education, Mary could only be employed as a poultry attendant and as a result she earned a low income. Assured of a regular income, Mary rented a room in Banda where she lived with her sister. Mary met her partner Mwine at her work place in Kyambogo.

Mwine, aged 51, years is a highly educated man. He was born into a middle-class family of eight siblings in Bwanshetsya village, Kyamuhunga sub-county, Igara, County, Bushenyi District. He was born into a strong Christian family and that influenced his early childhood education. His father was an Anglican minister. Mwine is a lecturer and farm manager at Kyambogo University farm. Mwine had two years of primary education at Rutoto primary school in Bunyaruguru County, Bushenyi District before he joined Kyamuhunga primary school where he completed the seven years of primary education. He then he joined Kigezi High school where he completed four years of secondary school education before joining Kyambogo College where he completed a Diploma in Agricultural Education in 1975.

In 1981 Mwine won a scholarship to go to the Netherlands to study for a diploma in poultry husbandry and feed mill technology. In 1987, he completed a two year Bachelor of Education Degree, at Makerere University. In 1992 he went to Italy and completed an agro-forestry course before he left for Sydney, Australia where he

completed a Masters degree in Agriculture in 1997. Between the periods of study, Mwine worked in different places. From 1975 to 1980 he was an agriculture teacher and head of department of agriculture at Kigezi High School and then he joined National Teachers College (NTC) Kyambogo as assistant lecturer and farm manager in 1980.

In 1984 he had his first marriage. The couple was blessed with three children, two girls and one boy. However, the first marriage ended and he attributes this to his endless studies abroad. He has custody of the children, but he separated from their mother and now lives with Mary. Mwine bought a plot of land in Banda and built the home before he began living with Mary. The plot of land on which the home is built is registered solely in his name. The house is not yet completed though it is habitable and yet it was started in 1987.

Although Mwine argues that he registered the plot of land solely in his name because his first wife, a graduate did not contribute to the cost of the home, he contradicts himself when asked whether he would include Mary's name on the title deed if she contributed to the home project: 'I do not want her to contribute because of the earlier experience from my first wife. This is my house and no wife should now contribute to it because I do not want any future claims from a woman that she has a share in the house. I prefer to struggle alone until the house is completed'.

Though Mwine sounds liberal and modern in his argument, he still depicts the cultural image and ideological sentiments that demonstrate a home belongs to the man. Although the home is incomplete, he prefers not to allow his wife's contribution. Mary revealed that she bought most of the domestic items in the house, which should be recognized although she did not contribute anything to the construction of the house.

Since Mary does not have a good income she finds it difficult to save for her future. Surprisingly she spends her little income on the domestic items. Mary further revealed

that she does not know where Mwine keeps the title deed to the property. Being a second 'wife', and not legally married, she is worried about her rights in the home. Since Mwine did not legally divorce his first wife and there is only one home in Kampala, there is bound to be a problem if he dies. Mary revealed that she does not have the capacity or stamina to ask Mwine about the homeownership issues because of fear of his reaction since there are two women with potential rights to the home. She fears that Mwine may lose trust in her. Mary's fear can be attributed to her low income and low education. She does not have the capacity to negotiate with Mwine because she has nothing substantial to offer and secondly her low education does not give her the capacity to negotiate with Mwine. In any case, Mwine's patriarchal beliefs cannot allow him to include Mary on the title deed.

Although Mary has a job, it is a poorly paid one based on her minimal education. As a result she finds it difficult to save for her future. Mwine on the other hand does not see any problem of having two women and one home in Kampala. Asked what would happen to the home in case of his demise since he has two wives he said 'I have a home in Kyamuhunga in Bushenyi district but I will have to take the trouble to have two homes so that each is catered for. 'This Kampala house is mine and any of the children who wants to come will have a room in the quarters, but it is basically mine' Probed further about the fate of the home in Kampala in case of his death, Mwine said: 'why should I think about dying? I have not planned for that as yet. What I have done, I have planned for the children, so that they share the proceeds. But at the moment, I have put up a hostel to support all of them in their education and if I collapse today, Yaa, so nobody should look at it [the Kampala home] as a mere residential house, No, no, no, it has that commercial element in it. I would imagine that whoever will be in charge will be reasonable enough to know that this house is not just for residential. It is for commercial purposes.'

Much as Mwine does not seem to see a problem in case of his demise, the fact remains that Mary does not have any legal right in the home because she is not legally married.

In summary, Mary is unable to co-own the matrimonial home because by the time she started cohabiting with Mwine the title deed was already registered solely in Mwine's

name. Although the home is not yet complete and she could make a substantial contribution to complete the home thereby enabling her to negotiate co-ownership with Mwine, she does not have income. Even if she had income, Mwine is a patriarch who seems unwilling to co-own a home with a wife.

Since Mary is not legally married, she has no legal right to the home. As a cohabiter there is no law to protect her because the Domestic Relations Bill that caters for such women has never been passed. In any case, the law would most likely not protect her because there is a legal wife. Hence, though Mary continues to spend her little income on some of the domestic expenses, her contribution is unlikely to be recognized upon separation, or widowhood. Mary's story demonstrates that a woman finds it difficult to have her name on the title deed if the title deed is already registered in the husband's name. A cohabiter without good income is in a more vulnerable situation where her name does not exist on the title deed. In times of separation she does not have any beneficial interests to claim in Courts of law and the marital does not in any case protect her either. The story brings out the homeownership dynamics in polygamous families and cohabiters.

6.9 Discussion of findings

This chapter analysed the experiences of married women in different marriage situations about the ways in which they were either deprived or deprived themselves of homeownership. Although the life stories reflect homogeneity in terms of deprivation of home ownership they present different dynamics embedded in the married women home ownership gender contract.

Findings in this study show that even though married women made substantial financial contributions directly or indirectly to the home project, the men had total control in decision-making regarding ownership of the matrimonial home. The discussion of the findings is based on what other studies have suggested as to why married women end up with only user rights of the home. Broadly, many authors attribute married women's lack of homeownership to economic, social-cultural, institutional and psychological factors and these are reflected at different levels for

example interpersonal, institutional, and cultural levels. The analysis is based on these broad factors.

6.9.1 Income, education and decision making

Lack of income limits a married women's capacity to contribute to the home project and to negotiate for homeownership rights with her husband. The life story of Flora, provide evidence that in a case where a married woman lacked good income, she found it difficult to co-finance the home project. As a result she depended on her husband for housing and therefore she could not negotiate to have her name included on the titled deed even when she had the opportunity to do so. Lack of control of income in the home renders the married woman dependent on her husband's decision on important investments such as housing. Some of the authors suggest that wives that do not earn income have less control over the allocation of household resources than working wives.⁴¹ This observation implies those married women who are unemployed or employed in low-paying jobs are unable to contribute to housing investments and hence are in a weak-negotiating position for homeownership rights. The findings in this chapter add to the general debate on the role of income, education, and decision-making to homeownership rights at interpersonal level.⁴²

However, the life stories also demonstrate that women with high incomes can have more influence over decision-making but it does necessarily mean equality in homeownership as many authors have also suggested.⁴³ For example, although Reggy and Patricia substantially contributed to the home project, their husbands did not include their names on the title deed. Instead, in appreciation of their substantial

⁴¹ Moser, *Gender Planning and Development, Theory, Practice and Training*, p.26; Sen, A., 'Gender and Cooperatives Conflicts', p.144.

⁴² Deere, & Doss, *The Gender Asset Gap: What do we know and why does it matter?* p.36; Agarwal, 'Bargaining' and Gender Relations: Within and Beyond the Household', pp.1-51; Moser, *Gender Planning and Development, Theory, Practice and Training*; Sen, A., 'Gender and Cooperatives Conflicts', p.144; Senauer, 'The Impact of the Value of Women's time on Food and Nutrition', p.151.

⁴³ Chant, S., 'Contribution of a Gender Perspective to the Analysis of Poverty'. In Jaquette, J., & Summerfield, G. (eds.) *Women and Gender Equity in Development Theory and Practice: Institutions, Resources, and Mobilization*, Duke University Press, Durham and London, 2006, p.101; Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment'; Moser, *Gender Planning and Development, Theory, Practice and Training*, p.27.

financial and indirect contribution to the home project their husbands entrusted them with title deeds. This indicated that they could not sell the matrimonial home without their consent.

The life stories also show that husbands not only appreciated their wives financial contribution, but also the non-financial contribution. For example in the life stories of Amina and Martha, their husbands entrusted them with the title deeds for their non-financial contribution to the home project. However, in the case of the life story of Annet, the husband did not appreciate the non-financial contribution and did not entrust his wife with the title deed of the home. In case of Annet, her husband had originally been let down by his former wife when she stole all his property and hence he could no longer trust any other woman with property.

Findings in this chapter partly concur with earlier studies that men make 'major' decisions on housing investments while women make decisions on activities related to domestic activities.⁴⁴ In this case the major decision refers to registration of the matrimonial home. The life stories show that married women were involved in decision making on the housing investment. However, they were less involved at the crucial stage of registering the title deed on which the matrimonial home was built.

Whereas married women made decisions for example on where to buy a plot of land, where to obtain finances to fund the home, they were not involved in the decision making at the crucial stage of registration. As a result, they ended up with only user rights of the home. This implies that if women are to safeguard their own interests in the home, they have to step into the male sphere of decision-making not only at the initial stage of the home project but also at the crucial stage of registration of the title deed.⁴⁵ In this regard the findings of this study partly concur with other studies that

⁴⁴ Kalabamu, 'Changing gender contracts in self-helping Housing Construction', pp., 245-68; Behice, 'Women's Efficiency in Decision Making and Their Perception of Their Status in the Family', pp.65-70; Matere-Lieb, 'Basotho Women's role in Urban Housing'; Cubbins, 'Women, Men, and the Division of Power, p.1065; Agarwal, 'Bargaining' and Gender Relations: Within and Beyond the Household', pp.1-51; Sen, 'Gender and Cooperatives Conflicts'; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

⁴⁵ Namita, 'Joint titling: A Win-Win Policy?' pp.278-279; Chant, 'Contribution of a Gender Perspective to the Analysis of Poverty', p.101.

men make important decisions on matters outside the home, for example housing investments and acquisition of title deeds.

The findings in this study however differ from earlier findings that women make decisions only on domestic activities. The life stories provide evidence to show that women make decisions not only on activities related to domestic activities but also on decisions regarding housing investment. The husbands' actions to exclude their wives names from the title deed even in situations where the wives made substantial financial contribution to the home project could be attributed to their cultural image and ideological thinking that a home belongs to the man.⁴⁶ Husbands preferred to have full control of the matrimonial home where the wives reside because of competing interests of the different actors.⁴⁷

There are ideological, cultural and economic reasons in the way resources are allocated in the household.⁴⁸ Having the matrimonial home solely registered in his name gives the husband control over the wife. The findings of this study reveal that there is a dominant gender contract whereby men believe that women should not own property especially land and housing.⁴⁹ This is because, when women own property, they tend to be 'self-assertive and unruly and therefore unmarriageable.'⁵⁰ Therefore, to control their wives, the husbands ensure that they do not include their names on the title deed. In situations where the married women do not challenge this dominant gender contract they end up with only user rights of the home.

⁴⁶ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.203; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

⁴⁷ Namita, 'Joint titling – A Win- Win Policy?', p.273; Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?', p.21; Munalula, 'Choice of Law: 'Theoretical Perspectives on Urbanization and Women's Rights to Property', p.195.

⁴⁸ Moser, *Gender Planning and Development, Theory, Practice and Training*, p.23.

⁴⁹ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231; Matere-Lieb, 'Basotho Women's role in Urban Housing'; Ntege, 'Women and Urban Housing Crisis', p.51; Namita, 'Joint titling- A Win-Win Policy? Gender and Property Rights in Urban Informal Settlements', p.279.

⁵⁰ Ntege, 'Women and Urban Housing Crisis', p.51; Namita, 'Joint titling- A Win-Win Policy? Gender and Property Rights in Urban Informal Settlements', p.279.

6.9.2 Household expenditure patterns and decision making on investments

Many studies allude to the fact that men tend to spend most of their income on housing investments while women spend their income on domestic and consumable items for example food and clothing and this is a reflection of gender roles.⁵¹ Findings in this chapter however show evidence that some married women spent substantial amount of money on housing investment while others spent their small incomes only on food. This implies that expenditure patterns in the homes did not reflect the predominant gender roles but rather the gender power relations whereby men took major decisions on housing investments especially in the acquisition of the title deeds.

Therefore, it is not always true that married women's incomes are spent only on consumables, which are not easily recognizable as many authors argue.⁵² However, it is true that women are disadvantaged by traditional household power. For example even where women spent money on the home project, the men still believed that the home belongs to them disregarding the women's financial contribution. Upon separation or divorce, married women have nothing to show as proof of their financial contribution to the home whereas men's expenditures are reflected in the title deed as proof of their financial contribution.⁵³ To acquire beneficial interest in the home, married women have to ask Courts of law.

In such cases, married women are at the mercy of Courts decision and sometimes the amount of beneficial interest in the home depends on the Judge presiding over the

⁵¹ Yngstrom, I., 'Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate over Land Policy and Changing Tenure Systems', *Oxford Development Studies*, 30(1), 2002, p.24; Kalabamu, 'Changing gender contracts in self-helping Housing Construction', pp. 346-347; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.217.

⁵² Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?' p.36; Miraftab, 'On Loan from Home: Women's Participation in Formulating Human Settlements Policies', pp.174, 184; Namita, 'Joint titling: A Win-Win Policy? Gender and Property Rights in Urban Informal Settlements', p.278; Vogler, 'Cohabiting couples: rethinking money in the household'; Chafetz, 'Gendered Power and Privilege' Kabeer, 'Resources, Agency, Achievements'; Narayan, et.al. *Voices of the Poor: Can anyone hear us?*, pp.179, 181, 269, Moser, *Gender Planning and Development, Theory, Practice and Training*, p.24; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.218.

⁵³ Kalabamu, 'Changing gender contracts in self-helping Housing Construction', pp. 346-347; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.217.

case.⁵⁴ Case laws of Mrs. Mayambala and Kironde cited earlier demonstrate the importance of a wife having her name on the title deed. Findings in this study, add on new knowledge that changes in expenditure patterns whereby a married women spends her money on housing investment do not necessarily guarantee them homeownership. The dominant homeownership gender contract whereby husbands make major decisions at crucial stages of housing investment still exists. For married women to challenge it, they must be alert.

6.9.3 Lack of awareness about homeownership

Education has been identified as one of the ways in which women can utilize the existing opportunities and take advantage of the existing structures and legal frameworks to protect and exercise their rights. With education, women can bargain for resources within the household, have autonomy in decision-making and participate in society's public spheres.⁵⁵ The life stories demonstrate that although some married women had income and were well educated, this alone did not guarantee them home ownership. There are influences beyond income and education. Other studies also show that education does not necessarily lead to home ownership.⁵⁶

The life stories of Reggy and Patricia have demonstrated that education and awareness are two different issues when it comes to homeownership dynamics.⁵⁷ In cases where married women were ignorant of their ownership rights, they ended up with only user rights to the home even when they financially contributed to the home project. Lack of awareness is one of the things that deprive many married women of

⁵⁴ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', pp.195-211; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

⁵⁵ Birdsall, N., Levine, R., & Ibrahim, A., Towards Universal primary education: investments, incentives, and institutions, UN Millennium Project Task Force on Education and Gender Equity, Earthscan Publishes, London, 2005, p.29; Miraftab, 'Women's Empowerment Indicators: Synthesis of the Women and Habitat Indicators Process, p.14; Kritiz, & Makinwa-Adebusoye, 'Determinants of Women's Decision-Making Authority in Nigeria, p. 413.

⁵⁶ Mugambe-Nabajja, B., 'Houses No longer a Male Preserve, Women own them too', Occassional Paper No. 28, Department of Women and Gender Studies, Makerere University, Kampala, June, 2004;Tusingwire, & Tumushabe, 'Women and Control of Housing'; Oruwari, 'The Invisible Contribution of Married women in Housing Finance'.

⁵⁷ Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, p.104.

ownership. This is regardless of whether a woman is educated or not. Although one would expect an educated woman with income to be able to assert her ownership rights, the life story of Reggy has demonstrated that education does not necessarily mean awareness of rights to home ownership.

Findings in this study show that awareness of one's homeownership rights and what is happening in the community deprives a married woman home ownership rights. It can be argued that to change the power struggles in the home, women must be aware of their ownership rights. It can also be argued that an uneducated married woman who is aware of her home ownership rights is more likely to become a homeowner than an educated married woman who is not aware of her home ownership rights. Awareness can be through personal interactions with other people in the community or through the media.⁵⁸

6.9.4 Perception and attitude

Many studies reveal that husbands and wives perceive each other in terms of their gender roles. Wives perceive themselves or are perceived by their husbands as homemakers, while husbands perceive themselves or are perceived by their wives as homeowners, breadwinners and decision makers.⁵⁹ In addition, while wives tend to devalue their work or contribution to the home project, husbands also tend to disregard their wives' contribution in the home.⁶⁰ Other studies suggest that married women were not concerned about their ownership benefits in the home. Instead of being assertive, married women preferred to be docile in order to save their marriages.⁶¹ In so doing men took advantage of this 'I don't mind' attitude of married women to exclude them from co-ownership.⁶² In contrast to earlier studies, findings in

⁵⁸ Griffiths, A., *In the Shadow of Marriage: Gender and Justice in an African Community*, p.225.

⁵⁹ Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter', pp.143-160; Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, p.175; Larsson, 'Theoretical and Methodological Considerations', p.218. Musyoki, 'Perceptions on Gender and Access to Housing', p.276; Sayne, 'Ideology as Law: Is There Room for Differences in the Right to Housing', p.98.

⁶⁰ Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter', pp.143-160.

⁶¹ Oruwari, 'The Invisible Contribution of Married women in Housing Finance', p.117.

⁶² Orumari, 'The Invisible Contribution of Married women in Housing Finance', p.120; Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter', pp.143-160.

this chapter reveal that there are changes in the way women look at husband's role in the home as well as the way husband perceive their wives roles.

Findings of this study suggest that married women did not perceived husbands as home providers and homeowners. Instead, married women actually took over what typically could be regarded as a man's role to provide a home for the family. If women looked at their husbands as homeowners, they would not contribute to the home projects. Married women contributed to the home project in the belief that the home was for the good of the family and in the hope that their husbands would recognize their contribution as co-owners. Statements like 'it is our money', 'these are our children', carry with them messages of togetherness, cooperation and equal responsibility.

On the other hand findings of this study reveal that there is a change in the way husbands look at their wives' role in the home. This is reflected in the way they entrusted title deeds with their wives something husbands in a typical patriarchal community would not do. However, husbands' behaviour to exclude their wives' names from the title deed showed a hangover of the dominant gender contract whereby husbands regard themselves as homeowners.

Hence, the life stories of Patricia, Reggy, Joyce, and Flora demonstrate that married women's perception about their role in the home did not per se account for their lack of ownership. Instead the life stories reveal the complex power dynamics married women are engulfed in. The life stories of Patricia and Reggy demonstrate that married women's trust of their husbands to include their names on the title deed, does not automatically guarantee them ownership. Instead, the husbands still carry patriarchal cultural beliefs that a home belongs to the man as a head of the household whether or not the wife financially contributed to the home project.

The cultural ideology is so powerful that it makes husbands to disregard their wives substantial financial contribution. As a result, they did not include their names on the title deed even when the wives financially contributed to the home project. Although

husbands do not perceive themselves as sole home providers and their wives as homemakers they still regard themselves as homeowners. Husbands tended to believe that entrusting the title deeds with their wives was a sign of assigning some power to them as a sign of appreciation of their contribution. Much as the married women kept the title deeds, legally they had only user rights of the home.

The life stories demonstrate that in cases where married women trusted their husbands to include their names on the title deed, the husbands automatically registered the home in their sole names. Although many authors attribute the trust married women put in their husbands to 'I don't care' attitude, the life stories of Reggie and Patricia reveal that men take advantage women's trust to exclude them from co-ownership because they do not see any need to include their names on the title deed due to their patriarchal ideological beliefs. On the other hand, there were cases where married women did not regard their contribution to the home project as important as reflected in their statements: 'Whatever I do, I register everything in his name, I don't know why. My husband and my son did the processing of the title deed' (Patricia's life story); 'No! No! No! , That is one thing which I have always told my friends even not for purposes of this interview. You know right from the beginning, that I came to make a home with Davie. And putting the plot of land in his names is not something that really bothered me, or that I am not in it or what, so 'we' have been slowly building this house, when we get money we put in this house and life continues. Because I believe it's ours it's our land, for our children, for us. It has never occurred to me that my name should also be there' (Reggy's life story); 'Because I don't earn a salary, my financial contribution was small'; No I haven't put in any of my money on the house. I spent most of my money on household items' (Martha's life story), 'When I tell him to put the title deed in my children's name that one can help' (Joyce's story).

The above statements reveal that women do not value their work but look at the common good of the family and more specifically for the sake of children. They do not look at themselves as stakeholders in the home.

6.9.5 Patriarchal cultural Images and ideologies

The feminist approach to housing provision has tended to explain the inequalities of women in housing in terms of gender relations and the influence of patriarchy. In so doing they focus on unequal access to power and decision-making.⁶³ According to Larsson, 'Men and women actions tend to reflect their cultural beliefs and their actions are usually explained in terms of their culture for example statements like this is how we do it now-a-days'.⁶⁴ However, this approach has not attempted to explain how patriarchy influences home ownership. As Little observes 'Studies have remained largely silent on the ways in which gender relations and the operation of male power have been reproduced within key areas of the production and consumption of housing.'⁶⁵ This study therefore has gone ahead to fill up this information gap.

In situations where the Registration of Titles Act does not deter a husband to include her name on the title deed then one is made to believe that patriarchal cultural beliefs are the forces behind a woman's deprivation of homeownership. The life stories demonstrate that husbands support patriarchal cultural norms and beliefs to deny women of homeownership.

The cultural norms and beliefs are reflected in husbands' actions and statements as reflected in their life stories. The following statements reveal husbands' patriarchal cultural ideologies: 'this is my house and no wife should now contribute to it because I do not want any future claims from a woman that she has a share in the house, I prefer to struggle alone until the house is completed. This Kampala house is mine and any of the children who want to come will have a room in the quarters, but it is basically mine' (Mary's life story); 'Whether the title deed is registered in my name or my wife's name is a non-issue because when we produce children we believe that they will inherit our property' (Patricia's life story); 'I just knew that the land title is

⁶³ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231; Little, *Gender, Planning and The Policy Process*.

⁶⁴ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.216.

⁶⁵ Little, *Gender, Planning and The Policy Process*, p.149.

supposed to be in my names, that is what I thought' (Martha's life story); 'Why should I include Annet on the title deed? You women are thieves; you are very cunning and difficult these days. That is why men no longer want to co-own houses with you because you can easily turn around and say this is our house, we built it together. Since Annet is not on the title deed everything in the house is mine and, no one would be interested in them and by that time my children would be old enough to decide what to do' (Annet's life story); 'Because this land is like a gift from my father. I had to leave the land title in my name. I cannot put her [Amina] name on the title deed because I do not want our property to get out of our family' (Amina's life story); 'Whether in her name, whether in mine, it is something for the children'. (Joyce's life story).

The above statements reveal that in many cases patriarchal cultural beliefs were on the top of the agenda to deprive married women of homeownership. For example the life stories reveal that men regard themselves as heads of households and therefore sole homeowners regardless of their wives' direct and indirect contribution to the home project. Men's actions in marriage with regard to property acquisition even in situations where they could include their wives' names on the title deed reflect the dominant gender ideology that the home belongs to the man and therefore women are only users of the home. This cultural belief drives men to register the plot of land on which the matrimonial home is built solely in their names.

In conclusion, the above stories demonstrate that in Uganda it is difficult for a married woman to co-own a home with her husband. There are various factors that account for lack of gender inequality in home ownership. The factors range from economic, social-cultural, psychological and Institutional.⁶⁶ These factors create various dynamics at institutional and interpersonal levels. Hence the situation of homeownership among married women becomes complex. In cases where women did not have regular income to co-finance the home project they depended on their husbands for housing. Where married women did not use their financial contribution

⁶⁶ Miraftab, 'On Loan from Home: Women's Participation in Formulating Human Settlements Policies', p.189; Rowlands, 'A Word of the Times, but What Does it Mean? Empowerment in the Discourse and Practice of Development', p.15; Schlyter, 'Women Householders and Housing Strategies' p.35.

to the home project as a tool for negotiation with their husbands they ended up with only user rights to the home. In these cases the husbands automatically registered the homes solely in their names. Studies on women's rights propose legal reforms in order to reduce on the inequality.⁶⁷ However other studies argue that legal reforms can only provide a framework within which women can assert their rights but will not per se guarantee women of homeownership.⁶⁸ The findings in this chapter also confirm that much as legal reforms are important, these have to go hand in hand with social changes at interpersonal level.

The Registration of Titles Act is gender sensitive and therefore married women have to find ways in which they can utilize this legal instrument to exercise ownership rights. In practice there are various factors that account for married women's lack of homeownership for example lack of regular income, awareness, and male cultural ideology. As Larsson concludes, 'At the different analytical levels there are various actors, who aim in different directions and have different power to influence [women's legal rights to ownership]'.⁶⁹ This therefore implies that married women can become homeowners only under special circumstances as the next chapter demonstrates.

⁶⁷ Schlyter, *Women Householders and Housing Strategies, The Case of Harare, Zimbabwe*, p.35.

⁶⁸ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property' p.211.

⁶⁹ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.229.

CHAPTER SEVEN

MARRIED WOMEN WHO BECAME HOMEOWNERS

'I will never forget the lady at the land office. If she had not advised me to include my name on the title deed, I would be homeless now (The nostalgic statement of a married woman whose husband threatened to evict her from the matrimonial home).'

7. Introduction

As discussed in chapter two, legal structures guarantee married women in developed countries of co-ownership of the matrimonial home regardless of whether the married women financially contribute to the home project or not.¹ As a result estate laws have enabled married women to increase their wealth.² In developing countries there is a lack of evidence on women's ownership of wealth especially on the ownership of particular assets like the matrimonial home in urban areas.³ A few studies on homeownership suggest that married women become homeowners as unmarried, divorced, separated or widows.⁴ In some of these cases women must have their own income to become homeowners while in others married women indirectly control the home through their eldest sons or nephews.⁵

Against the above background, this chapter presents evidence that shows the special conditions under which married women in a patriarchal Ugandan society became co-owners or sole owners of the matrimonial home. The argument made here is that for married women to become homeowners in a patriarchal society, it is an uphill task. Hence special conditions need to be available for a married woman to become a homeowner. The special circumstances involve various dynamics in different

¹ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter? p.4; Lundy, A., 'Race and Gender Inequality in Homeownership', p.607; Little, *Gender, Planning and The Policy Process*, p.158; Brion, M., & Tinker, A., *Women in Housing: Access and Influence*, pp.11-12.

² Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter? pp.1-50.

³ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter? p.6.

⁴ Matere-Lieb, 'Basotho Women's role in Urban Housing'.

⁵ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts'.

Figure 16: Christine's matrimonial home she co-owns with her husband



Christine was born to a poor family 50 years ago. She grew up in a Catholic convent. Christine's life was preoccupied with academic advancement. Although she initially had eleven years of education instead of the normal sixteen years, she upgraded to a Masters Degree level due to determination and hard work. The only child of her mother, Christine had a difficult childhood. Born in a polygamous family, she was abandoned by her mother when she was only two weeks old. She lived with her paternal grandmother up to four years and later her father took her to a nun's convent. In the convent Christine was exposed to the catholic moral doctrine of love, and respect. In a convent, everything was communally owned and hence this limited Christine's exposure to private property ownership.

Christine completed seven years of study in Mubende and later joined Nsambya Senior Secondary School where she completed her four years of study. Christine could not advance in her studies because of her family responsibilities. Her paternal uncle advised her to attend a short course that would guarantee her a job to enable her

marriage situations. These include control of income, absence of a husband, assertiveness, consensus, negotiation, and husbands being in a financial crisis. The stories demonstrate the opportunities married women had at their disposal and different strategies they used to negotiate the dominant gendered home ownership contract whereby husbands are regarded as owners of the matrimonial home while wives are regarded as homemakers of the home.

Evidence is presented through the married women's life stories through their actions. Since there is a gap in the literature especially in developing countries on the ways in which married women become homeowners, this chapter therefore fills in this gap and provides new knowledge on the homeownership gender contract of married women. The discussions that follow this introduction present evidence from the life stories of married women on the ways in which they became homeowners.

7.1 Including one's name on the title deed while a husband is absent: The story of 'Christine Nyakaisiki'

Christine is a highly educated married woman who was able to co-own the matrimonial home with her husband. She was able to include her name on the title deed of the plot of land on which they built the matrimonial home because she had control of her husband's and her own income. Not only did she have control over all the income but also her husband was absent at the time she purchased and registered the plot of land on which they built the matrimonial home. Had her husband been around, he would most likely have registered the plot of land solely in his name without any due regard to Christine's financial contribution, judging from his behaviour when he finally returned home.

Christine is a lecturer at Kyambogo University and a part-time lecturer in the department of secretarial studies at Makerere University. She lives in Banda with her three boys aged between 15 and 23 years, in a three bed roomed home she jointly owns with her husband. The house was iron roofed, with water, electricity, and is partially fenced (Fig.16).

look after her father's siblings. Christine then undertook a secretarial course at Tepol Secretarial College in Nairobi, Kenya in 1973 and later upgraded to the intermediate and advanced level, qualifying as a Secretary. In 1978 Christine returned to Uganda, and worked at St. Mary's College Kisubi as a secretary with a good salary and a house. In January 1980 Christine acquired a scholarship from the sisters of Notrodem in Switzerland and went to the United Kingdom for a year's tutor's course in Secretarial and office skills, at Pitman's Central College. At Pitman's College she acquired a diploma in teaching typewriting, a diploma for teaching shorthand and a postgraduate certificate to instruct in a College of higher education.

Although Christine would have advanced further and acquired a certificate in technical studies, which in England was equivalent to a first degree, and this would be a short cut to a Master's degree, Christine's plans drastically changed when she fell in love with Paul, a fellow Ugandan in Britain. Paul was from a different ethnic group and a highly qualified surveyor. In April 1982 Christine married Paul in Williams's Church of Hope in Reading in the United Kingdom. After four months of marriage, Paul became abusive and Christine realised that he had a mental illness. The couple was forced to return to Uganda in 1984, where they had no home. By that time the couple had one child. In Uganda the family first lived in Kansanga in her father-in-law's house who at that time was living abroad.

Although Paul was mentally ill, his illness was intermittent and whenever he stabilized he would acquire well paying jobs within the East African Region and other parts of Africa. He for example worked with East African consultancy firms as an evaluation surveyor and the company rented a house for the family at Nsambya housing estate. However, because of Paul's mental illness, he never stayed on any job for long. Christine was forced to look for a job to meet domestic expenses while Paul was in hospital or unemployed. With her postgraduate qualification in secretarial studies Christine was able to acquire a job and a house at National Teachers College, which is now Kyambogo University. The family then moved from their rented accommodation to a College owned house at Kyambogo. Since Christine had a job and free accommodation, she was able to earn a reasonable income to sustain her family and invest part of it. At Kyambogo Christine upgraded to a Bachelors degree and later to a Master's degree. With extra qualifications, Christine's salary increased.

To further improve on her income, Christine acquired a part time teaching job in the department of Secretarial studies at Makerere University. With the two jobs, Christine's income improved greatly. In the meantime, Paul acquired another job in Zambia and once in a while he would remit money to Christine. With her personal savings and Paul's remittances from Zambia Christine bought a plot of land.

Christine initially wanted to have the plot of land she co-financed registered solely in Paul's name because she thought it was culturally the right thing to do. In her social upbringing, she knew that a home belongs to a man. With her moral upbringing in the convent she did not anticipate that anything would go wrong in her marriage because she expected her husband who was also a catholic to be morally upright. It was a lady at the land office who advised Christine to include her name on the title deed. Christine had this to say about the lady at the land office: 'I will never forget the lady at the land office. If she had not advised me to include my name on the title deed, I would be homeless now' Christine was able to include her name on the title deed because of the advice of the lady friend at the land office and because Paul was away in Zambia. Had Paul been around during the time Christine registered the plot of land, he would most likely have registered the plot of land solely in his name judging from his behaviour when he finally returned home.

When Paul finally returned to Uganda, he became very abusive and would rarely stay at home. He at one time instructed his lawyers to write to Christine to hand over the title deed of the home and transfer the title deed into their children's names. Paul's proposal to have the title deed transferred into the children's name was to ensure that the property remained in the male line upon his death. He was not happy that Christine had included her name on the title deed. Christine had to seek advice from her lawyers to stop Paul's intimidation. On realising that Christine had refused to hand in the title deed of the matrimonial home Paul sneaked into her bedroom while Christine was at the University, searched everywhere but failed to locate the title deed of the matrimonial home. Christine had hidden the title deed very far from him, when she learnt of his motives. With anger and disappointment Paul took away Christine's title deed of another property solely registered in her name and gave it to his sister. By the time of the study, Christine's sister in-law had not returned the title deed.

Christine had instead lodged a caveat with the land registry to stop any transactions on her plot of land.

Although Christine financially contributed to the matrimonial home and supervised the construction of the home while Paul was abroad, Paul did not recognize her contribution and efforts at all. Although Christine would have registered the home solely in her name since her husband was absent, she did not do so because of harmony in the home and moral obligation since Paul had also contributed to the home project.

We can therefore conclude that Christine was able to include her name on the title deed only because Paul was absent. Had Paul been present at the time when Christine processed the title deed he would most likely not have included Christine on the title deed judging from his behaviour. His family will also have supported him in his actions. Paul's behaviour implied that he was not happy that Christine's name was on the title deed. He instead preferred the plot of land on which they built the matrimonial home to be registered in their children's names.

Christine's story demonstrates that a husband's absence can be an enabling factor for some women to exercise ownership rights. When husbands are present and involved in the purchase and registration of the plot of land, they prefer to register the matrimonial home solely in their names as discussed in the previous chapter. In contrast to men's actions, Christine's story demonstrates that it is difficult for a married woman to exclude her husband's name from the title deed because of the fear to create disharmony in the family.

Christine's story demonstrates that men have a patriarchal belief that property should remain within their family and not their wives. On the contrary, when husbands contribute to the home project women ensure that a husband's interest is taken care of for the good of the family. The story also demonstrates that awareness about the law governing registration of land is an important tool for a married woman to become a homeowner in the absence of her husband. This implies that ignorance of one's rights and the law governing land registration could easily deny a married woman her right to ownership. Had the lady at the land registry not advised Christine to include her name

because she had income without which she would still have had to depend on Deo for a home. Theo's story adds knowledge to the changing the homeownership gender contracts, where women have control of income, and make independent decisions without their husbands' involvement.

Theo has been in married for over thirty years. She is a 53-year-old retired cashier. Although she is not a qualified nurse, she operates a clinic at her home. Theopista's husband, Deo, is a 62-year-old retired teacher and a part-time lecturer at Kyambogo University. The couple lives in a three bed-roomed house alone. The house is iron roofed, with water and electricity but no fence (Fig.17).

Figure 17: Theo's home registered solely in her name



Theo was born into a middle class family in Kawempe Division, 4 kilometres from Kampala city. Her father owned large areas of land in Kawempe and had a good income to educate all the children. Theo, the first born of the family, grew up in a polygamous family of 40 siblings.

on the title deed, she would most likely be homeless or a user of the home she contributed to.

In summary, Christine was able to include her name on the title deed of the plot of land on which the matrimonial home was built because of the advice of a staff member at the land office. Secondly she was in total control of the income for the purchase and registration of the plot of land. Most importantly for Christine, her husband was abroad at the time she bought and registered the plot of land. Had her husband been around at the time of purchase and registration of the plot of land, Christine would most likely have found it difficult to have her name included on the title deed. Christine would most likely have entrusted Paul with the registration process of the plot of land, judging from her initial behaviour depicted at the land registration office. Christine would also most likely not have suggested to Paul to include her name on the title deed based on her religious and social upbringing that made her believe that husbands are supposed to be the respected heads of the household. Paul would definitely have registered the plot of land solely in his name, judging from his behaviour when he finally returned from abroad.

Had Christine not included her name on the title deed, Paul would most likely have evicted her from the matrimonial home. Christine's story shows that a husband's absence can be crucial for a married woman in Uganda to independently exercise ownership rights.

7.2. Sole ownership when a wife takes over a husband's responsibility to provide a home for the family: The story of 'Theopista Nabukalu'

Theo is a relatively well-educated married woman who was able to solely own the matrimonial home. This was possible because she had income to buy a plot of land and build a home for the family, a gender role her husband failed to play. Her husband was an alcoholic and spent all his money on alcohol. The change of the stereotyped gender roles whereby a husband is looked at as the provider of the home and a wife as a homemaker enabled Theo to fully exercise ownership rights of the home. Had Theo continued to look at Deo as the sole provider of the home, she would most likely not have become a homeowner. Theo was able to change the traditional gender roles

Theo completed eleven years of education. She attended seven years of primary education at Kisubi primary school. She then joined Namasagali College from 1966 to 1970 where she completed four years of secondary education. Although she wanted to undertake a nursing course, her father wanted her to enrol for a secretarial course. When she refused, her father also refused to pay school fees for her tertiary education. Her desire for nursing persisted and after her retirement as a cashier she opened up a clinic on her piece of land where she employed a nurse. Through the help of a neighbour in Kawempe, Theo joined East African Community as a tax collection officer. She worked in the East African Community for 15 years before joining Spear Motor Company in May 1970 as a cashier. She worked for Spear motor for nine years before she resigned her job when her husband became ill.

Deo was born in Mayembegambogo village in Mpigi District into a middle class family of ten siblings. Deo had a good education. He had 16 years of education. He first obtained a diploma in education in 1960s. As a qualified teacher he was posted to Kyambogo Demonstration School in January 1968. In 1970 he obtained a Bachelor of Arts Degree in geography from Makerere University. After completing his Bachelor of Arts degree at Makerere University he was posted to Mbale Senior Secondary School in March 1973. In January 1976, he was posted to Namilyango College. In January 1979, he was transferred to Kyambogo College School where he taught until 2002 when he retired. At the time of the study he worked as a part time lecturer at Kyambogo University.

Theo and Deo met at Makerere University Church in 1971. In 1972 they were married in a church and were blessed with only one child, a boy, in 1973. Theo narrated that her marriage life was a disaster because her husband was an alcoholic and whatever he earned, he spent on alcohol. The couple first lived in a rented house in Kireka before they moved to Kyambogo where they lived for fourteen years in a College owned flat provided by Deo's employer. While at Kyambogo a landowner Mrs. Kisosonkole advertised a number of plots for sale in Banda, a neighbouring area to Kyambogo College, which recently became a University. When Theo informed Deo about the land for sale, he said he didn't have any money. At Theo's work place in Spear motors, staff members were advanced car loans but Theo asked her bosses to convert the car loan into a housing loan because she did not have a garage and

therefore she had no intention to buy a car. Her bosses accepted and advanced her 800,000 Ugandan shillings. The loan was supposed to be repaid over a long period of time. Theo used part of the money to buy more than one acre of land in Banda in 1985 and registered the plot of land solely in her name. Theo registered the plot of land in her name because her husband was absent and irresponsible at the time she bought the plot of land. Further more Theo had control of the money.

In January 1995 Theo embarked on the construction of the home without any assistance from Deo. Because she did not have enough money to build a big house she first built a small house of 15 iron sheets part of which she used as a shop and the other part as residence. She was forced to sell part of her land to complete the construction of the small house as reflected in her own words. 'My employers helped me. I used to get loans. Every time I was always in loans so, the final part, I was forced to part with my land.' She used the money from the sale of her land to complete the house. By then she was even also paying school fees for her son who was in a boarding school. Although her husband had a good job, he spent all his money on alcohol. In February 1995 Theo moved to her uncompleted small house and left her husband in the Kyambogo College owned flat. Since the plot of land was registered in Theo's name, she became the sole owner of the home. Later Deo recovered from alcoholism and contributed part of his retirement package to the home project. Although Deo contributed at a later stage to the construction costs, the plot of land was already registered in Theo's name.

In summary, Theo was able to register the plot of land on which she built the matrimonial home solely in her name because her husband was not involved in the purchase and registration process of the land. Theo was free of any interference from Deo in making the decision in whose name she would register the plot of land. Secondly, Theo had a good job that offered a good income. Had Theo had no job, she would not have been able to buy a plot of land. Thirdly not only did Theo have income but she was also in total control of it. Although Deo's contribution to the construction came in later it cannot be reflected anywhere because the title deed of plot of land is solely registered in Theo's name. Since the plot of land on which the

matrimonial home is built is solely registered in her name, Theo legally owns the home. At separation or divorce, Theo has all the legal right to claim the home. Theo's life story demonstrates that in a case where a married woman has control of her income and takes charge of home provision for the family, she is most likely to include her name on the title deed. To be in charge of the purchase and registration gives the woman autonomy to take care of her interests.

7.3 Ownership of the matrimonial home when a housing loan is available to the wife and not the husband: The Story of 'Margaret Asekenye'

Margaret is a relatively well-educated married woman who solely owns the matrimonial home even though her husband financed the home project. Margaret was able to solely own the matrimonial home because she had a job that offered a housing loan on condition that the title deed was registered solely in her name. Since her husband's job did not offer similar benefits, and her husband did not have an alternative source of money, he accepted having the title deed registered solely in Margaret's name for a family to have a home of their own after renting for many years. Margaret's husband succumbed to Margaret's employer's condition to have the title deed registered solely in Margaret's name because he had no income to provide a family with a home.

Had Margaret's husband had other sources of income, most likely he would not have accepted registering the plot of land solely in Margaret's name, judging from previous arrangements where they had all the title deeds of land in the rural village jointly registered. Margaret's story demonstrates that a man can only accept having a plot of land registered solely in his wife's name if he is in a financial predicament.

Margaret, aged 50, was born in Teso, one of the districts in the Eastern part of Uganda. Margaret, a retired secretary, lives in a three bed-roomed house in Banda parish with her husband, Peter, and their two children aged 25 and 21 years. The house is iron roofed, with water and electricity and a fence (Fig.18)

Figure 18: Margaret's home in Banda



Margaret, the fourth child of a family of ten siblings grew up in a monogamous family. Although there were ten siblings, Margaret's father was able to educate all of them. He was a teacher and her mother was a housewife. Margaret had eleven years of education. She attended the different primary schools her father was transferred to as a teacher. Margaret attended primary education at Achowa, Amuria and Moroto Town Council primary schools where she completed the Primary Leaving Certificate. Thereafter she joined Nabisunsa girl's Secondary School from 1971 to 1974. She then joined Uganda College of Commerce for a stenography course where she qualified as a secretary.

In 1978, Margaret joined Uganda Commercial Bank, now renamed Stanbic bank, as a secretary. She was able to acquire a job at the bank because of her qualification without which she would be a housewife and a dependant. Margaret met Peter in 1975 at a Christian meeting. On 28 January 1978 they were married in a church. The couple was blessed with two children a girl and boy, now aged 25 and 21 years respectively.

When Margaret was married she kept her job as a secretary. The former Uganda Commercial Bank had branches in every district and hence it was easier for Margaret to apply for transfer to join Peter wherever he would be transferred. Because she kept her job as a secretary, she was able to earn a reasonable income and acquire all the benefits the bank offered. The couple lived in different places within Uganda due to the nature of Peter's job as a Customs Officer. Margaret and Peter first lived in a government owned house in Jinja. In 1981 the couple lived in Tororo where Peter rented a house until 1988. The couple later transferred to Kampala where they rented houses at different times in Mpererwe, Kololo and Ntinda before they were allocated a government house on Nkrumah road in 1991.⁶ In 1993 the owners repossessed the house in which the couple lived. The couple then rented a house in Kireka.

In 1992 the couple borrowed money from friends and bought a plot of land in Banda. Peter and Margaret serviced the loan through their salaries. Peter's government job could not offer extra money for investment in housing, nor did it offer any housing loans. As a result he could not finance the home project as expected of him. Margaret then informed Peter that her employer had an interest free housing loan scheme for members of staff on condition that a staff member presented a title deed in his or her sole name.

Since Peter did not have enough income to build a home and yet he was spending a lot of money on rent, he had no choice but to accept Margaret's proposal. Had Peter had a choice he would not most likely have allowed Margaret to take out a housing loan with her employer with the conditions that the title deed had to be registered solely in Margaret's name. He would most likely have preferred joint ownership of the plot of land. This is because the couple jointly owned all their other pieces of land in the rural village. Had Peter registered the plot of land in both names, Margaret would legally own half the value of the home. When I asked Margaret whether her husband would have accepted to register the title deed in her name if it was not for the housing loan she said: 'Maybe the title deed would be in both names (Mr. & Mrs.) because the

⁶ When President Idi Amin closed down businesses run by Indians in 1971, the government took over all Asian owned buildings and created a custodian board to take care of these buildings. The government was aware of the legal repercussions if it attempted to change ownership as the Indians owners had title deeds in the form of leaseholds for these buildings.

other properties we have are in both names'. My husband has made sure that the other title deeds are registered in a such a way that my maiden names also appears on the title deed for identification purposes because anyone can claim to be a Mrs. so and so.

Although Margaret's husband in principle accepted Margaret's idea to acquire a housing loan from her employer, the couple had not yet processed the title deed for the plot of land. Margaret could not process the title deed herself because she was busy at her work. Peter handled all the administrative aspects that go along with acquiring the title deed. These include among other things getting a surveyor to put mark stones on all corners of the plot, acquiring a letter from the local council official, looking for the landlord to sign the transfer form, and opening a file with the Ministry of Lands. After Peter had completed all the administrative work he took the transfer forms to Margaret to sign. The plot of land was then registered in Margaret's sole name. Peter's action to process the title deed in Margaret's sole name can be regarded as unusual but he had to do it because he was in a fix. He could not provide his family a home in which to live.

In 1993 Margaret voluntarily resigned her job at the bank and she was given a retirement package. She spent most of the retirement package on the home. She also put part of the money in dry maize selling business. When Peter was transferred to Mutukula border near Tanzania he was paid hardship and overtime allowance. He would remit the money to Margaret to meet construction expenses. Margaret's retirement packages, the money from her business and the remittances from Peter enabled Margaret to meet the construction costs of the home. Since the plot of land is registered solely in Margaret's name, she legally owns the home and Peter has only user rights.

In summary, Margaret owns the matrimonial home because she had a job that offered her a housing loan while her husband's job could not provide the same benefit. If her husband's job had similar benefits, he would most likely have acquired a loan by himself. If Margaret's husband had income he would most likely not have allowed Margaret to acquire a housing loan because it would mean his name would be excluded from the title deed. Hence, it is because Peter did not have money to build a home, that he allowed Margaret to acquire a housing loan. Because Margaret's

employer could not accept a jointly registered title deed, her husband had no choice but to register the title deed in Margaret's sole name for her to acquire a housing loan. Although Peter and Margaret contributed to the construction of the home, the home legally belongs to Margaret because the title deed is registered in her name. If Peter divorces Margaret she does not lose ownership rights because the home legally belongs to her. It would be up to Peter to convince court that he contributed to the home. The above story demonstrates that a married woman is able to own the matrimonial home when her husband is in a financial fix.

7.4. Changing the sole ownership status to joint ownership when the husband is in a financial crisis: The story of 'Damalie Nsubuga'

Damalie is a highly educated and professional married woman who was able to have her name included on the title deed of the matrimonial home. Damalie was able to convince her husband to change the ownership status of the home and have her name included on the title deed, which was originally registered solely in her husband's name. This happened because her husband was in a financial crisis. Had Damalie's husband not been in a financial crisis, he would most likely not have changed the ownership status of the home, judging from his insistence on including the children's names on the title deed.

Damalie's story demonstrates the difficulty a married woman is likely to face to include her name on the title deed in a situation where the title deed is already registered in a husband's name. Damalie has been married for over twenty years. She is a professional accountant and works for the Civil Aviation Authority. The couple lives in Banda parish in a three bed-roomed house with three children aged 13 to 22 years. The house is tile-roofed, fenced, with water, electricity and servants quarters (Fig.19 and 20).

Figure 19: Damalie's home



Figure 20: The exterior of her home



Although Damalie agreed to tell her full story, her husband, Charles refused to talk to the author about issues concerning the home. Any attempts to ask him about ownership issues were futile. He said: 'Leave me alone, I have my own problems, my wife can tell you about ownership issues'. Charles only talked briefly about his family background.⁷

Damalie, aged 49, years is the first born of her mother. Her mother had only two children. Damalie was born into a rich polygamous family of fifteen siblings in Mukono District. Her father was a sub-county chief in the Buganda Government. He had big farms of coffee plantations from which he earned good income to educate all his children. Damalie had more than 18 years of education. She attended Matala Primary Boarding School from 1964 to 1970 where she completed her primary education. In 1971 she joined Kings College, Buddo and completed four years of ordinary level education in 1976. In 1976 she joined Nakawa College of Commerce for an accounting course but completed only one part of the course because the course was too tough. With the acquired skills in accounting she joined the ministry of Finance as a trainee accountant. She was later transferred to the Judiciary as an accountant.

From 1988 to 1991 Damalie embarked on a Degree course in Economics and Political Science at Makerere University, which she completed in 1991. With a degree in her possession and professional training in accountancy Damalie acquired a high paying job in 1992 with the Civil Aviation Authority, a privately owned company, as an accountant. In 1994 Damalie re-attempted the second stage of accountancy studies, and completed it in 1998. In 2002 she embarked on an MBA Degree at Nakawa Business School, which she hoped to complete in 2006. Probably by the time of submission of this thesis, she may have completed the course. With good education, Damalie earned a good income.

⁷ I noted resistance from married men who did not solely own the home, for example Peter, Tumwine's husband, Deo. In cases where the home is solely registered in a woman's name, the men were either resistant to giving details, or lied about the home ownership dynamics. For example Petersaid that his wife processed the title deed when it was he who processed the title deed. Deo said that he co-owned the home when actually the home is registered in his son's name. Tumwine's husband refused to talk to me. On the other hand, when the title deed is solely in a man's name, the man is willing to discuss ownership issues.

Charles was also born into a polygamous family of 39 children in Muzizi village in Masaka District. His mother produced seven children. He had thirteen years of education. He attended Namilyango Junior Boys School from 1956 to 1962 where he completed six years of primary education. From 1963 to 1964 he joined Saviour primary school at Kisubi where he completed seven years of primary education. From 1965 to 1969 Charles joined St Gonzaga where he spent four years for ordinary level education before he joined Tororo College for a two year High school certificate from 1969-1970. Charles then joined Nakawa College of commerce for a diploma course in accounting. In 1973 he joined the Treasury department in the Ministry of Finance as an assistant accountant and was later transferred to the Judiciary as an accountant. He retired from public service in 1994.

Damalie met Charles in the 1970s in the Judiciary Department where they both worked as accountants. In 1985 they were married in a Church. They were blessed with three children, all boys aged between 13 and 22 years. Charles has three other children, two girls, and a boy, from a previous relationship.

The couple first lived in a government owned house provided by Charles's employer. Although both Damalie and Charles planned together to buy a plot of land on which to build their home, when Charles identified half an acre (0.50 decimals) plot of land in Banda in 1990 he paid for it without any consultation with Damalie. He had the plot of land registered solely in his name. It seems Charles bought the plot of land without consulting Damalie because he did not want Damalie to contribute and later assert her ownership rights judging from his behaviour later on. Charles was aware that Damalie had money and she would be willing to contribute if he told her. Charles's action not to consult Damalie is an indication that he did not want to co-own a home with Damalie judging from his behaviour later on when Damalie asked him to change the title deed from single to joint ownership.

In 1992 Charles embarked on the construction of the home. Damalie met some of the construction costs because by that time she already had a good job with the Civil Aviation Authority. When Charles received his retirement package in 1994, he also spent most of the money on the house. He built the matrimonial home from

foundation up to window level, bought poles and timber for roofing but ran out of money.

When Charles was financially stuck Damalie was at that time very reluctant to invest any more of her money because the title deed was registered solely in Charles's name. Damalie was reluctant to invest her money because she feared for her future. She had heard from her women friends and from newspapers how husbands sometimes evicted their wives from the home. Besides, Charles had other children from a previous marriage.

Although Damalie was reluctant to invest her money in a home that legally belonged to her husband, she did not have enough money to buy herself a plot and build herself a home. She only had 3 million Uganda shillings (1630 United States dollars) on her account and a plot of land at that time cost eight million Uganda shillings (4,347 United States Dollars). At the same time she was worried that since her husband had retired they would be evicted from the government owned house and her husband would not afford to pay rent. She had to make a choice whether or not to put her money into her husband's home so that they could have a home of their own, or to keep her money in her account. At first she naively thought that as a good head of household, Charles would never evict her from the home she had contributed to. She borrowed more money from her employer, bought tiles, doors, and windows, plastered the walls, and completed the floor. The couple then moved from the government owned house in Kamwokya to their uncompleted house in 1995.

As Damalie continued to read more stories in the print media about evictions of women and hear stories from her friends at the work place and social gatherings, she became more worried about her future in Charles's house. Damalie knew very well that to confront Charles on the change of ownership was an uphill task but she was ready to take the risk. In 1999, Damalie asked Charles to change the title deed from sole ownership to joint ownership.

To convince her husband, she referred him to a number of stories she had read through the press media and heard from her friends about husbands evicting their wives from houses. Damalie was well informed about issues of ownership through the

printed media and friends. If she had not known what was happening around her, and the community she lived in, she would most likely have not bothered to negotiate with Charles about a change of ownership of the home. Damalie was wise to use information from the print media and stories from her friends to discuss her status in the home with her husband. If she had not had this information she would most likely have invested all her money in the home without being concerned about her security. Charles was adamant to change the title deed of the house. As a result there was tension in the relationship.

When Charles totally refused to change the title deed Damalie threatened to stop financing the home project. Because Charles was in a fix, he finally agreed to sign the transfer forms but on condition that all the children's names are included on the title deed. Damalie did not agree with Charles' idea to include the children's names on the title deed of the matrimonial home because according to her, that would in future bring problems. She gave to Charles three reasons why she did not want the children names to be included on the title deed. Firstly she felt that parents tend to have a lot of sentiments about their children when they are young and forget that they grow up. She mentioned cases where children kill their parents in order to take their property.

She felt that including children on the title deed would guarantee them rights and hence more powers. Secondly, she stated that when children know about their future ownership of property, they do not work, and do not concentrate on their studies. They anticipate their parent's death. Thirdly, children tend to have conflict with each other over property ownership issues. In spite of the reasons Damalie put forward for not including the children's names on the title deed, Charles insisted that the children names be included or he would not sign the transfer forms.

Although Damalie continued to negotiate with Charles to exclude the children from the title deed her efforts were in vain and it took them a long time to agree on the change of ownership. Charles's insistence to include his children's names could be attributed to patriarchal male ideology that the house belongs to the male line. If he did not include the children's names and he died the house would automatically belong to Damalie and her relatives. Damalie failed convince Charles to exclude the children names on the title deed because she was treading on sensitive ground related

to family property and the patriarchal sentiments attached to this. Hence for Damalie to insist that only her name be included on the title deed, she was confronting patriarchal culture and custom even though she was in an urban setting.

After a long process of negotiation with Charles not to include the children names on the title deed, and failure to convince him on this, Damalie finally compromised and agreed to include the children names on the title deed. Damalie compromised her earlier position because Charles totally refused to sign the transfer forms in her favour. She had already spent a good amount of money on the house and therefore if they did not come to an agreement she would lose all the money she had already invested in the home. Damalie took Charles to her lawyer and he signed the transfer forms in 2005 in her favour and that of their three children. Her lawyers signed as witnesses. Charles accepted to change the ownership status of the home and to include

Damalie's name on the title deed because he was in a weak financial position. Charles was stuck and in a fix because he had retired from work, had spent his entire retirement package on the home and had no hope to acquire more money in his lifetime. Damalie was able to negotiate and convince her husband to include her name on the title deed because she was in control of the finances. If Damalie had not had a good education and a good income she would not have any justification to ask her husband to include her name on the title deed. Had Charles had enough money to complete the house, most likely he would not have changed the status of ownership, judging from his behaviour. Further more, Charles accepted including Damalie's name on the title deed of the home because she accepted to have the children names included on the title deed. Since the children's names were included on the title deed, he felt the home would be protected and would remain in his patrilineal line.

Had Damalie had no children at all, Charles would mostly likely have refused to sign the transfer forms in her favour. If Damalie had not had boy children, Charles would most likely have been reluctant to sign the transfer forms because it would mean removing the patriarchal property to another clan when the girls would be married. In all these patriarchal dynamics of ownership Damalie would lose all her investments in the home to Charles.

Charles looked at his children as a compromising avenue to take care of his family's interests. Even if he died, he was sure that his family interests were catered for. If he included Damalie name alone on the title deed it would mean that upon his death the property would revert to the wife's clan. Charles's refusal to exclude the children's names from the title deed is a demonstration that he wanted the family property to remain in the male line.

The inclusion of children's names on the title deed hurt Damalie so much that up to the time of this interview she had failed to come to terms with the situation of owning only one fifth of the value of the matrimonial home when she funded almost 75 per cent of the home project. In her story telling one could observe bitterness on her face. To her, Charles's insistence on including the children's names on the title deed was putting her at the level of a child, which she called in her local language 'okusomoza' literally meaning', under looking her'. Although Damalie contributed three quarters of the home cost, she only owns one fifth of the home.

In summary, Damalie was able to convince Charles to include her name on the title deed of the matrimonial home because he was financially stuck and Damalie was in a better financial position to finance the house project. Had Damalie been poor she would have had no power to convince Charles to include her name on the title deed. Had Charles had money to complete the home project he would most likely not have accepted including Damalie's name on the title deed.

Damalie was able to convince Charles to include her name on the title deed because she accepted Charles' proposal to include the children's names on the title deed. Had Damalie refused to agree to Charles proposal, Charles would most likely not have signed the transfer forms in her favour. Damalie's story also demonstrates that if a woman has something substantial to contribute to a home project she can negotiate her ownership rights with her husband to a certain extent.

The above story also demonstrates that a married woman is unable to acquire equal ownership rights in the home if a title deed is already registered in her husband's name. For a married woman to convince her husband to change the ownership status of the home when the title deed is already registered solely in a husband's name is an

uphill task and therefore for the husband to accept to change the status of ownership, he must be in a difficult financial situation. A husband would prefer the property to remain in the male line, not a woman's line even when she has contributed more money to the purchase and construction of the home. Damalie's life story demonstrates that a married man will only have his wife's name included on the title deed if she has something substantial to offer and when he is in a financially weak position.

7.5 Guaranteed of co-ownership rights through making a substantial contribution to the home project and awareness of her rights: the story of 'Doreen Kusiima'

Doreen is a 35-year-old highly educated wife who co-owns a matrimonial home with her husband. Doreen co-owns the matrimonial home with her husband because she made a substantial contribution to the home project. Not only did Doreen make a substantial contribution, but also she was aware of her ownership rights. Hence, she made sure that her name was included on the title deed of the home. Had Doreen not been aware of her ownership rights, most likely her husband would have either registered the home solely in his name or included the children's names, judging from his recent statements that they should include children's names.

Doreen's story demonstrates that whether husbands are educated or not, they prefer not to include their wives' names on the title deed. Hence, in cases where married women with income are not aware of their ownership rights and are not assertive to have their names included on the title deed of the home, husbands are most likely to deprive them of their ownership rights. Doreen lives in Kiwatule in a three bed roomed house with her husband and three children, two boys and one girl aged 11, 6 and 2 years. The 11-year-old boy is Doreen's child from her previous marriage. The house is iron roofed, with a garage, two bathrooms, two study rooms and two stores, with water and electricity (Fig.21).

Figure 21: Doreen's home



Doreen was born in Bwijanga Village in Masindi District to a middle class rural family of nine siblings. Doreen's parents were both primary school teachers with reasonable income to educate all the children. Doreen, the first born of 9 siblings, 3 boys, and 6 girls, had a good education. Doreen had three years of primary education at Kitamba Primary School, from 1977-1980 and four years of Primary Education at Bulima Primary School from 1981-1983 where she completed her seven years of primary education. In 1984 Doreen joined Sr. Tito Winyi Secondary School where she completed six years of secondary education. Because of good performance, Doreen joined Makerere University for a Bachelor of Science in Economics Degree in October 1990, where she graduated in 1993. In 1993 Doreen embarked on a Master of Arts Degree course in Economic Planning and graduated in 1995.

In 1994, Doreen was married under customary law to her first husband, who worked as a civil servant. The couple lived in Entebbe in a government owned house. In 1996 Doreen's husband passed away in a helicopter crash leaving her with a one-month

pregnancy. Doreen was then evicted from the government owned house and she rented a two bed roomed house in Namungoona. In October 1996 Doreen had her first child. Her in-laws and her husband's friends looted everything her husband left. With a Masters qualification, Doreen was appointed as a research fellow at the Economic Policy Research Centre based at Makerere University in 1997 where she worked for three years. Doreen also had a part time teaching job at Makerere University. With the two jobs, Doreen was able to earn a reasonable income. In addition Doreen had part time consultancies where she was paid good rates for the work done. As one of the few young female economists, Doreen was able to obtain good consultancy work because in many projects the issue of gender balance was emphasized. With good income at an early age Doreen was also very enterprising and innovative.

In 1998, Doreen bought a 25 decimal plot of land in Nansana and built a three bed-roomed house with servants' quarters and registered it in her maiden name. Doreen was able to earn a good income because of her good education and more so because she qualified in a very marketable area where there are few women hence giving her the upper hand in getting a number of consultancy jobs. When Doreen's contract with Economic Policy and Research Centre expired in 1998 she acquired a full teaching job at Makerere University. In 2004, Doreen enrolled for a Ph.D. programme at the University of Cape Town.

Doreen knew her second husband Tom in the 1990s when they were both undergraduate students at Makerere University. After Doreen's first husband died in 1996, Tom proposed to Doreen in 1997. Tom, 37 years old is also a highly educated man. He was born in Soroti District in the eastern part of Uganda to a middle class rural family of seven siblings, 6 boys, and one girl. Tom's father was an education officer, and his mother was a teacher. Tom's parents had good income to educate all the children.

Tom had five years of primary education at St Alosias Primary school in Kapchorwa, Sebei District from 1975 to 1979 and two years of primary education at Farewell primary school in Mbale District, where he completed seven years of primary education in 1982. In 1983, Tom joined Majansi Secondary School where he completed four years of secondary school education in 1986. In 1987 he joined St.

Peters College Secondary School in Tororo where he completed two years of higher-level secondary school education in 1989. In 1989, Tom joined Makerere University for a three year Bachelor of Science Degree in Economics and graduated in 1992. Because of his good performance, he acquired a teaching job at Makerere University in 1993. In 1994, Tom enrolled for a Master of Arts Degree in Economics at Makerere University and graduated in 1996. After acquiring his Masters Degree, Makerere University appointed him as a Lecturer.

In 1999 Tom moved into Doreen's house in Nansana and in 2000 the couple had their first child. With a child together, Doreen asked Tom to build a home for the family because there was no way he could continue living in her personal house. Tom was very reluctant to buy a plot of land and build a home for the family. He preferred to refund Doreen half of the money she had spent on her own house so that they would co-own the home instead of building another house. Doreen refused Tom's suggestion because everyone in the community around her knew the house Tom lived in belonged to her and therefore even if he refunded her money, people would still think the house belonged to Doreen. In 2001 Tom enrolled for a Ph.D. Degree programme in Economics at University of Cape Town and graduated in 2005. In 2005 he then acquired an International Job in Nairobi Kenya.

As Tom continued to be reluctant to buy a plot of land, Doreen gave him an ultimatum of one year in which to buy a plot of land, after which she would evict him from her house. In 2002, Tom asked Doreen to identify a plot of land where they could build a home of their own. Although Tom was willing to pay for one acre of land alone, Doreen opted to contribute 25 per cent of the cost price of the land. Tom paid more than Doreen because by culture he had to provide a home, reflected in his words: 'it was a cultural issue, a man is supposed to host the wife, and secondly, at the time I was more financially stable than her. Upon the final payment of the land Tom brought transfer forms to Doreen and asked her how she wanted the land to be registered. Although Tom wanted Doreen to register her marital names (Mrs. X)) on the title deed, Doreen refused because to her any woman could be a Mrs.

In 2003, upon consensus between Doreen and Tom the surveyor processed the title deed in Doreen's maiden names and Tom's names. In the interview Tom revealed that

even if Doreen had not paid the 25 per cent of the cost price of the plot of land, he would still have included her name on the title deed because he wanted her to take responsibility for the home as reflected in his own words: 'We wanted to co-own because the house had to belong to both of us. For the purposes of responsibility it was necessary for her to have a stake in the plot of land so that she takes full responsibility of the home. If I did not want her name on the title deed I would have said no. I would have insisted that I own it with the children but I listened to her view.' Tom's statement is heavily loaded with the word 'responsibility'. He chose his words very carefully as a well-educated person. Responsibility meant that Doreen in one-way or the other had to meet part of the construction costs. Tom was aware that if he did not include Doreen's name on the title deed Doreen would question him. Tom was also aware that if he included Doreen's name on the title deed, she would be encouraged to meet some of the construction cost because she had a good job, and good income.

Therefore, Tom's action to include Doreen's name on the title deed was a strategy to ensure that Doreen takes part of responsibility to meet the housing costs and she would have no excuse not to contribute. He knew that if he did not include her name on the title deed he would finance the home project alone. Had Tom did not include Doreen's name on the title deed; she would most likely never have supervised the construction work or spend any money on the home as reflected in Doreen's own words: 'If my name was not on the title deed, I would never put any cent on that house. Even if Tom asked me to supervise the construction work, I would ask him money to fuel my car to go to the site, he was aware of that. Since we do consultancy work together, I would demand for my share and I invest money somewhere else. I would never allow Tom to spend part of the research money on the house'.

Doreen's statement reveals she has an equal negotiation power with Tom. This is because they are both highly educated, with good income. In addition they jointly work together on a number of projects hence jointly contributing to the family income. Doreen revealed that since she writes research projects together with Tom, they both have to agree on how much money of the research money is to be spent on the home. She further revealed that though Tom has spent about 70 per cent on the construction costs, they have a common ground and understanding. They both know

each one's income and therefore they have an equal economic relationship. As economists, they seem to relate to each other in a calculative and economic manner and they seem to apply their economic training to their negotiations and rightly so. Tom was aware that they both stood to gain from the home in case one dies. He said: 'Well, it is a two way process, If she dies I would own the home and if I die, she would own the home'. Tom believes that his action to include Doreen's name on the title deed was to protect the family property in case he died as reflected in his words, 'It is a blend of tradition and modernity, there is affirmative action, if a man dies, many times a family gets a problem. If a wife is part of a process, there is no one who can come to disturb her'.

Although Tom seems to be modern, he is still patriarchal because at one time he suggested that his children should be included on the title deed as reflected in Doreen's own words 'the issue of children never arose when we bought the plot of land. At that time the contestation was whether to register the land in my maiden names or marital name on the title deed. It is only of recent that Tom started talking about inclusion of children on the title deed because he heard a story of a friend whose wife forged his signature and changed all the co-owned title deeds to her sole names. Since Tom heard that story, he has been blaming himself why he did not include the children names on the title deed'.

Although Tom is aware that Doreen contributed to the home project he still has some cultural image or ideology that property should remain in the patriarchal family. It is not surprising that he wants the children's names to be included. He seems to be worried that in case he died first, Doreen would definitely inherit the matrimonial home and in so doing the property would end up in her clan. Doreen also revealed that Tom often asks her why she registered her personal house in her sole name without including her first-born child on the title deed. Doreen suspects that Tom is worried about her child from her first marriage in the co-owned home. Tom is worried about Doreen's boy child from her previous marriage because if Tom died, the child would benefit from Doreen's share in the matrimonial home.

Although both Doreen and Tom have good income, Tom earns slightly more than Doreen because an International Organization employs him. As a result he has spent more money on the home than Doreen. Since the plot of land was registered in both

Doreen and Tom's name, they have equal benefits in the home. On separation or divorce each would have equal shares in the value of the home. Doreen keeps the title deed of the matrimonial home but Tom knows where it is. To erase any suspicion, Doreen keeps all the title deeds of her own properties where Tom can see them and she also involves Tom in all properties she individually purchases.

In summary, Doreen was able to co-own the matrimonial home with her husband because she was aware of her ownership rights and at the same time she partly contributed to the home project. She was able to contribute to the home project because she had good education and hence good income. Although education does not necessarily mean high income, education enabled Doreen to discuss homeownership issues on the same level as Tom. Had Doreen not been an educated woman, she would most likely have found it difficult to negotiate with Tom at the same level.

7.6 Co-ownership through assertiveness and consensus: the story of 'Anna Mary'

Anna is a separated woman who was able to co-own the matrimonial home with her husband. Anna was able to co-own the home with her husband because she met part of the costs of the home project. Not only did she make a substantial contribution of the home project, she made it clear to her husband that her name had to be included on the title deed of the plot of land on which her husband had to build the matrimonial home. To ensure that her name was on the title deed Anna was also involved in the registration process of the plot of land on which the matrimonial home was built. Anna's story demonstrates that a married woman's contribution to the home project is not a guarantee for her name to be included on the title deed. Her contribution has to be accompanied with assertiveness and sometimes persuasion.

Anna, aged 44 years, was born in Kabarole District in the western part of Uganda. The second born in a family of four siblings, Anna was born in a middle class urban family. Anna's father was an accountant in the civil service with a reasonable income to give his children a good education. Anna lives alone in Banda in a three bed-roomed house under a lease of forty-nine years. The house is iron roofed (Fig 22).

Inside the house there is electricity but the inside part of the home is incomplete, for example there is no ceiling and no plumbing.

Figure 22: Anna Mary's home



Anna is currently a Biology and Physical Education Lecturer at Kyambogo University. Anna had part of her primary education at Namate Primary School in Entebbe, and Kajjansi Primary School where her father worked at different times. Anna then joined Masindi Public School in Masindi where she completed seven years of primary education in 1975. Anna later joined Kyebambe Girls Secondary School where she completed six years of Secondary School education in 1981. Thereafter Anna joined the then National Teachers College (NTC), Kyambogo [Kyambogo College recently upgraded to a University], for a two year teacher education course where she qualified as a grade five teacher in 1984. After graduation, Anna acquired a teaching job at Kyambogo College. Anna was able to acquire a job and earn good income because of her good education.

Anna met Jimmy in 1982. Jimmy was at that time a mechanical engineer with a Masters Degree in Design and Production engineering. By the time they met, Jimmy was lecturing at Makerere University. In 1986 Anna and Jimmy wedded in a church. The couple rented a house in Kanyanya and was blessed with two boys born in 1986 and 1987 respectively. In 1987 Jimmy acquired a job with British American Tobacco Company (BAT) and earned a good income. In the meantime Anna had a shop in Kampala, which Jimmy partly financed. Anna would buy assorted items in Busia and sell them in Kampala at a high profit. At that time Anna, like many Ugandan business people, made a lot of profits because there was less competition after President Amin had expelled all the Asians from Uganda in 1971.

With profits from the shop Anna was able to earn good money to improve on her salary. Anna saved all her money from the salary and the shop because Jimmy had a good job and met most of the domestic costs. Hence, by the time Mrs. Kisosonkole⁸ the landowner advertised plots of land for sale in Banda, Anna had reasonable amount of money in her account. Anna knew about the sale of the plots of land because she worked at Kyambogo College, which borders with Banda Parish. Anna informed Jimmy about the sale of land and her intention to pay for the purchase. Although Jimmy had a better Job than Anna, Anna did not bother to ask Jimmy for money to purchase the plot of land because she had her own money in her account as reflected in her own words. 'So I want to make this clear I paid the money from my own cash. I did not have enough money to build. This was our first house in Kampala and my husband built the house'.

In 1989 Anna paid for a 50 decimal plot of land on the understanding that both would finance the home project. Anna paid for the plot of land because she had income from her salary and business. If Anna did not have a job and income, she would most likely have asked Jimmy to pay for the plot of land. If Jimmy had paid for the plot of land, he would most likely have registered the plot of land solely in his name judging from

⁸ Mrs. Kisosonkole was the wife of the King of Buganda. One of the Palaces of the King is in Banda. Most of the land in Banda belongs to the King of Buganda as part of 9,600 square miles of land the British purportedly gave to the King under the 1900 Buganda Agreement. When Kabaka Muteesa died in Britain in 1960s, his wife sold off most of the land neighbouring the Palace. Kabaka's wife donated part of the land on which Kyambogo University is built.

his behaviour later on as reflected in Anna's words 'When he became so wild and so possessed because of other women in the relationship he sort of indicated that I should leave and he has his freedom. I should leave him alone and leave his house and at that time he really did not have a second serious house where I could put a family'. At the stage of registration of the plot of land Anna boldly told Jimmy to include her name on the title deed, and he did not object. Anna was able to suggest to Jimmy to include her name on the title deed because she paid for the plot of land with her own money. If Anna had not paid for the plot of land, she would have had no justification to tell Jimmy to include her name on the title deed. Therefore, Jimmy accepted Anna's suggestion to co-own the plot of land because Anna paid for the plot of land and he had no justification to exclude Anna's name from the title deed as reflected in Anna's words 'We both decided because, I can show the title deed to you. We have it here. We both decided because I bought and you know, on registration he didn't set a condition as such but we both agreed that it was ours and it was purely for our own good. So we put both names and we hoped that we could develop it together which we did anyway to some extent. I insisted also a bit when it came to registration. I said now lets register it in both names because we are both contributing equally. We even on top of that had joint accounts so they were in both names and when it came to registering anything it was both ours, even some vehicles were in both names. So we had common things, which we had together. It is not only the house'.

Anna was able to assert her ownership rights because she was aware of her rights to co-own property with her husband in case of death as reflected in her words, 'Ok. At that time I didn't really foresee much problem because I thought, really at that time he was a loving husband. But it was normal to co-own property; they had educated us about ownership, In case the man is not there. You know like that. Those days we would look at it like, you would think of death coming in and taking away one person so you would think of managing together' If Anna did not know her ownership rights to co-own a home with her husband, she would most likely have left Jimmy to register the plot of land solely in his name.

If Anna did not suggest to Jimmy to include her name on the title deed, Jimmy would most likely have registered the plot of land solely in his name judging from his behaviour when he told Anna to move out of the home when their love became sour.

Since both Anna and Jimmy had their names on the title deed of the matrimonial home, they had equal ownership rights of the matrimonial home. Although Jimmy met the bigger percentage of the construction costs, it did not matter because Anna's name was on the title deed of the plot of land. In 1992 Anna and Jimmy moved from the rented house in Kanyanya to their unfinished house in Banda.

7.7 Summary

In summary, the above stories demonstrate the special circumstances through which married women can become homeowners. The stories demonstrate the difficulties married women have to face to exercise ownership rights. It is clear from the life stories that control of income played a vital role for married women to be able to negotiate the dominant gender contract whereby the general belief is that men are the owners of the matrimonial home. Even where a married woman makes a substantial contribution to the home project she is not assured of co-ownership rights unless she insists and negotiates.

We can therefore conclude that married women's ownership rights are not easily guaranteed unless there are special circumstances and unless the married women themselves assert their rights. We can conclude that male power to control ownership is dominant. To change the gendered home ownership contract whereby men are seen or regard themselves as the sole owners of the matrimonial home is an uphill task. Change can come about by building consensus, negotiation, creating awareness and through control of income.

The stories demonstrate that in some cases married women are able to have their names on the title deed of the plot of land on which the couple built the matrimonial because they contributed a substantial amount of money to the home project. This is a necessary condition for negotiation. This is reflected in the findings in the previous chapter where married women ended up with only user rights to the home when they did not use their financial contribution to the home project as a tool for negotiation with their husbands. In these cases the husbands automatically registered the homes solely in their names. This is an indication that for a married woman to have her name

included on the title deed of the plot on which the matrimonial home is built she must either assert her ownership rights or negotiate with her husband for ownership rights. She should not expect her husband to automatically include her name on the title deed. Hence financial contribution to the home project alone does not automatically guarantee ownership. Failure to assert or negotiate for ownership rights gives the husband freedom to register the plot of land solely in his name. The findings also confirm findings in other studies whereby joint ownership was regarded as one of the ways in which a married woman is empowered and her status made secure.⁹ Upon separation or divorce, the husband cannot easily evict her as reflected in Anna Mary's life story.

7.8 Discussion of findings

There is little evidence to show how married women become homeowners. Studies in developing countries reveal that husbands dominant in decision making regarding the home.¹⁰ In contrast to earlier findings that married women are not allowed to register their names on the title deed, the life stories in this study demonstrate that married women are able to become homeowners in a patriarchal society under special circumstances. The analysis of the life stories shows that women are able to negotiate the dominant married women's' home ownership contract in which married women are regarded as homemakers but not homeowners. As a result a new home ownership contract whereby women become homeowners is be created. This is mainly due to the following special circumstances.

7.8.1 Control of income

Control of income not only helps a married woman to improve on her well-being but it also increases her power to negotiate over household investments like housing,

⁹ Namita, 'Joint titling: A Win-Win Policy? Gender and Property Rights in Urban Informal Settlements', pp.273.

¹⁰ Manyire, 'Gender and Housing Development in the Low Income Suburbs'; Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', 245-268; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

hence reducing homeownership inequality.¹¹ One of the ways of increasing married women's income is through paid employment. Workingwomen have more control over the allocation of household resources than non-earning wives.¹² This observation implies that unemployed married women or women employed in low-paying jobs are unable to financially contribute to housing costs and hence are in weak negotiating position in the household.

The life stories show that adequate income is a necessary condition for married women to negotiate for a share in home ownership. As a result of having their own money, married women no longer need to be in a subordinate position. The life stories demonstrate women's control of income in a number of instances. In cases where husbands do not have money to meet all the construction costs of the home project and the wives are able to provide the money and have control over it, the wives either become sole homeowners or co-owners of the home. In these cases women are able to become homeowners because their husbands have no choice but to accept their wives' terms.

The life story of Theo demonstrate that in a case where a husband is not concerned with constructing a home for the family and the wife has income to take control of home provision, the married woman is free to register the home solely in her name. In this case the married woman is able to take care of her home ownership interests because she does not have any interference from her husband.

The life stories of Anna and Doreen demonstrate that in cases where wives contribute money to the home project, and insist on having their names included on the title deed, they end up as co-owners of the matrimonial home. As Vogler observes, in cases where both partners are in full-time employment and they see themselves as providers, there is a tendency to emphasize co-sharing of expenses. In these cases financial decision-making and access to money tend to be more equally shared.¹³ The

¹¹ Moser, C., *Gender Planning and Development, Theory, Practice and Training*, p.26.

¹² Moser, *Gender Planning and Development, Theory, Practice and Training*, p.26; Sen, A., 'Gender and Cooperatives Conflicts', p.144.

¹³ Vogler, 'Cohabiting couples: rethinking money in the household at the beginning of the twenty first century', pp.14-15.

findings in this study demonstrate that a dominant gender contract whereby men control home ownership can be redefined and negotiated as married women with income become aware of their homeownership rights.¹⁴

7.8.2 Husband's absence

It can be argued that a husband's presence and involvement in home provision can easily deny a married woman homeownership rights if she is not alert and aware of her ownership rights. It can therefore be argued that absence of a husband plays a vital role for married women to make independent decisions without interference from husbands similar to what other scholars argue.¹⁵ Although absence of the husbands in the study of home ownership has not been explicitly identified as one of the factors that accounts for married women's home ownership, it is indirectly implied.

Studies reveal that unmarried, separated; divorced and widowed women are able to become homeowners so long as they have income.¹⁶ This study provides evidence that a husband's absence was crucial for a married woman to become a homeowner. This is because she was able to make an independent decision on ownership rights without any hindrance or interference from her husband.

This study therefore adds new knowledge with regard to the concepts of 'husbands' presence and absence' as one of the important factors that can enable or inhibit married women to become homeowners. The findings of this study as demonstrated in chapter six also reveal that in cases where a husband is involved in the registration process of the title deed the married woman has to be alert and aware of her ownership rights, otherwise she is stands to be deprived of homeownership.

In conclusion, married women became homeowners because of the husband's absence, regular and control of income, negotiation, consensus and assertiveness. In

¹⁴ Brion, & Tinker, *Women in Housing: Access and Influence*, p.35-36.

¹⁵ Matere-Lieb, 'Basotho Women's role in Urban Housing'; Schlyter, *Women householders and housing strategies*, p.146.

¹⁶ Kalabamu, 'Changing Gender Contracts in Self-help Housing Construction', pp.245-268; Matere-Lieb, 'Basotho Women's role in Urban Housing'.

all these situations a new gender contract is created whereby women became homeowners instead of users. In some cases there was a total reverse of the gender contract whereby the wives became the sole owners of the home. According to the gender system contract theory, women have always been in a subordinate position (the other) while men are always in a dominant position (the norm).¹⁷

The life stories have demonstrated that the homeownership gender contract can be reversed under special circumstances. Hence, the gender system can be shaken in situations where power relations and gender roles of women and men change. This usually happens when women become economically independent in a patriarchal society. This implies that if women want to become homeowners it is only them who can change the dominant gender contract especially in decision making at the crucial stages of housing investments. This however will require cultural, economic and political and institutional changes.¹⁸

¹⁷ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

¹⁸ Miraftab, 'On Loan from Home: Women's Participation in Formulating Human Settlements Policies', p.189. Narayan, et.,, *Voices of the Poor: Can anyone hear us?*, p.175; Rowlands, 'A Word of the Times, but What Does it Mean? Empowerment in the Discourse and Practice of Development', p.15; Schlyter, *Women Householders and Housing Strategies*, p.35; Brion, & Tinker, *Women in Housing: Access and Influence*, p.144.

CHAPTER EIGHT

WIDOWS WHO INHERITED THE MATRIMONIAL HOME

*'They would not come this way anyway, because they know this is my property'
(A widow's statement, whose home was registered solely in her name before her husband died intestate)*

8. Introduction

This chapter discusses the special ways in which widows were able to inherit their husbands' home. It is argued in the chapter that a widow's inheritance right to the matrimonial home in the Ugandan patriarchal society is not automatic but rather there are strict conditions that must be met before a widow can inherit her husband's home.

It is argued that in cases where the married woman had her name on the title deed before her husband died, she automatically acquired the matrimonial home. In this case the issue of inheritance did not arise. This is an indication that there are contradictions between succession law and Registration of Titles Act. In a very special way, a widow was able to inherit her husband's home because her husband died before he acquired the title deed of the home. In this case the land on which the husband built the matrimonial home belonged to an independent landowner and there was no interference from the in-laws during the registration process. Another way in which a widow could inherit the matrimonial home of her husband is when her husband names her as the sole executor and sole beneficiary. However, cases where husbands named their wives as sole executors and sole beneficiaries were hard to find. The few husbands, who make Wills, name their wives as sole executors and sole beneficiaries. In many cases husbands die without leaving valid Wills.¹

Widows in developed countries automatically inherit the matrimonial home upon the death of their husbands.² This could be attributed to the fact that married couples jointly own the matrimonial home during marriage. Even then, the legal structures in

¹ Okumu-Wengi, 'Women and The Law of Inheritance'.

² Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?.'

place support widows' inheritance of the matrimonial home. Although sometimes widows are unable to inherit the matrimonial home upon the death of their husbands, this has nothing to do with cultural or statutory law. Rather, widows are only denied inheritance rights if they cannot afford to pay the mortgage rates.

In many developing countries, where most societies are patriarchal in nature, a widow does not automatically inherit the matrimonial home. This therefore implies that there are strict conditions that have to be met before a widow can inherit her husband's home. Studies in South African countries reveal that some urban widows were able to inherit the matrimonial home due flexible customary laws, support of family members including in-laws and through the support of state institutions like traditional leaders and local councils.³

In cases where traditional chiefs relaxed the customary law, they allowed widows to transfer the matrimonial home from their husbands' name into their own names due to changes in settlement patterns and urbanisation.⁴ In cases where the houses were acquired through employment with state organs, for example local councils and housing authorities, widows were able to inherit their husbands' plots of land through the help of the state institutions.⁵ In cases where the husband died before he paid off the mortgage, the Municipality could assist the widow to transfer the plot of land from her husband's name into her name. In this case the widow was allowed to pay off the mortgage before she could inherit the plot of land.⁶ The local councils and employers were able to safeguard the widow's inheritance rights because of the Succession Law.

What is not clear though is whether these widows were able to develop homes on these plots. The widow would also transfer the matrimonial home from her husband's

³ Gwaunza, et.al. E., *Widowhood, Inheritance Laws, Customs & Practices in Southern Africa*; Dengu-Zvogbo, et.al. *Inheritance in Zimbabwe: Law, Customs and Practice*, pp.120-121; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.223.

⁴ Matere-Lieb, 'Basotho Women's role in Urban Housing'.

⁵ Gwaunza, et.al. *Widowhood, Inheritance Laws, Customs & Practices in Southern Africa*.

⁶ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property'.

name into her name in cases where her in-laws especially sisters and brother in-laws and the children allowed her to do so.⁷ Other studies also revealed that a widow automatically took over the matrimonial home upon the death of her husband in a situation where her name was already on the titled deed. In this case the issue of inheritance did not rise.⁸ Other studies however reveal that widows inherited a fifth of the entire property value regardless of her contribution.⁹ In other studies widows were allowed to remain in the matrimonial home until death or remarriage or when children grew up.¹⁰

The discussion above shows that while in developed countries widows inherit the matrimonial home and the legal institutions support them, in developing countries widows have to negotiate with state institutions and some times through courts of law to exercise inheritance rights. Against the above background therefore, this chapter presents the special circumstances under which the widows inherited the matrimonial home in the Uganda patriarchal society even when their husbands died intestate.

As discussed above, in a case where a married woman had her name on the title deed before the death of her husband she automatically acquired the home. In a case where a husband died before he acquired the title deed the widow manipulated the intestate succession law and registered the home solely in her name. The life experiences of widows presented through individual life stories demonstrate the mechanisms through which they were able to negotiate the dominant inheritance contract and create a new one. The discussions that follow this introduction present evidence on the special ways in which widows inherited the matrimonial home.

⁷ Dengu-Zvogbo et.al., *Inheritance in Zimbabwe: Law, Customs and Practice*.

⁸ Dengu-Zvogbo et.al., *Inheritance in Zimbabwe: Law, Customs and Practice*.

⁹ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', p.220; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.205.

¹⁰ Kanabahita, 'Report on Intestate Succession'; Asiiimwe, 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform'.

8.1 Inheritance through sole ownership: the story of ‘Beine Scola’:

Beine is one of the widows who became a homeowner through inheritance upon the death of her husband even though he died intestate. Beine is a retired teacher living with two of her children in a three bed-roomed house. The house is iron roofed with electricity, and water in the courtyard (Fig .23).

Figure 23: Beine’s home in Banda she solely owned before her husband’s death



Beine, the second born in a family of 15 siblings, was born into a middle class family. Her father was a clergyman and managed to educate all his children. Beine completed eleven years of education in 1960 and thereafter joined Kinyamasika Teacher Training College where she qualified as a grade three- teacher in 1970. She was then posted to Kabwohe Primary School before she joined Kyanyakatura Primary School as a grade three teacher.

In 1976 Baine was married in church to Mwesigye, a civil servant working as a principle auditor in the office of the Auditor General in Kampala. She then requested a transfer to Kampala where Mwesigye worked. As a civil servant, Mwesigye was entitled to a government owned house. The family resided in a government owned house in Kololo, one of the prime areas in Kampala. The couple was blessed with four children, all girls. While in Kampala, Beine taught in many schools, for example Nabagereka Primary School, Kololo and Shimoni Demonstration School. While they were living in a government owned house, Beine at one time, advised Mwesigye to buy a plot of land in Kampala on which they could build a family home. Mwesigye did not agree to the idea but instead built a home in rural village. To him building a home in Kampala was unnecessary because he had a spacious government owned house.

As the family continued to stay in a free, spacious government house, Beine saved all her money, because Mwesigye met most of the domestic costs. On failure to convince Mwesigye to buy a plot of land in Kampala, Beine bought a plot of 25 decimals of land in Banda with all her savings and registered it solely in her name. Beine was able to buy a plot of land because she was employed as a teacher with a reasonable income and a vision to secure her future. Beine informed Mwesigye that she had bought a plot of land in Banda. Although Beine bought the plot of land, she did not have adequate money to construct a home. On the other hand, Mwesigye as a principal auditor in the office of Auditor General had a higher income than Beine. Apart from his salary, he had extra income from the subsistence allowance the government paid him while on travel abroad.

As Mwesigye was approaching retirement age, he realized that he would be asked to vacate the spacious government owned house in Kololo. He neither had land, nor a personal house in Kampala and yet he had four school-going children whose education he did not want to interrupt. He then requested Beine to allow him to build a family home on her plot of land, which Beine accepted with no reservation. Mwesigye's decision to build the family home on Beine's plot of land was most likely because he realized that he did not have enough money to buy a plot of land and build a home at the same time. He could not imagine renting a two-roomed house either, having lived in a spacious government owned house. Had Mwesigye been too proud

to build a home on Beine's land, Beine would most likely not have owned a home. Instead, she could have ended up with only a plot of land because she did not have money to develop it. Similarly, had Beine not bought the land and registered it in her name, she would have nothing to offer to Mwesigye at the critical moment when he needed substantial help. Mwesigye's decision to build a family home on Beine's land was a blessing to Beine. Mwesigye met all the construction costs of the home.

Although Mwesigye built the home, legally the home belongs to Beine. This is because the title deed of the plot is solely registered in Beine's name. When Mwesigye retired, the family moved from the government owned house in Kololo to their own home in Banda. Although Mwesigye built the home on Beine's plot of land, he seemed not happy that the title deed of the plot of land on which he built the home was registered solely in Beine's name. At one time, he suggested to Beine to change the title deed to joint ownership.

In 2003, Mwesigye became critically ill. In his last days, he requested Beine that he should not be buried in the rural village but in the compound of his home. Mwesigye's request to be buried in Kampala demonstrated the male cultural image ideology that a home belongs to the man not a woman alone. When Mwesigye died intestate in 2004, he was buried in the courtyard of the home as he had wished. Mwesigye's request to be buried in Kampala was a shock to his friends, to whom this researcher spoke.

According to Kinyankole culture, where Mwesigye was born, burial of heads of households is usually in the rural village. One of the respondents confided to the researcher that by the time his friend and neighbour Mwesigye died, he was in the rural village. Knowing that automatically Mwesigye's body would be transported to the rural village he cancelled his plans to join the family in Kampala and instead waited at the rural home. He was later shocked to learn that Mwesigye was to be buried in Kampala. Although Beine tries to justify Mwesigye's burial wishes she might most likely find it difficult to sell or mortgage the home even though she legally owns it. This is because Beine will have to relocate the grave to another place if she is to sell the home.

When Mwesigye died, Beine did not experience any conflict with her in-laws, as reflected in her words. 'They would not come this way anyway, because they know this is my property'. Beine's statement implies that her in-laws could not claim the matrimonial home because she legally owned the land. Since the Registration and titles Act does not differentiate between the land and the house, Beine legally owns both the land and the home. In Beine's case there was no legal way that anyone else could claim the home because the home was legally hers already. Even if Mwesigye had contested ownership if he were alive, he would most likely have lost the case. This is because he would have had to produce evidence that he constructed the home.

Although Mwesigye met all the construction costs of the home, Beine legally owns the home because the title deed of the plot of land on which the home is built is registered solely in her name. Hence upon Mwesigye's death, Beine automatically inherited the home because the land on which the home was built legally belonged to her. Had Mwesigye not constructed the home, Beine would most likely not have been able to finance the construction of a home. She would most likely have ended up with an undeveloped plot of land with no home.

After the burial, Beine processed the necessary Letters of Administration. She took to the administrator General a letter of consent from her children and a marriage certificate. She explained to the Administrator General that she could not obtain a family letter as is required by the intestate Succession law because all her brother in-laws had died and her sister in-laws were all married. Since Beine had a marriage certificate she convinced the Administrator General to obtain a Certificate of No Objection, which she took to the High court to obtain Letters of Administration.¹¹ Beine needed Letters of Administration to obtain her husband's death gratuity. She used part of the money to install plumbing and sanitary provisions in the home.

¹¹ A Certificate of No Objection (CONO) is a document granted by the Administrator General to the person chosen by the family of the deceased to administer the estate. It carries a lot of authority without which a person cannot be granted Letters of Administration. The Administrator General advertises the intention for administration of the deceased estate in one of the widely read local newspaper for 14 days. If no one objects to the administration of the deceased estate after 14 days, then the Administrator General grants the Certificate of No Objection. The person chosen to administer the deceased estate then obtains Letters of Administration from High Court.

Although the intestate succession law makes it clear that the matrimonial home includes the home and the land on which it is built, the law fails to account for cases where the land is registered in the widow's name.

In Beine's case, the intestate law is irrelevant because the land and the home are registered in her name. According to the Registration of Titles Act, the proprietor, whose name appears on the title deed, has the legal right to transact any business on the said property. Since the Registration of Titles Act does not differentiate between the landowner and homeowner, Beine inherited the home.

In conclusion, Beine was able to inherit the matrimonial home because the plot of land on which her husband built the matrimonial home was already registered solely in her name. Although her husband met all the construction costs of the home, the home legally belongs to her and therefore the intestate succession law is redundant in this case. There is no legal way that anyone else could claim inheritance rights to the property because the home was legally hers already.

The above story demonstrates that homeownership dynamics in marriage determine the inheritance regime. In a case where the woman home solely owns the matrimonial before the husband's death, the same contract will be reflected at inheritance.

8.2 Inheritance through joint ownership: The Story of Christine Nyakaisiki

Christine, whose marriage story was told in chapter seven, is a widow who inherited the matrimonial home even though her husband died intestate.¹² In 2005, Christine's husband Paul died without leaving a will. Since the relatives knew that Christine jointly owned the matrimonial home with Paul they never bothered to try and

¹² I recorded the life story of Christine at different stages of her life hence reflecting the gender contracts during marriage and at widowhood. The first time in 2004 I recorded the life story of Christine when her husband was still alive. However, Christine's husband was not at home at the time of interview due to the mental illness and hence I could not record his story. In the following year of field research in Banda, I was informed of Christine husband's death. I then re-interviewed Christine on matters of inheritance.

dispossess her. Her in-laws found it difficult to contest the ownership of the home, which was jointly (conjugally) owned. Had Christine not jointly own the home with Paul, her in-laws would most likely have dispossessed her, judging from Christine's sister in-laws refusal to return her personal title deeds. As a joint owner, Christine legally inherited half of the value of the home. Although The Registration of titles Act provides for equal shares of the property if two persons jointly own the property, the Succession Act is quiet on what happens when one of the joint owners dies intestate.

In Conclusion, Christine was able to legally inherit the matrimonial home even when her husband died intestate because she co-owned the home with Paul before his death. Since there were no claimants of the home she 'informally' inherited the whole home. Had she not co-owned the matrimonial home, her in-laws would most likely have dispossessed her of the home regardless of whether the law protected her, judging from her sister-in-law's behaviour of retaining Christine's personal title deeds. Since Christine jointly owned the home with Paul, her in-laws found it tricky and difficult to assert any claim over the home at his death.

8.3 Manipulation of Intestate Succession Law: the Story of Namatovu:

Namatovu is a widow who inherited the matrimonial home upon the death of her husband even when he died intestate. Namatovu was able to register her husband's home solely in her name not only because her husband died before he acquired the title deed of the home but also due to her in-laws lack of interference in the registration process. Namatovu was also able to register the home solely in her name because the land on which her husband built the home belonged an independent landowner not his parents. Had the land been registered in her in-laws names, the in-laws would most likely have preferred to register the home in the children's names.

Namatovu, aged 56 years, was born into, a big family of 15 siblings in Bugerere Mukono District. She lives in Kiwatule in a four bed-roomed home with her three children aged 24, 28 and 30 years. The house is iron roofed, self-contained with two sitting rooms, two bathrooms, two toilets, and has electricity and water (Fig.24).

Figure 24: Namatovu's home in Kiwatule that she inherited after her husband's death



Namatovu studied at Nagalama primary school from 1952 to 1960, before she joined Namagunga secondary school in 1961 where she completed her eleventh year of education in 1964. She then joined Nsambya Nursing School for a three-year course in nursing, qualifying as a nurse in 1969. Namatovu then joined World Health Organization based in Mbale from 1969 to 1972. In 1972 she joined Mulago School of nursing and completed an advanced course in nursing in 1974.

In 1976 Namatovu was customarily married to Saul, a police officer working with the Criminal Investigation Department (CID). They were blessed with three children, one boy and two girls aged 30, 28 and 24 years respectively. However, her husband had three other children, two girls and one boy, from other relationships. From 1974 Namatovu worked at Mulago hospital as a registered nurse until 1986 when she became unemployed due to the political changes. She remained at home as a

housewife until she left for the United States in 1988. While in the United States, she attended a course in paediatrics.

In 1991, Namatovu returned to Uganda and joined Saul who was by then living in a government owned house. Saul later bought a quarter of an acre (25 decimal) plot of land from one of the landowners in Kiwatule. He made structural building plans in his name and constructed a home on the untitled land (Kibanja).¹³ In 1995 Saul died intestate, before he acquired the title deed for the plot of land on which he built the matrimonial home. After the burial, Namatovu moved from the government owned house to the unfinished and untitled house in Kiwatule. Her in-laws granted her permission to solely administer Saul's estate. Namatovu then obtained Letters of Administration to enable her to claim Saul's death gratuity and pension.

Although Namatovu benefited from Saul's pension and death gratuity, the amount was inadequate to pay her children's school fees and complete the matrimonial home. Apart from paying school fees Namatovu used part of Saul's death gratuity to start a clinic at home. Namatovu was able to start a clinic because she had a nursing qualification, without which she would not have had the skill and capacity to run it.

Had Namatovu had no education she would most likely have largely depended on Saul's death gratuity to survive. With income from the clinic Namatovu was able to construct more rooms for renting and expand her medical service business. She also rented a house in Ntinda where she started another clinic. With regular income from her clinics and rentals from the rooms, and using household property as security Namatovu borrowed more money from the informal credit associations within Kiwatule to build more rooms for renting.

¹³ Ekibanja is a plot of land managed by a de facto owner, while it belongs to a de jure landowner. Often, though not always, it applies to tenants on mailo or freehold land. See Nabwire, *The Impact of Health User Fees on Women's role in Household Health Care Decision-Making in Mukono District, Uganda*, p.213; In the period prior to colonialism, the different ethnic groups had land tenure systems governed by their traditions and customary practices. In Buganda for example, prior to 1900, there were four categories of rights of control over land: clan rights – Obutaka; the rights of the King and his chiefs – Obutongole; individual hereditary rights of occupation – Obwesengeze; peasant rights of occupation – Ebibanja. See Nkurunziza, 'Informal Land Delivery Processes and Access to Land for the Poor in Kampala', p.41.

Because of the enormous financial demands of completing the matrimonial home, Namatovu realized the need to borrow bigger loans from big financial institutions. To borrow big loans from financial institutions, Namatovu needed a title deed in her own name. Namatovu then contacted the local council officials to introduce her to the landowner of Saul's plot of land. Because the local council officials already knew her as one of their residents they introduced her to the landowner and convinced him to sign the transfer forms in her favour. For the landowner to sign the transfer forms in her favour, Namatovu had to part with an equivalent of about 3,000 dollars, because the price of land in Kiwatule had by that time gone up. Upon payment of the 3,000 dollars, the landowner signed the transfer forms solely in her name. Namatovu was able to pay the 3,000 dollars because she had good income from her clinics and rentals.

Namatovu registered the plot of land on which Saul built the matrimonial home solely in her name and acquired the title deed in 2005. Namatovu was able to beat the intestate inheritance system and its biased patriarchal laws because Saul died before he acquired the title deed and secondly her in-laws did not bother to follow up matters concerning their son's home. In any case, there were costs involved before a title deed could be issued which her in-laws were not ready to meet. Namatovu's in-laws were liberal and good-natured judging from their actions to grant her a family letter to solely administer Saul's estate.

This is reflected in Namatovu's words after further probing as to how she succeeded in registering the plot of land in her name when her husband died intestate 'My in-laws did not conflict with me at all and even when I received the death gratuity money they never insisted on sharing it. My in-laws did not bother me with the money or attempt to evict me because they are naturally good people. I observed their good behaviour before whereby all the women who have been married in this family after losing their husbands are left with their property. The only complaint I have with my in-laws is failure to assist me to pay the children's school fees'.

Although legally Letters of Administration do not permit an Administrator to register the plot of land in the widow's personal name especially where her husband dies intestate, Namatovu managed to work around the inheritance system with the

assistance of local council officials. She convinced the landowner through the local leaders to sign the transfer forms in her favour, knowing that her in-laws would never question her actions because of their good nature. Had Namatovu known that her in-laws were problematic and possessive of their son's estate, Namatovu would most likely not have dared to register the plot of land solely in her name. Namatovu was able to have the plot of land registered solely in her name for four reasons. Firstly, she was single and free from the control of Saul. Had Saul been alive, he would most likely have registered the plot of land solely in his name, judging from the building structural plans, which he registered solely in his name.

Had Saul had an intention to register the plot of land in both his name and Namatovu's name; he would not have registered the building plans in his name alone. Secondly, Saul died before he acquired the title deed. Had Saul died after he had acquired the title deed, Namatovu would most likely have found it extremely difficult to transfer the title deed solely into her name because Saul died without leaving a Will. Thirdly, the title deed of the land on which Saul built the matrimonial home was not in any of Saul's relatives' names. Had the title deed been in the names of Namatovu's in-laws, Namatovu would most likely have found it difficult to convince them to sign transfer forms in her favour. Because the title deed was not in the names of any of Namatovu's in-laws she was able to convince the landowner, through the local leaders, to sign the transfer forms in her favour.

Fourthly, Namatovu's in-laws did not bother to follow up matters concerning their son's property. Had Namatovu's in-laws been aggressive and possessive of their son's estate, they would most likely not have allowed her to have the plot of land registered solely in her name. Namatovu's in-laws would most likely have preferred the plot of land to be registered in their grandchildren's names. Although Namatovu's in-laws authorized her to acquire Letters of Administration, this good gesture did not necessarily mean registering Saul's home in her name.

Under succession law, an Administrator of a deceased estate is not supposed to transfer the deceased estate into his or her own personal names but the word 'Administrator of the X estate' is inserted on the title deed. Therefore, for any transaction on the property has to be approved by the family members. The

Administrator of the estate is supposed to protect and administer the deceased property on behalf of the beneficiaries who in many cases include the children, the widow, and the deceased relatives. Fifthly, Namatovu had the capacity to pay an equivalent of 3,000 dollars to the landowner. Had Namatovu been without income, she would most likely have continued to live on untitled land.

In summary, Namatovu was able to register the home solely in her name because her husband died before he acquired the title deed of the matrimonial home, support of local council officials and in-laws and because of income to pay the current value of the land.

8.4 Discussion of findings

In many patriarchal societies in developing countries women do not inherit property.¹⁴ Studies in South African countries reveal that widows are able to inherit the matrimonial home under special circumstances for example due to the support from Municipal councils, chieftaincy and support from family members.¹⁵ Findings in this chapter partly concur with findings in earlier studies on the influential role of state institutions in guaranteeing a widow inheritance rights in the matrimonial home. In contrast to earlier findings in other studies, findings in this chapter reveal that state institutions like local councils could assist a widow to register the matrimonial home in her name only in a situation where the husband died before he acquired the title deed of the home and where the plot of land on which the matrimonial home was built belonged to an independent owner. State institutions would not have assisted the widow to transfer the matrimonial home into her name had the husband died after he had acquired the title deed or in a situation where the matrimonial home was built on the in-laws land. Firstly, if the home was already registered in the husband's name, the widow would by law be required to obtain Letters of Administration to administer

¹⁴ Lee-Smith, et.al. 'Unequal Rights: Women and Property', p.163; Lee-Smith, *'My House is My Husband'*, p.146.

¹⁵ Gwaunza, et.al., *Widowhood, Inheritance Laws, Customs & Practices in Southern Africa*; Dengu-Zvogbo et.al., *Inheritance in Zimbabwe: Law, Customs and Practice*, pp.120-121; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts' p.223; Matere-Lieb, 'Basotho Women's role in Urban Housing'.

her husband estate since he died intestate. The law of intestate succession as discussed in chapter four, which the local council officials are expected to know, does not allow a widow to inherit the matrimonial home. Secondly, had the matrimonial home been built on the widow's in-laws plot of land, the local council official would find it very difficult to support the widow.

Findings in this study however fully concur with findings in earlier studies on the influential role in-laws and children play in inheritance matters. Much as the husband's death before he acquired the title deed contributed to the married woman's right to inheritance, the widow was able to register the matrimonial home in her names because of the support from her in-laws. First of all it was a sign of good gesture for the in-laws to allow Namatovu to administer her husband's estate alone. If the in-laws were interested in their son's estate, they would have asked High Court to grant Letters of Administration to more than one person and the High Court would have no objection. A widow is not allowed to administer the estate of her husband without the consent of the husband's family especially if the husband died intestate.

This rule was set by the High Court in 1990 in the case of Lucy Monica Akulo vs. Michael Alias Kilega, in Administration Cause No.10. At that time Judge Okello ruled that 'Under Section 202 of the Succession Act as amended by decree 22/72 the Court is empowered to associate any person with the widow in the administration of the estates of her deceased husband if the court thinks that it is proper to do so'.¹⁶ As noted earlier in chapter four, when a person dies intestate, the estate is divided into shares where the widow obtains 15%, the children 75%, the heir 1% and the relatives or dependants 9%. Therefore, the High Court has to ensure that interests of all beneficiaries are taken care of. Therefore, in cases where in-laws have an interest in their son's estate, a widow cannot register the home in her names even when her husband died before he acquires the title deed. Hence, had the in-laws objected, the widow would not have registered the home into her name. Interestingly, the

¹⁶ Lucy Monica Akulo Vs. Michael Alias Kilega, in Administration Cause No.10 can be found in High Court Archives. It is not yet incorporated in Court Bulletin. The full case is also cited in Okumu-Wengi, J., (ed.), *The law of succession in Uganda: women, inheritance laws, and practices: essays and cases*. Women and Law in East Africa (WLEA) Publication No.1. Kampala, 1994, p.96; Kiapi, Family Law [Domestic Relations] Practical Manual Series, p.49.

Succession law would protect the in-laws' interests if they contested ownership. The Succession law would not protect the widow because the husband died intestate. This therefore implies that in cases where widows do not receive any support from in-laws, and state institutions they can easily be denied inheritance rights.

Findings in this study concur with findings in other studies regarding the influential role of children in inheritance matters. Findings in other studies reveal that in cases where there were children of the deceased from a previous marriage, the young widow did not inherit anything. Instead, the eldest son of the deceased by his previous marriage not only inherited the home but also went ahead to register it in his name. As a result, the deceased's children of the previous marriage evicted the widow from the home.¹⁷ Hence in case where there are other children the widow's right to the matrimonial home is not guaranteed.

The findings in this study reveal that widows were able to inherit the matrimonial home because they were no other children to claim inheritance rights in the home. The rules of intestate succession assume that families are monogamous whereby only the surviving spouse and her children are the beneficiaries of the estate. In cases of polygamous marriages this rule becomes irrelevant. In cases where there is only one matrimonial home and there are other children, the widow may not register the home in her name even when her husband died before he acquired the title deed. An interview with the Administrator General revealed that in situations where there is only one matrimonial home in the urban area and there are children of different mothers, the Administrator General usually advises the family to sell off the home and divide the proceeds among the widows, dependants and the children. This discussion therefore implies that a widow is able to register the matrimonial home through the support of her own children and this can only happen in situations where her husband did not have other children or in situations where he had already catered for them.

Findings in this study also concur with findings in other studies on the importance of having one's name on the title deed. Studies in South African countries reveal that widows whose names were already on the title deeds before their husbands died

¹⁷ Dengu-Zvogbo, et.al. *Inheritance in Zimbabwe: Law, Customs and Practice*, pp.88-89.

automatically took over the home since they legally owned the homes. In such cases even though the in-laws were bitter they could do nothing except to take away personal belongings of the deceased.¹⁸ In this chapter the life stories of Baine and Christine also demonstrate that in cases where widows had their names on the title deed before their husbands died, they did not experience any problems from the in-laws. The study shows that a married woman automatically takes over the home even when her husband dies intestate as long as her name is on the title deed of the home. In such a case the issue of inheriting the home, which is already legally hers, does not arise.

The findings reveal that married women whose names are already on the title deed of the matrimonial home do not have to worry about inheritance matters because their inheritance benefits are already embedded in the title deed. However, in cases where the matrimonial home is jointly owned and the deceased had other children, the inheritance of the other half value of the matrimonial home might be contested. The findings therefore bring to light the contradiction between Succession Law and Registration of Titles Act. Whereas the Succession Act states that the matrimonial home belongs to the legal heir, who is the eldest son of the deceased, the Registrar of Titles Act states that the land belongs to the proprietor in whose name the land is registered.

Succession law is silent on the rights of the widow in cases where the matrimonial home is jointly owned and there are other beneficiaries. This is an indication that there is a patriarchal belief within the laws that the matrimonial home usually belongs to the man. This implies that since the current Succession Act has not been harmonized with the Constitution and the Registration of Titles Act, married women can actually use the Act to exercise inheritance rights since it seems to override the Succession Act. Nonetheless, the life stories show that married women were able to contest the gendered dominant inheritance contract that dictates that women do not inherit the home, under special circumstances. The above stories demonstrate how a new inheritance contract was created whereby widows inherited the matrimonial home in a

¹⁸ Dengu-Zvogbo, et.al., *Inheritance in Zimbabwe: Law, Customs and Practice*, p.125.

Ugandan patriarchal society. There are a number of elements in the inheritance gender contract.

8.4.1 Element 1: Where married women have their names on the title deed

Although the intestate law specifically dictates that when a man dies the widow has only user rights to the matrimonial home until she re-marries or dies, and that the matrimonial home belongs to the eldest son of the deceased, the life stories show that in practice this dominant gendered contract cannot stand the test of time. One of the elements in the inheritance contract is whether or not the woman has her name on the title deed. In a case where a married woman has her name on the title deed she is able to inherit the matrimonial home because the home legally belongs to her. The life stories demonstrate that having a name on the title deed enables married women to negotiate the gendered inheritance contract.

8.4.2 Element 2: Manipulating the inheritance system

The life stories have demonstrated that women are capable of manipulating the inheritance law if they are aware of ownership dynamics and if they have the support of in-laws. One of the ways in which married women can inherit the home in such a circumstance is the use of state machinery. In case where there are conflicting laws women can use this loophole to their advantage to exercise inheritance rights. In so doing they would be able to 'undo' the discriminatory inheritance laws. However, this is only possible in situations where the home is not built on clan land and in situations where the title is not registered in the in-laws names. As Larsson and Schlyter observe, 'In societies that are experiencing rapid social, economic and political change, these gender contracts can even be contradictory'.¹⁹

In Conclusion, the life stories of widows demonstrate the special circumstances through which they were able to inherit the matrimonial home despite unfair inheritance laws. In cases where married women already had their names on the title deed before their husbands died, they automatically took over the home even when

¹⁹ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts'.

their husbands died intestate because legally they owned the homes and therefore the question of inheritance did not arise. In this way they survived the discriminatory inheritance laws. In these cases, widows did not encounter any resistance from their in-laws because they legally owned the homes.

A widow is able to retain ownership of the matrimonial home even when her husband died intestate and her name was not on the title deed because her husband died before he processed the title deed. In this case the woman only needed the support of her in-laws and local council officials. In this case the widow was able to manipulate the patriarchal inheritance laws and inherit the home. Although the Succession Act does not guarantee a widow's right to legally inherit a home, especially when a husband dies intestate, the life stories have demonstrated that in practice, widows are able to inherit under certain circumstances. The life stories have demonstrated that there is conflict between the Registration of titles Act and the succession law. In practice, the intestate law does not necessarily inhibit a widow from inheriting a home so long as her name is on the title deed.

CHAPTER NINE

WIDOWS WHO ENDED UP WITH ONLY USER RIGHTS OF THE HOME

9. Introduction

The previous chapter analysed the special circumstances under which widows retained ownership of or inherited the matrimonial home even when their husbands died intestate. The special circumstances under which widows retained or inherited the home involved having one's name on the title deed as both joint or sole owner and manipulation of the intestate Succession law especially in a case where a husband died before he acquired the title deed of the home.

This chapter presents an account of widows who were unable to inherit the matrimonial home upon the death of their husbands even when their husbands died testate and even in cases where their husbands died before they acquired the title deeds of the homes. In one of the cases a widow was unable to register the home in her name even when her husband bequeathed the matrimonial home to her as a sole beneficiary, and the matrimonial home was built on untitled land; and even when the land belonged to an independent landowner. This chapter therefore builds on the previous chapter hence revealing the complex dynamics of homeownership through inheritance.

In this chapter I argue that a widow's right to retain ownership of the matrimonial home is not automatic especially in cases where her name was not on the title deed before the death of her husband. In such cases a widow is only allowed to acquire Letters of Administration. In this case, a widow's user rights of the home can easily be denied if she was not legally married to the deceased.

A widow's right to inherit the home is equally difficult in a situation where her husband died before he acquired the title deed and the land on which the matrimonial home was built belonged to her in-laws. In this case a widow needs her in-laws' consent before she registers the home in her own name. A widow's right to inherit the

matrimonial home becomes difficult even when her husband dies testate in a case where he does not name her as sole executor and sole beneficiary. A widow is deprived of inheritance in a situation where her husband bequeaths the home to his son. In this case the widow is at the mercy of the son. A widow is also unable to inherit the matrimonial home if she did not have children with her husband and her husband had other children from previous relationships. In this case a widow finds it impossible to inherit the home even when she is legally married, her husband dies testate, bequeaths to her the matrimonial home as a sole beneficiary, and the land on which the matrimonial home is built belongs to an independent owner.

The life stories demonstrate that a widow was unable to inherit the matrimonial home in a case where her name was not on the title deed of the home and her husband died intestate. In this case a widow's user rights of the matrimonial home were in jeopardy because she was not married under any recognized marriage. She was only guaranteed user rights of the home as a guardian of the children.

In another case, a widow was unable to inherit the matrimonial home even when her husband died before he acquired the title deed of the home because the land on which the matrimonial home was built belonged to her in-laws. In this case, the widow needed her in-laws' consent to register the home in her name. The in-laws preferred to register the home in their grand children's names to keep the property in the male line. A widow's right to inherit the matrimonial home was not possible even when her husband died testate because he did not name her as sole executor and sole beneficiary but rather as a beneficiary and as one of the executors. Similarly, a widow was unable to inherit the home even when her husband died testate because her husband bequeathed the home to his youngest son.

Lastly, a widow's right to inherit the matrimonial home through bequeath was jeopardised because she did not have children of her own and her husband had children from previous relationships. Although the widow's husband died before he acquired the title deed and the land on which the matrimonial home was untitled and belonged to an independent landowner, she was unable to register the home in her name. This is because firstly she did not have children of her own with the deceased through whom she could have asserted her inheritance rights and probably inserted her name on the

title deed. Secondly there were other children of her husband from the previous marriage. In this case her husband's children registered the home in their names.

In developed countries, widow's inability to inherit the matrimonial home upon the death of their husbands has nothing to do with cultural or statutory law. Rather, widows are only denied inheritance rights if they cannot afford to pay the mortgage rates. Hence, a widow's inability to inherit the matrimonial home is attributed to the affordability crisis due to rising housing prices and interest rates.¹

By contrast, in many developing countries where most societies are patriarchal in nature, a widow does not automatically inherit the matrimonial home.² This is because, through statutory and customarily law, land and housing is passed on to the male line for example from father to son. If the deceased does not have a boy child, his younger brother becomes the heir.³ Patriarchal customary systems deprive widows of the matrimonial home for example, customarily the home belongs to the man and upon the death of the husband the in-laws can easily block a widow's inheritance rights.⁴ Property grabbing, which includes the matrimonial home, is very common regardless of whether the widow is educated or not, or is aware of her rights or not.⁵ For example under customary law an urban house belongs to the relatives of the deceased but not the wife or the children.⁶ In some cases brothers in-law of the widow have the right to claim household property that includes the matrimonial home unless the male children are old enough to inherit.⁷ In a case where the children are young, the widow has to

¹ Reitz, 'Homeownership'.

² Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?', pp.1-50; Kanabahita, 'Report on Intestate Succession'; Asiimwe, 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform; Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, pp.257-258; Tusingwire, & Tumushabe, 'Women and Control of Housing', p.125; Owen, *A World of Widows*, p.198; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.2.

³ White, et.al., (eds.), *Dispossessing the Widow: Gender Based Violence in Malawi*.

⁴ Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, pp.257-258; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p. 206.

⁵ Casimiro, et.al., *Women and Law in Southern Africa Research Project: Right to Succession and Inheritance, Mozambique*; Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, p.257.

⁶ Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

⁷ Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, p.260.

accept to be married by one of the brothers' in-law if she is to exercise user rights to the home. If she refuses she has no alternative but to return to her natal family. In some cases widows are not only denied inheritance rights but they are also not welcome to return to their natal families because women do not inherit from their fathers' land because the land belongs to her brothers.⁸ Homeownership through inheritance is highly gendered and embedded with complex cultural dynamics.

These complex dynamics differ from country to country, from society to society and from one ethnic grouping to another.⁹ Apart from customary laws, there is legal pluralism whereby customary law thrives side by side with statutory law.¹⁰ In many cases statutory law is embedded with customary law sentiments. Under intestate Succession law, a widow is guaranteed only user rights of the matrimonial home until she dies or remarries, making her a tenant in a home she could have directly or indirectly contributed to.¹¹ In addition, Succession law recognizes all the children of the deceased whether or not they were born in wedlock or outside wedlock.¹²

However, the intestate Succession law does not recognize a cohabiting woman.¹³ This implies that even in a situation where the married woman contributed to the matrimonial home but had not formalised her union with the deceased, not only are her inheritance rights denied but also her user rights of the home are not guaranteed except under the guardianship of the children. Why should the intestate Succession Law recognize children outside wedlock and fail to recognize cohabiters? Because women do not inherit the matrimonial home upon the death of their husbands, one of routes through which women would become homeowners is blocked.¹⁴

⁸ Narayan, et.al. *Voices of the Poor: Can anyone hear us* p.260.

⁹ White, et.al. (eds.), *Dispossessing the Widow: Gender Based Violence in Malawi*; Harley, A, & Verbeek, C., 'A Place to Live, Women's Inheritance Rights also see <http://www.cohre.org>.

¹⁰ Kakooza, 'The Application of Customary Law in Uganda'; Himonga, C., 'Property Disputes in Law and Practice: Dissolution of Marriage in Zambia'. In Armstrong, A. (ed.) *Woman and Law in Southern Africa*, 1987, Harare, Publishing house; Larsson, A., & Schlyter, A., 'Changing Gender Contracts and Housing Conflicts', pp.212-231; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property'.

¹¹ Okumu-Wengi, 'Women and The Law of Inheritance'; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.210.

¹² Rukimirana, & Bateson, *Laws of the Republic of Uganda*.

¹³ Kiapi, Family Law [Domestic Relations], p.47.

¹⁴ Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter, pp.143-160.

It is against this background therefore, that this chapter presents evidence that shows the conditions under which widows were deprived of inheritance rights of matrimonial homes even in situations where husbands died testate, named their wives as beneficiaries of the home and even where husbands died before they acquired the title deeds of the home. The evidence is captured through the life experiences of widows reflecting their marriage lives, as presented in their life stories.

The purpose is to identify the different elements of the inheritance gender contract created as widows negotiate the system. The aim is also to explore how and why married women end up with only user rights of the matrimonial home upon the death of their husbands. The life stories that follow this introduction present the different situations in which married women were denied inheritance rights.

9.1 Deprived of inheritance of the matrimonial home by the property being registered in the husband's name only: The story of 'Jane Chandiru'

Jane is a widow who was unable to inherit the matrimonial home upon the death of her husband even though she indirectly financed the home project. Jane was unable to inherit the matrimonial home because her name was not on the title deed. Jane's user rights of the home were in jeopardy because she was not legally married. She was only able to remain in the home as a guardian of her children. Jane, a retired secretary is aged 59 years. She was born in Moyo District, one of the Districts in Northern Uganda. Jane was born and grew up in a middle class family of eight siblings of which she is the sixth born. Jane lives in Banda Parish in a three-bedroom house with her four children. The house is iron-roofed and fenced, with water and electricity (Fig.25).

Figure 25: Jane's home in Banda



Jane had primary education in Moyo from 1952 to 1959 where she completed seven years of education. She then joined Sacred Heart Senior Secondary School in Gulu for her four years ordinary level education. In 1966 Jane joined Makerere College School for a two year Advanced level certificate (HSC) that she completed in 1967. After the thirteen years of education, Jane attended a one-year secretarial course at Nkumba College of Commerce qualifying as a secretary. Jane worked for over 27 years in different organizations in Kampala as a secretary and earned a good income. By the time she was retrenched in 1999 she was at a level of principal secretary.

Jane met her 'husband' George whom she defined as quiet, difficult and very secretive at one of her work places in 1972. The couple cohabited together and were blessed with four children one boy and three girls. Although the couple worked for the same company for some time, Jane earned more money than George. Jane later joined another company leaving George behind. After cohabiting together for a number of years Jane requested George to formalise their marriage but he adamantly refused. For

over 20 years of cohabitation the couple lived in rented houses paid for by Jane's employer.

During the twenty years of cohabitation Jane advised George to save all his income to buy a plot of land and build a family home while she met all the domestic expenses and payment of children school fees. Jane's action to spend her income on domestic costs was an indication that she looked at herself as a homemaker and George as a home provider. As many authors have observed, women tend to identify themselves as homemakers and give less value to their work and their contribution to the home and regard their husbands as homeowners, breadwinners and decision makers.¹⁵ To her, culturally it is a husband's role to build a home for the family while the woman's role is to take care of the family in terms of food and school fees. If Jane advised George to meet the domestic expenses while she saved her money to buy a plot of land, this would be reversing her gender roles. Jane's expenditure pattern confirms what other studies have revealed that women tend to spend their money on domestic activities while men spend theirs on housing investments.¹⁶

Relieved of the domestic expenses, George bought a plot of land in Banda, registered it solely in his name, and constructed a home without Jane's knowledge. Jane thinks that George's action was due to lack of trust created by the cross-cultural marriage. This is reflected in Jane's real words 'Men are very secretive and some men tell things to their friends or to their sisters and their brothers but they consider you as an intruder in the family and to make it worse I am a Madi and he is a Muteso, so you can see two different tribes may be he did not trust me'.

Although Jane attributes George's secret behaviour to the intermarriage, his behaviour is more to do with a male patriarchic ideology where the dominant gender contract is male control of the home regardless of a woman's contribution. George's action not to include her name on the title deed implies that he did not want her to be part of the

¹⁵ Miraftab, 'Risks and Opportunities in Gender Gaps to Access Shelter, pp.143-160; Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, p.175; Larsson, 'Theoretical and Methodological Consideration', p.218; Musyoki, 'Perceptions on Gender and Access to Housing', p.276; Sayne, 'Ideology as Law: Is There Room for Differences in the Right to Housing', p.98.

¹⁶ Yngstrom, 'Women, Wives and Land Rights in Africa', p.24; Kalabamu, *Changing gender contracts in self-helping Housing Construction*, p.217.

family property in spite of her indirect financial contribution to the home project. He probably thought that if he informed Jane that he was about to buy a plot of land and construct a home, she would suggest her name to be included on the title deed since they agreed that she met domestic costs while he saved money for the house. To avoid Jane's involvement in the patriarchal family property, he preferred to keep the home project a secret. George regarded the home as a patriarchal family property where a wife had no role to play.

We can interpret George's action in terms of patriarchal ideology where men believe that a home belongs to the man. Jane only knew about the home when George fell ill and asked the family to shift to their own home in 1997. This implies that if George had not fallen ill, he would mostly likely not have suggested that the family moves in their own house.

Two months after the family had moved into their new home in Banda, George died intestate and Jane's in-laws accused her of murder. Foreseeing more problems ahead Jane requested George's employer not to give any document from George's office to anybody until she came back from the rural village. After the burial, George's clan chose a male heir to take care of the deceased family. They considered Jane's surviving brother in law as young and irresponsible. Jane's in-laws did not consider Jane's sister in-laws to manage their brother's estate either but instead made her stepbrother in-law the customary heir because he looked a responsible man. Jane's stepbrother in-law was supposed to look after the children and Jane.

In a meeting, the family agreed that Jane and her stepbrother in-law should administer the deceased estate. The family's decision for Jane to co-administer Timothy's estate could be attributed to the patriarchal belief that Timothy's property had to be protected by the clan through the heir (stepson). Hence the presence of the stepbrother in-law would deter Jane from taking the family property to her clan.

Immediately Jane settled down in Kampala her stepbrother asked for the title deed of the home on the pretext that the lawyers wanted it to process the Letters of Administration. At the time Jane's stepbrother in-law asked for the titled deed, she was still confused, and in grief.

Without suspecting her stepbrother in-law of ill intentions she gave him the title deed, only to realize later that he wanted to deprive her of the title deed. Since the family agreed that Jane co-administer George's estate with her stepbrother in-law she had to obtain Letters of Administration with her stepbrother in-law.¹⁷ Judging from her brother-in-law's dubious behaviour Jane later realized that co-administration of George's estate with him would in future cause her more problems. Although the Administrator General issued a Certificate of No Objection to Jane and her stepbrother in-law to enable them acquire Letters of Administration from the High Court, Jane withdrew her intention. As a result her in-laws lodged a court injunction.¹⁸ In addition, her in-laws demanded a share of George's death gratuity. When Jane refused, her in-laws threatened to evict her from the matrimonial home, but she resisted.

Since Jane needed Letters of Administration to access George's death gratuity from George's former employer to pay the children's school fees, she approached a lawyer friend who worked with the Federation of Women Lawyers for advice. The lawyer advised her to seek help from the Administrator General. When Jane reported the case to the Administrator General, she called for a family meeting to solve the conflict between Jane and her in-laws. In the meeting the Administrator General asked Jane's in-laws to remove the court injunction before any one could be allowed to administer the estate.

The Administrator General could neither allow Jane to administer Timothy's estate alone because she was not married under any legally recognized marriage, nor could she allow Jane's stepbrother in-law to administer George's estate because he would most likely mismanage the estate and even evict Jane. In the end there was no alternative apart from the Administrator taking over the administration of George's estate. Since the Administrator General was in control of George's estate; Jane did not have any legal authority to administer the estate.

¹⁷ Letters of Administration is the authority granted to the court to a person to administer an estate where a person dies without leaving a will, or where even though he leaves a will no person is named in it as executor or the named executor cannot act. See Nanyenya, p.10.

¹⁸ A court injunction is a legal action that stops anyone to administer a deceased person's estate.

The Administrator General then asked Jane's stepbrother in-law to take the title deed of the matrimonial home to her office for safe custody but he did not comply. It was only after the intervention of the police that he complied. Jane was given the number of the safe where the title deed was kept. Currently the title deed is at the Administrator General's office. The Administrator General then asked George's former employers to deposit the death gratuity into the Administrator General's account. Hence, Jane could only access the money to pay school fees for her children through the Administrator General.

Jane's story demonstrates how in practice a widow is unable to inherit the matrimonial home when a husband dies intestate when the title deed is registered solely in his name. Although legally a widow is allowed to remain in the matrimonial home if a husband dies intestate, a widow's user right of the matrimonial home is jeopardised if she is not legally married.

The main reason why Jane remained in the matrimonial home when she was not legally married is because of dependent children. Had it not been for her guardianship of children, Jane would most likely have no strong argument to remain in the matrimonial home. According to intestate succession law, the matrimonial home belongs to the legal heir who is the first-born son of the deceased and if the deceased had no children with a cohabiting wife, the case becomes tricky. Jane's story therefore highlights the issue of cohabiting as one of the ways in which a widow can be denied user rights of the home and the authority to administer her partner's estate.

9.2 Deprived of inheritance of the matrimonial home by the property being registered in the in-laws names: the story of 'Evelyn Kalungi'

Evelyn is a widow who was unable to inherit the matrimonial home upon the death of her husband even when her husband died before he acquired the title deed. While we would have expected Evelyn to register the matrimonial home solely in her names just as Namatovu in the previous chapter did, she could not do so. This is because the matrimonial home was built on the land that belonged to her in-laws. Evelyn would need her in-laws consent to transfer the matrimonial home into her name. Evelyn lives in two bed-roomed servants' quarters with her two daughters and a stepson, aged 12,

10 and 9. The house is iron roofed, with electricity, (Fig.26). She moved out of the matrimonial home (Fig.28) and rented it out to generate income to pay school fees for her children.

Figure 26: Evelyn's current accommodation in servant's quarters



Figure 27: The interior of Evelyn's two-roomed house



Evelyn, aged 30 years was born into a poor family in Mukono District. She had only six years of primary education due to lack of school fees. As a result she could not acquire any formal employment. Due to social problems in the rural village, Evelyn migrated to Kampala in search of any informal job. She rented a room in Kiwatule where she lived alone. She ran different kinds of businesses for a living and earned a reasonable income. It was at Kiwatule that she met Peter who was working with 'KK Car clearing company'.

Figure 28: Evelyn's main house



In 2000 Evelyn was married to Peter under customary law and they were blessed with two daughters. However, within marriage, Peter produced a boy child from an outside relationship. By the time Evelyn was married to Peter, Peter had acquired a plot of land from his father but had not transferred it into his name. The couple first constructed a small housing unit (Evelyn currently lives in this unit) where they lived before they constructed the main house. Evelyn spent part of her own income from her business on building materials for the main house while Peter met other construction expenses. The couple later moved from the servant's quarters to the main house.

In 2005, Peter abruptly fell ill and within two months he died, without leaving a Will. Immediately upon his death Evelyn's in-laws demanded the car keys on the pretext that they needed to use the car for the funeral preparations. After the funeral Evelyn was surprised to learn that her in-laws had sold off Peter's car purportedly to raise school fees for the children. Her in-laws in the end never paid the school fees. Judging

from her in-laws behaviour regarding Peter's car, Evelyn did not bother to ask her in-laws issues concerning the matrimonial home. She later learnt from the neighbours that her in-laws had transferred the title deed of the matrimonial home she contributed to into her children's names. Evelyn's in-laws quick action to register the home in their grandchildren's names was to deter Evelyn from claiming inheritance rights to the home. Evelyn's in-laws preferred to register the home in their grandchildren's names because the property would then remain in the male line.

To register the matrimonial home in Evelyn's name would be transferring the family property to Evelyn's line. Although Peter died intestate before he processed the title deed, Evelyn could not process the title deed in her name although she had an opportunity to do so. This is simply because the plot of land on which Peter built the matrimonial home was registered in Evelyn's father in-law's name and hence his family had control over the registration process. Evelyn could not process the title deed of the matrimonial home in her name because she needed the consent of her father in-law to sign the transfer forms in her favour and he would probably not give it.

In addition, before Peter died, his father had not given him an allocation letter for the plot of land on which he built the matrimonial home, as required by the Kiganda custom. According to Evelyn, in Kiganda custom when a parent gives a plot of land to his child, he or she is supposed to put the allocation in writing. This agreement enables the child to register the land in his or her name in cases where the land is untitled. In Peter's case, there was no such agreement and therefore when he died the land automatically reverted to Evelyn's father in-law who then registered the land in their grandchildren's names.

Had there been an agreement between Peter and his father, Evelyn believes she would have used the agreement to process the title deed in her name. However, she was quick to add that she would most likely have met resistance from her father in-law. Evelyn regrets having spent her money on a home that does not belong to her.

Since the plot of land on which the matrimonial home is built is registered in the children's names, the matrimonial home legally belongs to the children and hence

Evelyn can only exercise user rights. When Evelyn's husband died in December 2005, she could not longer sustain the family because of small income. She then moved out of the matrimonial home and rented it out to generate income to pay school fees for her children. She however consoles herself that her children will benefit from her contribution. She has for example roofed one of the houses her husband left uncompleted. Although she has continued to put up new structures on her husband's land, she plans to acquire her own land where she can construct her own home because to her this is not her home.

In summary, Evelyn was unable to exercise inheritance rights over the matrimonial home she contributed to, even in a situation where her husband died before he acquired the title deed, because the plot of land on which the matrimonial home was built was registered in her in-laws' names. Because of her in-laws protective and possessive manner over their son's estate Evelyn could not even think of processing the title deed in her favour. Her in-laws preferred to transfer ownership rights to their grandchildren to ensure that the property remained in the male line.

The Registration of Titles Act does not differentiate between the land and house, Evelyn's contribution to the house cannot be recognized and therefore, legally the matrimonial home belongs to her children. Evelyn's story demonstrates that a widow is unable to inherit her husband's home even in situations where her husband dies before he acquired the title deed. This happens when the land on which the home is built belongs to the woman's in-laws.

9.3 Deprived of inheritance of the matrimonial home by the property being registered in the in-laws names: The life story of 'Kikonde Beatrice'

Kikonde is another widow who was unable to inherit the matrimonial home because the plot on which her husband built the matrimonial home was registered in her father in-law's name. Kikonde is 45 years of age. She lives in a three bed roomed house in Kiwatule with six of her children and three stepchildren. The house is iron roofed, with water and electricity (Fig.29).

thereafter Letters of Administration from the High Court. To obtain a Certificate of No objection and thereafter Letters of Administration Kikonde needed a family letter from her in-laws mandating her to administer her husband's estate. Kikonde's in-laws refused to give her the family letter. Kikonde instead used her marriage certificate to obtain a Certificate of No Objection from the Administrator General that she later used to acquire Letters of Administration. Her marriage certificate therefore enabled her to acquire Letters of Administration without which her in-laws would most likely have applied for joint administration of Bukenya's estate judging from their previous behaviour. Kikonde used Bukenya's death gratuity to construct rooms for rent. Although Kikonde benefited from Bukenya's death gratuity, and could have used the benefits to acquire a home of her own, she did not have the vision to do so. Investing her only income in constructing rooms for rent on the land registered in her in-laws names only put Kikonde in a more vulnerable situation.

Although Bukenya died before he acquired the title deed of the matrimonial home, Kikonde could not process the title deed of the matrimonial home in her name because the land was registered in her father in-law's name. This is because she needed her father in-law's consent to sign the transfer forms in her favour. Kikonde's father in-law would most likely prefer his son's property to either revert back to him or to be transferred to his grandchildren's names. This way the property would remain in the male line. Transferring home ownership to Kikonde would mean removing the property from the male line. By taking all movable property, Kikonde's in-laws demonstrated that she would face resistance if she were to transfer the home in her name. Legally the home belongs to Kikonde's father in-law because it is built on his land. Had the land on which Bukenya built the home been registered in another person's name, Kikonde would most likely have had the opportunity to process the title deed in her name because all she needed was money to pay for the plot of land on which the matrimonial home was built. Although Bukenya died intestate this would not deter Kikonde from processing the title deed as long as she acquired recommendation letter from the local leaders and she had money to pay to the landowner the current price of the land. With the assistance of the local officials the landowner would then sign the transfer forms in her name as demonstrated in Namatovu's life story in the previous chapter.

Figure 29: Widow Kikonde's matrimonial home



Born into a poor family in Wanviri rural village in Mukono, Kikonde only had six years of education. Because of her lack of education Kikonde was unable to acquire a job to earn an income of her own. Kikonde was legally married to Bukenya, a civil servant, in 1990. After the wedding, Kikonde lived in her in-law's house in Kiwatule. The couple was blessed with six children but during marriage her husband produced three other children outside wedlock. Later Kikonde's father in-law allocated a plot of land to Bukenya on which he built a matrimonial home for the family.

In 1997 Bukenya died intestate before he acquired the title deed of the matrimonial home. After the burial Kikonde's in-laws took away all her husband's movable property. However, they did not evict Kikonde from the home probably because it was built on the in-law's land and therefore they knew Kikonde could not claim any inheritance rights. Since Kikonde's husband was a civil servant, Kikonde was entitled to his death gratuity as the legal wife. For Kikonde to obtain her husband's death gratuity, she needed a Certificate of No Objection from the Administrator General and

Because Registration of Titles Act does not differentiate between the owner of the land and owner of the home, Kikonde cannot claim inheritance rights over the matrimonial home without claiming inheritance rights over the land. Kikonde therefore remains a user of the matrimonial home under the circumstances even though other circumstances would have guaranteed her inheritance rights. Kikonde's story demonstrates that a widow would most likely find it impossible to inherit a home if it is built on a clan's land. In such cases, the home reverts to the male line upon the death of a husband. Under such circumstances, a widow is only guaranteed user rights of the home. A widow's user rights may even be at stake if the matrimonial home is built on clan land, she is not legally married or she does not have children. Kikonde's user rights would most likely have been at stake if she had not had children, even though she was legally married. The clan would most likely have denied her the user rights of the home

In summary, although Kikonde would normally have had the opportunity to process the title deed of the home in her name upon the death of her husband, just as Namatovu did in the previous story in chapter eight, she could not do so under the circumstances because the land on which her husband built the matrimonial home was registered in her father-in-law's name. Obviously her in-laws would not allow her to register the home in her name judging from their behaviour. In both Evelyn and Kikonde's cases, the circumstances were hostile and as a result they could not exercise inheritance rights to their matrimonial homes. Therefore, in cases where husbands die before they acquired title deeds to the plots of land on which they built the matrimonial home; it is not automatic that a widow would be able to process the title deeds in her name. In cases where the land on which a husband built the matrimonial home is registered in the in-laws names and the in-laws are conservative and possessive of their sons' property, the widow is unable to transfer the plot of land on which the matrimonial home is built to her name, due to patriarchal beliefs that property should remain in the male line.

9.3 Deprived of Inheritance Rights by the Husband's Failure to Bequeath the Matrimonial Home to the Wife as Sole Beneficiary and Sole Executor: The Life Story of 'Jennifer Kalungi'

Jennifer is a widow who was unable to inherit the matrimonial home even when her husband died testate. Jennifer was unable to inherit the matrimonial home because her husband did not name her as the sole executor and sole beneficiary. Jennifer is 54 years of age. She lives in Kiwatule in her own three bed-roomed home with six of her children. The house is iron roofed, with water and electricity (Fig.29).

Figure 30: Jennifer's house, registered solely in her name



Born in Luwero 50 miles from Kampala, Jennifer grew up in a poor family in Katikamu. Jennifer's childhood and adulthood was a life of getting pregnant with different men, three of whom were married. As a result she had four children each with a different father and two from the man who finally married her. Jennifer studied at Katikamu senior secondary where she completed seven years of education until 1966 when she dropped out of school due to pregnancy. After her first pregnancy

Jennifer lived with her sister in Gombe and with the help of her brother in-law she upgraded to an eighth year of study. She later joined Ishaka Hospital where she undertook a first aid nursing course and qualified as a nurse aid. In 1970s she went to Kendu in Kenya and completed a three-year nursing course and qualified as nurse. She then returned to Uganda and worked in Gombe Hospital.

At Gombe she became pregnant again with her second child whose father was a married man. Jennifer later left Gombe for Kampala and worked at a private clinic for one year.

In 1974 Jennifer undertook a course in midwifery at Mengo Hospital and completed in 1975. In the mean time she became pregnant with her third child with a different father. She then acquired a job with the Muslim Supreme Council as a nurse. Her employer gave her a free house on South Street in Kampala city centre. She then left the father of her third child and moved to the house given by the employer together with her child where she stayed for five years.

In 1980s, Jennifer met her fourth man Jamaine, who was a civil servant and a divorcee with three children. In 1981 Jennifer was legally married to Jamaine. She then stopped working at the Moslem Supreme Council and shifted to Kiwatule. In their nine years of marriage, the couple lived in Jaimane's home whose title deed was registered solely in his name (Fig.30)

Figure 31: Jennifer's original matrimonial home, registered solely in her husband's name



The couple was blessed with two children one boy and one girl now aged 19 and 24 years. Having lost her job at the Moslem Supreme Council because of marriage, Jennifer used her qualification as a mid-wife to start a clinic at the matrimonial home to generate income. Had Jennifer not had any qualification, she would most likely have depended on Jamaine for income. Using the same qualification as a midwife she jointly opened a Pharmacy and a clinic in Ntinda with Jamaine.¹⁹ Although Jamaine invested more money in the Pharmacy and the clinic than Jennifer, Jennifer's medical experience was an asset to the business.

In 1990 Jamaine died testate. In his Will Jamaine named Jennifer one of the beneficiaries of the home. She was allowed to live in the matrimonial home with her two children until she died or remarried. Her husband also named Jennifer one of the

¹⁹ In Uganda, it is only midwives and Doctors who are allowed to open up clinics and not any other medical practitioner.

executors together with two male relatives. While Jamaine had the right to freely bequeath the matrimonial home to Jennifer as a sole beneficiary and sole executor, mostly likely due to the patriarchal ideology, he preferred to include two other executors. Jamaine's action to include two male executors in the Will is a clear indication that he wanted his property to remain in the male line. Most likely he was convinced that the two male executors would safeguard the family property.

Had Jamaine made Jennifer the sole executor and sole beneficiary, she would be at liberty to transfer the home into her name. Therefore, to make Jennifer a sole executor and sole beneficiary would mean losing the Patriarchal family property to her and her clan. Hence Jamaine included the two male executors as custodians of the family property. After the funeral rites, Jennifer and the other three executors transferred the title deed from Jamaine's name to their names.

The existence of the two male executors on the title deed limited Jennifer's inheritance rights. As a businesswoman, Jennifer could not use the title deed as collateral to borrow money from any financial institution. For Jennifer to use the title deed, she needed consent from the two male executors to acquire a loan from any financial institution. The two male executors' concern would most likely be to protect the family property. The two male executors would neither transfer the home into Jennifer's name, nor allow Jennifer to risk the patriarchal family property and use the title deed as collateral for a loan. For her to acquire a loan, she needed a title deed registered solely in her own name. Hence, though Jamaine left a valid Will and named Jennifer one of the beneficiaries of the home in terms of user rights and one of the executors, Jennifer did not have inheritance rights. She could only exercise user rights to the home.

In 1995, Jennifer - 'a woman of loans' as she describes herself, bought her own plot of land and registered it solely in her name. With a title deed registered solely in her name, Jennifer was able to acquire a loan from a financial institution. With the loan from the bank and the income from the Pharmacy and the clinic Jennifer built her own house within two years. She converted the matrimonial home into a health centre and shifted to her own house. Jennifer is proud to have a home of her own, as she puts it:

‘I left that house and built this house I am in now. This house I am in is my own house; it’s a woman’s house’ (Fig.31)

In conclusion, although Jennifer’s husband died testate, the will did not guarantee Jennifer outright inheritance rights. Jennifer was unable to inherit the matrimonial home because her husband didn’t make her the sole executor and sole beneficiary.

Jennifer’s life story demonstrates that the way a husband writes the will determines the widow’s inheritance rights to the home. Hence husbands can deny their wives inheritance rights if they do not make their wives sole beneficiaries and sole executors. Though Jennifer’s husband had the liberty to bequeath the matrimonial home to his wife as a sole beneficiary and sole executor he preferred the home to remain in the male line by including two of his male relatives as executors in the Will to protect the family property. There is good evidence to show conservatism of patriarchal culture in the way some husbands write Wills. In this way, Jennifer ended up with user rights but was unable to exercise her inheritance rights.

9.4 Deprived of inheritance rights by the property being bequeathed to a son: the Story of ‘Aida Atim’

Aida is a widow who was unable to inherit the matrimonial home she contributed to even when her husband left a valid will. One way in which her husband denied her inheritance rights of the home was to bequeath the home to his youngest son. Aida is 50 years old. She now lives in Banda with her two children and her relatives.

The housed is four bed-roomed, iron roofed (Fig.31).

Figure 32: Aida's Matrimonial home



Aida was born in Anaka village, Gulu District in 1954. Aida had 11 years of education. She had seven years of primary education at Anaka Primary from 1961 up to 1969 before joining City High for four years of secondary school education from 1971 to 1974. In 1974 Aida became pregnant. As a result she could not continue with studies. In the same year she was married to Okello, a self-employed man who owned a printing business. The couple was blessed with two children in 1975 and 1979.

In 1975 Aida joined Agricultural Enterprises, a subsidiary company of Uganda Co-operation where she worked until 1989 before she was laid off. She stayed at home for one year until March 1991 before she joined National Water and Sewerage co-operation as a copy typist. During their marriage Okello bought a plot of land in Banda in 1991 and registered it solely in his name. In 1999 Aida resigned her job at National Water and Sewerage co-operation. She spent all her money she obtained as a pension on the matrimonial home. Although her name is not on the title deed, she says

‘We’ bought the land together, ‘We built together’. This reflects a false belief that she co-owns the home.

In 2002, Okello died testate. In his Will, Okello bequeathed the matrimonial home to his youngest son. According to Aida, in Acholi culture, property is usually bequeathed to the last male child. This brings out a contradiction between custom and law. Whereas the intestate succession law gives the matrimonial home to the eldest son as the heir, customary law in some communities does the opposite.

Although Okello had the liberty to bequeath the matrimonial home to his wife Aida he preferred to bequeath the home to his youngest son. As a result the matrimonial home legally belongs to the son and Aida ended up with only user rights. In her story Aida tended to use the term ‘We’ to include herself in the ownership when in actual sense she is not part of the ownership. For example Aida uses the term ‘We’ built the house together’, ‘It is our house’, indicating that there is a misconception on her part about what ownership really means. The ‘We’ statement makes her feel included even when in actual fact she was excluded from ownership during marriage and at widowhood. When her son grows and marries, Aida will most likely be at his mercy with regard to accommodation.

After her husband’s burial in Kitgum District, Aida’s in-laws did not make any attempt to evict her from the matrimonial home or take any property from her. Her in-laws behaviour could be attributed to the fact that their son bequeathed the home to their grandson. Therefore, Aida’s in-laws could not evict her because their son acted ‘just right’ according to the Acholi culture to bequeath the matrimonial home to his last-born son, not his wife. Thus the property remains in the male line in spite of the fact that Aida contributed to the construction of the matrimonial home.

Aidah’s life story demonstrates how men act according to the patriarchal ideology in which there is a belief that the home belongs to the male line. The act to bequeath the matrimonial home to the last-born child is an attribute of patriarchal ideology where husbands believe that wives do not own property and therefore all the property belongs to the clan. The story also demonstrates that husbands do not recognize women’s financial contribution to the home project.

9.5 Deprived of inheritance rights of the matrimonial home due to lack of children of her own and other children: the life story of 'Nabukera'

Nabukera is a widow who was unable to inherit the matrimonial home even when her husband left behind a valid will in which he bequeathed the matrimonial home to her as sole executor and sole beneficiary and even when her husband died before he acquired the title deed of the home. Nabukera was unable to inherit the matrimonial home because she had no children of her own with her late husband and her husband left behind other children from previous relationships. As a result, her stepchildren would not allow her to transfer the land on which the matrimonial home was built into her sole name.

Nabukera is over 50 years old. She lives in a three bed roomed house with her grandchildren, nephew, nieces and her husband's relatives. The house is iron roofed with water and electricity (Fig.32).

among his five children and remained with only the plot on which he had built the matrimonial home.

In 1990 Mukwasi fell ill and died leaving a valid Will. In the will, Mukwasi bequeathed the matrimonial home solely to Nabukera since he had already given each child a share of the land. In the Will Nabukera's husband also advised his relatives not to evict Nabukera from the home. In spite of the Will, Nabukera's in-laws took all the property from the home, including her husband's clothes. She could only look on as they looted the property. The behaviour of Nabukera's in-laws was already a sign that Nabukera could not inherit the home. Nabukera was in a more unfortunate situation because she had no convincing reason to fight for her husband's property because she did not have children. Later, the original owner of the land on which the matrimonial home was built died. His children threatened to evict all the squatters on the land, locally known as Bibanja²⁰ holders. One of Nabukera's stepsons bought the land, which in Buganda is termed as '*kwegula*', literally meaning re-buying the land in the hope of acquiring the title deed. He paid for the land in the hope that his brothers would repay him in future.

Although Nabukera's stepson informed Nabukera of his plan to acquire the title deed in the names of the three brothers excluding the girls, she could not stop him. She was reluctant to assert herself to be included on the title deed due to lack of knowledge about her inheritance rights and her social insecurity due to lack of children. Secondly, Nabukera had no income to pay for the plot of land on which the matrimonial home was built. Even if she had the money, most likely her stepsons would not have allowed her to register the plot of land on which the matrimonial home was built solely in her name. Though Nabukera had the legal right to register the land in her name as the legal wife she was helpless under the circumstances. Since the land on which the matrimonial home is registered in Nabukera's stepsons' names, the matrimonial home legally belongs to them. As a result Nabukera is at the mercy of her stepsons. Nabukera's user rights of the home are in jeopardy. One of her stepsons,

²⁰ Bibanja is plural for Kibanja; Kibanja is a Plot of land managed by a de facto owner, while it belongs to a de jure landowner. Often, though not always, it applies to tenants on mailo land. See, Nabwire, *The Impact of Health User Fees on Women's role in Household Health Care Decision-Making in Mukono District, Uganda*, p.213.

Figure 33: Nabukera's home



Born in Luwero District into a family of four, Nabukera grew up with only her mother because her father died when she was young. Her mother was a farmer and grew cotton to raise income. Nabukera had only eight years of education due to lack of school fees. Although she attempted to attend a course in nursing her mother discouraged her because of the cultural ideological belief that nurses never get married. Instead she encouraged her to get married. Hence she did not complete her nursing course but was married instead. Nabukera was married to Philip in the 1960s. The couple was blessed with two sons. Because of Philip's reckless behaviour, spending nights outside the home, Nabukera's mother advised her to divorce him.

In 1970 Nabukera had a second legal marriage to Mukwasi, a parish chief. Mukwasi had a home on untitled land (kibanja). The original owner of land had allowed him to build a home and use the land on the understanding that he would collect taxes from the other squatters as a parish chief. In her twenty years of marriage, Nabukera did not have any child due to miscarriages. Before Mukwasi died, he divided up the land

the heir, asked her to look for another house to live in. Nabukera's hope is in one of the stepsons who processed the title deed because he seems sympathetic to her circumstances. He advised her not to accept the heir's demands to move out of the home because once she allowed the heir to build a house on the land he would bring his family to live there and then she would be evicted.

Nabukera's story demonstrates that having no children of one's own when the husband had other children deprives widow inheritance rights of the home. Although Nabukera's husband died before he acquired the title deed, and the land on which the matrimonial home was untitled and belonged to an independent landowner, Nabukera was unable to register the home in her name as Namatovu in the previous chapter did. This is because firstly she did not have children of her own through which she could have inserted her name on the title deed; secondly there were other children of her husband. Even if there were no other children, most probably Nabukera's in-laws would have contested the Will judging from their behaviour.

Nabukera's life story demonstrates that even when a spouse bequeaths a matrimonial home to his wife through a Will, implementation of the will is uncertain. The implementation of what is written in the Will becomes more blurred when the widow has no children and the deceased had other children from previous relationships. Nabukera's story demonstrates that when a widow has no children and her deceased husband had other children she is not guaranteed of inheritance rights even when she is legally married, and even when her husband bequeaths the matrimonial home to her and even when the husband died before he acquired the title deed and the land belonged to an independent land owner. This is notwithstanding that the law protects her. The issue is how statutory interfaces with what happens in practice.

While statutory laws allows an individual to make a Will and bequeath the property the way he wishes, at the same time statutory law recognises children born out of wedlock.

9.6 Discussion of findings

This chapter presented the ways in which widows were deprived of inheritance rights even when their husbands died testate or died before they acquired title deeds of the homes. In most patriarchal societies in developing countries widows do not inherit the matrimonial home. This is because properties are passed on from the father to the son and where there is no son, another male relative inherits the home.²¹ In some cases the urban home belongs to the relatives of the deceased but not the wife or the children.²² Inheritance matters are engulfed with social-cultural dynamics to an extent that a wife's contribution to the home project is not recognised.²³ This is also supported by the facts that in many cases husbands do not leave behind valid Wills and the few that make Wills rarely name their wives as sole beneficiaries and sole executors.²⁴ This implies that one of the ways in which a husband could entitle his wife full inheritance rights of the matrimonial home is blocked. This again reflects that husbands prefer to have the property remain in the male line. To make matters worse, intestate statutory law does not guarantee a widow inheritance rights apart from user rights hence echoing customary law sentiments.²⁵ By statutory law the matrimonial home belongs

²¹ Deere, & Doss, 'The Gender Asset Gap: What do we know and why does it matter?' pp.1-50; Kanabahita, 'Report on Intestate Succession'; Asiimwe, 'One Step Forward, Two Steps Back: The Women's Movement and Law Reform; Muthoni -Wanyeki, (ed.) *Women and Land in Africa: Culture, Religion, and Realizing Women's Rights*, Zed Zed Books, Ltd, London, 2003; Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, pp.257-258; Tusingwire, & Tumushabe, 'Women and Control of Housing in Kampala, Uganda: Characteristics and Problems of Women Household Heads', p.125; Owen, *A World of Widows*, p.198; Schlyter, A., 'Youth, Gender and Living Conditions in Lusaka' in *Changing Gender Relations in Southern Africa, Issues of Urban Life*. In Matseliso Mapetla, Larsson, A., Schlyter, A., (eds.) Institute of Southern African Studies, National University of Lesotho, Lesotho, 1998, pp.286- 308; Larsson, A., 'Housing as a Strategy for Urban-Rural Linkages in Botswana' in *Changing Gender Relations in Southern Africa, Issues of Urban Life*, pp.129-153; Guyer, 'Women and the State in Africa: Marriage Law, Inheritance, and Resettlement', p.2.

²² Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231.

²³ Oruwari, 'The Invisible Contribution of Married women in Housing Finance, p.121.

²⁴ Okumu-Wengi, 'Women and The Law of Inheritance'; Okumu-Wengi, (ed.), *The law of succession in Uganda: women, inheritance laws, and practices: essays and cases*.

²⁵ Okumu-Wengi, 'Women and The Law of Inheritance'; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts', pp.212-231; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property'.

to the legal heir who is the eldest son of the deceased. Hence, intestate Succession law regard a widow as a tenant in a home she could directly or indirectly contributed to.²⁶ The discussion following this introduces focuses the ways in which widows are deprived of homeownership through inheritance in comparison with findings in other studies.

9.6.1 The role of the state in inheritance matters

The state is identified as one the inhibitors of women's rights in inheritance through its legislation.²⁷ These studies reveal that the Succession Act regards a widow as a tenant in a home that she directly or indirectly contributed to. Findings in this chapter also reveal that state institutions through the succession law deny a widow to register the matrimonial home in her name. Intestate Succession laws seem to assume that the matrimonial home belongs to the husband even in situations where the widow could have financially contributed to the home project. The life story of Chandiru demonstrates that state institutions do not assist the widow to transfer the matrimonial home into her name in situations where the title deed of the matrimonial home was already registered in a husband's name. In a case where a husband died intestate and the home was registered solely in his name, the widow is required by law to obtain Letters of Administration to administer her husband's estate. The Letters of Administration however do not guarantee her inheritance rights, but rather only custodian rights. The matrimonial home belongs to the heir but the widow is guaranteed user rights of the home until she dies or remarries. In addition, intestate succession law provides for deceased persons' estates to be jointly administered which in many cases puts the widow in a difficult situation.

²⁶ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property', p.201.

²⁷ Kanabahita, 'Report on Intestate Succession'; Tamale, 'Riding the Paper Tiger: Gender and the Family'; Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property'; Larsson, & Schlyter, 'Changing Gender Contracts and Housing Conflicts'.

9.6.2 Marital status of a widow

Furthermore, in situations where a widow was not legally married under any recognized marriage, her user rights of the matrimonial home are uncertain.²⁸ Even if a widow had contributed to the home project but was a cohabiter, all her contributions are not recognized. The importance of the marital status of the widow was set in the High Court ruling in 1988 in *Erinesti Babumba vs. Nakasi Kizito* in Civil Suit No. 173. At that time, Judge Okello held that ‘the widow or widower takes precedence over all persons for Letters of Administration. But since there was no evidence to prove that the caveator (widow) was married to the deceased in any way, she would not be given Letters of Administration’.²⁹ This Court’s precedence implies that a widow not married under any legally accepted marriage does not have any legal right over her purportedly husband’s estate.

9.6.3 Name on the title deed

Not having one’s name on the title deed of the matrimonial home before the death of a husband is one of the ways in which a widow is denied ownership through inheritance.³⁰ In cases where a husband dies intestate and the title deed is registered solely in his name, the widow finds it difficult to inherit the matrimonial home. As a result she is not only subjected to the unfair patriarchal intestate laws but also to in-laws harassment. In such cases in-laws can easily evict the widow from the home and take all household property. The life story of Chandiru demonstrate that in a case where a married woman does not have her name on the title deed of the home before her husband dies, she is at the mercy of her in-laws regardless of her indirect contribution to the home project.

²⁸ Kiapi, Family Law [Domestic Relations] Practical Manual Series, p.47.

²⁹ The above case is cited in Kiapi, Family Law [Domestic Relations] Practical Manual Series, p.47.

³⁰ Dengu-Zvogbo, et.al., *Inheritance in Zimbabwe: Law, Customs and Practice*, p.125.

9.6.4 Other children and inheritance rights

Children of husbands from previous relationships interfere in inheritance matters.³¹ Findings in other studies reveal that in cases where there were children of the deceased from a previous marriage, it was difficult for a widow to inherit the matrimonial home.³² In such cases the eldest son of the deceased by his previous marriage not only inherited the home but also went ahead to register it in his name. As a result, the deceased's children of the previous marriage evicted the widow from the home. Hence in cases where there are other children the widow's right to the matrimonial home is not guaranteed. The findings in this chapter concur with earlier findings.

The findings in this study reveal that a widow was unable to register the home in her own name even when her husband named her as sole beneficiary of the home because the deceased had other children from a previous marriage. As a result the children registered the land in their names leaving out their stepmother's name. Succession law recognizes all the children of the deceased regardless of whether they were born in wedlock or outside wedlock.³³ The state institution cannot deny other children inheritance rights because it recognizes customary marriage that by its very nature is polygamous. This again points to the issue of legal pluralism whereby customary law thrives side by side with statutory law.³⁴ Interview with the Administrator General and observation at Administrator General's office reveal the complexity of cases where there are children from different mothers. At one of the visits to the Administrator General's office this researcher observed children fight each other. She later learnt that the case involved children of different mothers.

An interview with the Administrator General also revealed that cases where there are polygamous families are the most difficult to handle. In cases where there is only one

³¹ Dengu-Zvogbo, et.al. *Inheritance in Zimbabwe: Law, Customs and Practice*, pp.88-89.

³² Dengu-Zvogbo, et.al. *Inheritance in Zimbabwe: Law, Customs and Practice*.

³³ Okumu-Wengi, (ed.), *The law of succession in Uganda: women, inheritance laws, and practices: essays and cases*, p.43-44; Rukimirana, & Bateson., *Laws of the Republic of Uganda*, p.3806, Succession Act, section 27(1).

³⁴ Munalula, 'Choice of Law: Theoretical Perspectives on Urbanization and Women's Rights to Property'.

matrimonial home in an urban area, families are advised to sell the home and divide the proceeds among all the children. The dynamics of inheritance cases regarding children from polygamous families are reflected in case laws of Christine Male Vs. Sylifiya Mary Namanda in 1982³⁵; Ruth Nsubuga and Peter Nsubuga in High Court Cause Suit (HCCS) No.1081 in 1988 and Lucy Monica Akulo vs. Michael Alias Kilega in 1990 in Administration Cause No.10. In the first case (Christine Male), the deceased died intestate leaving 12 children by different mothers.

One of the mothers contested the grant of Letters of Administration to the legal widow on the ground that the deceased was able to build a matrimonial home because she gave him a loan and therefore she was entitled to live in it. In this case Justice Kato ruled that the matter of the matrimonial home is covered under section 25 and 28 inclusive and schedule 2 of the Succession Act where by the matrimonial home belongs to the first-born child of the deceased. In the second case, (Ruth Nsubuga) the deceased died testate leaving behind children of different mothers. But he named his wife by the second marriage as the lawful executor and trustee of the Will. But the children of the deceased by his first marriage challenged the validity of the Will. In this case the Judge Tsekooko ruled in favour of the widow by the second marriage. Although the researcher failed to obtain the copy of the said Will to ascertain the contents, this case points to interference of children of the deceased from previous relationships in inheritance matters and how this impacts on a widow's right to inheritance. In the third case (Lucy Akulo) the widow was customarily married to the deceased. The matter of contestation was that since the widow was a young lady, she was likely to remarry and more so she had no love for other children left by the deceased and therefore she was not likely to administer the estate of the deceased for the best interest of those other children.

In this case Judge Okello ruled that 'the widow's youthfulness alone is not good enough to justify her exclusion and therefore the ground was hollow, suspicious and suggests a misconception of the meaning and purpose of grant of Letters of Administration. Apart from those assertions, there was no proof of ill treatment of the

³⁵ High Court Bulletin 140, 1882. Also cited in Okumu-Wengi, (ed.), *The law of succession in Uganda: women, inheritance laws, and practices: essays and cases*, p.88 and Kiapi, Family Law [Domestic Relations] Practical Manual Series, p.49.

minor (children) of the deceased and/ or those other children by the widow. Administration merely empowers the grantee to collect all the properties of the deceased together, and to pay all his debts and distribute the balance to those who are entitled to a share of the estate according to the Law of Succession. This provides a good protection to the interests of those who are entitled to a share of the estate against dishonest grantees of Letters of Administration'

9.6.5 Lack of children and inheritance

Lack of children is as one of the ways in which a widow can be denied inheritance rights especially in situations where her name is not on the title deed.³⁶ In cases where a widow's name was on the title deed of the home before the death of her husband, the in-laws fail to evict her apart from the psychological torture they inflict on her.³⁷ In such a situation the issue of inheriting the house, which was already legally hers, does not arise. The findings in this chapter reveal that not only was a widow's right to inherit the matrimonial home hindered but also her user rights of the home were at stake. This is because the deceased did not have children with the deceased to protect her.

9.6.6 Patriarchal cultural ideologies

Widows are dispossessed of the home upon the death of their husbands due to patriarchal beliefs that a home belongs to the clan.³⁸ Findings in this study fully concur with findings in earlier studies on the impact of patriarchal cultural beliefs. In cases where in-laws have an interest in their son's property, a widow is unable to register the matrimonial home in her names even in situations where the deceased died before he acquired the title deed.

³⁶ White, et.al. (eds.), *Dispossessing the Widow: Gender Based Violence in Malawi*, p.56; Kwesiga, *Women's Access to Higher Education in Africa*; Narayan, et.al., *Voices of the Poor: Can anyone hear us?* .

³⁷ Dengu-Zvogbo, et.al. *Inheritance in Zimbabwe: Law, Customs and Practice*, Women and Law. p.125.

³⁸ White, et.al., (eds.), *Dispossessing the Widow: Gender Based Violence in Malawi*; Owen, *A World of Widows*, p.55; Narayan, et.al., *Voices of the Poor: Can anyone hear us?*, p.255; Dengu-Zvogbo et.al., *Inheritance in Zimbabwe: Law, Customs and Practice*, pp.120-121.

Similarly, in cases where a husband dies intestate the widow finds it difficult to register the matrimonial home in her names if the plot of land on which the matrimonial home is built registered in her in-laws name, The life stories of Evelyn and Ms. Kikonde demonstrate that in-laws can be stumbling blocks to a widow's inheritance rights especially where the land on which the matrimonial home is built is registered in their names. This is because of the patriarchal belief that property should remain in the male family.

9.6.7 Not naming a wife as sole executor and sole beneficiary

It can be argued that the way husbands write Wills determines a widow's inheritance rights. The findings in this chapter also concur with findings in other studies on the importance of making a widow as a sole executor and sole beneficiary.³⁹ Other studies reveal in a case where a husband not only named the widow as sole executor and sole beneficiary but also went ahead to transfer the matrimonial home into the wife's name before he died, the widow was able to acquire the matrimonial home.⁴⁰ Although in this case the in-laws psychologically tortured the widow, they could not evict her from the home.

The findings in this chapter reveal that in a case where a husband did not name the wife as a sole executor and sole beneficiary and the title deed was registered solely in his name, she was unable to transfer the title deed into her name. The life story of Jennifer Kalungi demonstrate that she was unable to inherit the matrimonial home because she was not the sole beneficiary or sole executor. She shared the role of an executor with others who prevented her from using the title deed to acquire a loan. In this case the widow was unable to use the title deed to borrow money from any financial institution because she needed consent of other executors. The findings in this chapter also reveal that a widow can be denied inheritance rights of the home even when she financially contributed to the home project in a situation where the husband bequeaths the home to his son. In such a situation the widow is at the mercy of her son.

³⁹ Dengu-Zvogbo, et.al. *Inheritance in Zimbabwe: Law, Customs and Practice*, p.125.

⁴⁰ Dengu-Zvogbo, et.al. *Inheritance in Zimbabwe: Law, Customs and Practice*, p.125.

The life stories demonstrate that there is a dominant gendered inheritance contract whereby married women do not inherit the matrimonial home upon the death of their husbands. This is mainly because the matrimonial homes are usually registered solely in the husbands' names. Even in a situation where a widow could register the matrimonial home in her name if her husband died before he acquired the title deed, she finds it difficult if the matrimonial home is built on her in-laws land. The presence of other children also impacts on the widow's right to inheritance. In such cases, even if the husband bequeathed the matrimonial home to the widow, the other children would contest the Will. Even though inheritance laws allow husbands to bequeath the matrimonial home to their wives, many husbands die intestate. Under intestate succession law a widow is not legally allowed to inherit the matrimonial home but can only occupy it until she remarries or dies.

The above stories demonstrate different elements of the inheritance gender contract. These different elements are reflected in the different circumstances in which widows are denied inheritance rights of the matrimonial home as mentioned below.

9.7 Elements of inheritance gender contract

9.7.1 Where a husband leaves his wife the home in his Will but does not make her the sole executor and sole beneficiary

The life stories show that one way in which a husband deprives his wife of inheritance rights is when he bequeaths the home to her but does not make her as sole executor and sole beneficiary. In this case the widow needs consent from other executors before she can transfer her husband's home into her own name. It can be argued that the few men who make Wills ensure that property remains in the male line. Therefore, a widow's right to inherit the matrimonial home through a Will depends on how the husband writes the Will.

9.7.2: Where the land on which the matrimonial home is built belongs to the clan

One of the ways in which married women are unable to inherit the matrimonial home is where the matrimonial home is built on clan land. This is because the widow needs the in-laws consent to transfer the title deed into her name. Upon the death of her husband the in-laws prefer to transfer the home into children's names due to the cultural ideological belief that a home belongs to the husband and his clan.⁴¹

9.7.3: Where a married woman had no children with her husband and the husband left behind other children

One of the ways in which a widow could easily be deprived of inheritance rights is where she has no children but her deceased husband had children by other women. It can be argued that polygamous marriages have an impact on a widow's right to inheritance. It is noted that in many polygamous marriages, conflicts arise among widows and their children over the property especially when a man dies intestate and leaves one home in an urban area.⁴² Even in situations where a husband bequeaths the home solely to his wife, she finds it difficult to exercise her inheritance rights if her husband had other children from other relationships. In many cases the children are likely to contest the Will.

9.8 Relating the gender system and contract theory to inheritance gender contract

9.8.1 Interpersonal level

Focusing on the dominant gender contract in inheritance at the interpersonal level, we observe that in all their actions husbands prefer to be in a dominating position. In marriage they prefer to register the home solely in their names. At death, it is still difficult to know why most men prefer to die intestate. As a result, the matrimonial

⁴¹ White, et.al, (eds.), *Dispossessing the Widow: Gender Based Violence*; Casimiro, et.al., *Women and Law*; Narayan, et.al., *Voices of the Poor: Can anyone hear us?*; p.257.

⁴² Dengu-Zvogbo, et.al. *Inheritance in Zimbabwe: Law, Customs and Practice*, p.88.-

home remains in the male line upon their deaths. Even in the few cases husbands make Wills; very few of them name their wives as sole executors and sole beneficiaries. In so doing, they deprive their wives to transfer the home in their own names hence retaining the property in the male line.

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CHAPTER TEN

CONCLUSION

10. Introduction

This final chapter answers the question: What has this research on homeownership contributed to the understanding of gender dynamics in homeownership? The findings of this research suggest that homeownership is contextual and complex at institutional, interpersonal and cultural ideological levels. The factors that influence homeownership are multifaceted and full of contradictions. Although homeownership is influenced by institutional, social-cultural, economic and psychological factors, there are dynamics within these broad factors in the way they impact on unmarried and married women in different contexts. Hence, this study conceptualized homeownership as a dynamic process affected by specific contextual factors. The study went ahead to explore these contextual factors since they constitute the different environments in which unmarried and married women negotiate for homeownership

10.1 The complex social dynamics of homeownership

The study attempted to explore how and why women in Kampala are deprived of homeownership in marriage, separation, divorce, and at widowhood. In order to bring out homeownership gender contract among married women, the study explored the unmarried women and married men adulterers' homeownership contract.

The point of departure of the study was that gender inequality in homeownership exists and persists in spite of urbanization, improved information flow, improved education and income among women. In addition, it was noted that there is a gap between women's experiences on the issue of homeownership and the explanations existing research presented on the ways in which married women are deprived of homeownership. Researchers have paid attention to the broad factors that account for gender inequality in wealth acquisition for example in terms of social-cultural, economic, institutional and psychological. While in developed countries culture is less

sexist and does not contradict (as sharply) the laws on gender equality, on the contrary, in developing countries gender inequality in property acquisition exists and persists due to a mix of historical, cultural, social and economic factors. In developing countries however, most of the studies on gender and property rights have focused on landholdings but not specifically on home ownership. The matrimonial home in particular has always been neglected in the gender and property rights research agenda.

Although research has paid attention to the broad factors that account for gender inequality in wealth acquisition, few studies have systematically provided evidence to support the ways in which these broad factors impact on married women's homeownership rights. The literature not only fails to provide sufficient evidence on the specific processes by which married women are deprived of homeownership but also on the specific processes by which some married women become homeowners. That is, the scholars have been concerned with the broad factors that account for gender inequality in property acquisition rather than enlightening us on the specific processes regarding how gender and homeownership are produced and reproduced and sometimes challenged in social practices.

In addition, while studies on homeownership are insightful, they do not provide innovative insights to address challenges related to women's homeownership experiences. Focusing on this information gap and the insufficient attention given to the subject of homeownership there is need for an exploration of homeownership gender dynamics in Uganda. Hence this study not only unpacks the processes and gives evidence on how and why married women end up with only user rights of the home while others become homeowners; but also presents the challenges women face and strategies they use to become homeowners.

10.2 The Gender contract and system perspective to homeownership

The investigation was undertaken by using the gender system and contract lens developed by Hirdman but presented by Larsson. This perspective helped to analyse complex homeownership processes grounded in the experiences of the women

themselves. This theory was found to assist in explaining the gender relations in a household setting. Since the underlying premises of the research were that unequal gender relations exist and persist in homeownership, there was no better theoretical framework than the said theory as its main focus is actually on the relations between men and women in the household. In this respect, the theoretical point of departure for this study was that women are usually in the subordinate position in homeownership, that is, they are regarded as 'the other' while the men are regarded as the 'norm' as explained by Hirdman's gender system and contract theory.

The process that positions people within homeownership practices as 'men' and 'women' who are opposites rather than complementary was examined and found to be useful for shedding light, not only on experiences of unmarried women but also on the experiences of married women, as well as on the notion of homeownership itself. For women to move out of the subordinate position and be regarded as complementary a number of things have to happen.

Studying women's homeownership dynamics from their own experiences is a new methodological approach. It is believed that the approach that takes women's experiences as empirical and theoretical resources for research about homeownership process was most appropriate. This meant that the specific processes regarding how gender inequalities in homeownership are produced and reproduced and sometimes challenged in social practices had to be investigated. Examination of these processes was useful in studying homeownership as a practical accomplishment.

In this regard, the processes by which married women are deprived of homeownership hence reproducing the dominant gender homeownership contract where husbands are the sole homeowners was examined and found to be useful in enlightening us on the ways in which married women are deprived of homeownership. In the same way, the processes by which married women become homeowners hence producing a new homeownership gender contract was also useful in shedding light on how new homeownership gender contracts are created an indication that the gender system is subject to change under particular circumstances.

10.3 Unmarried and Married women homeownership gender contract

A prominent feature among unmarried women is the control of income and independent decision-making without the married male adulterers' interferences. Although unmarried women freely controlled the income they received from the married male adulterers and registered the homes solely in their own names without the married male adulterers' interferences, married women could not control their husband's income. Instead, husbands not only controlled their own income but also controlled their wives' income.

Although married male adulterers did not suggest having their names included on the title deed, husbands ensured that they registered the homes solely in their names. In contrast with unmarried male adulterers, married men were more than interested to register the home solely in their names due to cultural ideological beliefs whereby husbands believe that the home belongs to the husband as the head of the household. As a result, the husbands saw no need to include their wives' names on the title deed even when they were aware of and appreciated their wives' indirect and direct financial contribution.

Though husbands truly appreciated wives' financial and indirect contributions to the home project by entrusting them with title deeds, they did not translate this appreciation into having their names included on the title deed. This implies that husbands still had the dominant cultural ideology that a home belongs to the man as head of the household. This therefore implies that it may take time before changes in men's perception are translated into married women's automatic co-ownership of the home.

The findings in this study therefore reveal that the arena of marriage in Uganda is quite different and complex. Married men and married women's actions reveal the different gender power relations in the home. Men prefer to solely own property as individuals due to patriarchal beliefs that property should remain in the male line. Married women are caught up by traditional male control and power in the allocation

of household resources like housing. This therefore implies that married women have to apply different strategies to counteract this dominant gender contract belief. The findings of this study suggest that civil society organizations and all development partners on the forefront to reduce gender inequality in homeownership may have to resort to programmes that go beyond economic empowerment of women by addressing the patriarchal cultural ideology. In so doing they will be able to devise means to change men's perception in regard to women's stake in the home especially in the current changing world where women not only financially contribute to the domestic costs but also to housing investments.

10.3.1 Conditions that exclude married women from homeownership

At the institutional level, the state plays a vital role in guaranteeing or denying married women homeownership rights through its legislation. Unlike in developed countries whereby the state guarantees married women ownership rights of the home, states in developing countries do not have specific laws that address a woman's beneficial right in the matrimonial home during marriage except at divorce.

Although in Uganda, the Registration of Titles Act guarantees all women of ownership provided that their name is on the title deed, husbands are keen to register the home solely in their names unless there are special conditions. Since the Registration of Titles Act seems to be the only legislation that can guarantee married women of ownership the question remains as to whether married women can strategically use the Registration of Titles Act to own or co-own the matrimonial home. This all depends on the options available for them to include their names on the title deed.

Firstly, the importance of married women's control of income coupled with education and awareness cannot be overemphasized if married women are to become homeowners. Secondly, married women's involvement at the critical stage of registration of the land on which the matrimonial home is built is equally important if the dominant gender contract whereby husbands are the homeowners is to be challenged.

10.4 Conditions that deprive married women of homeownership during separation or divorce

Although in developed countries married women can become homeowners through divorce settlements, the findings in this study reveal that homeownership through divorce in Uganda is not automatic. The findings in this study reveal that in cases where a married woman does not have her name on the title deed, her beneficial share in the matrimonial home is uncertain. The findings in this study bring to light the issue of statutory laws on mortgaging the matrimonial home. Since there is no clear statutory law in place that stops men from mortgaging the matrimonial home with financial institutions, it means that husbands who in most cases are the homeowners are free to mortgage the matrimonial home without the wife's knowledge. Therefore, in cases where a married woman's name is not on the title deed, a husband has a right to mortgage the home and sometimes he can maliciously do so to deprive his wife of homeownership. To redeem the home, the married woman has to pay back the mortgage to the financial institution. Although a court can guarantee a divorced woman reasonable value of the matrimonial home upon divorce especially in cases where her name is not on the title deed upon proof of financial contribution, implementation of court decisions becomes difficult in cases where the married woman moves out of the home and leaves the husband in the home.

10.5 Conditions that exclude a widow from ownership through inheritance

While widows in developed countries are guaranteed inheritance rights of the matrimonial home upon the death of their husbands through legislation, the legal framework in Uganda does not guarantee a widow inheritance rights upon the death of her husband. Inheritance matters are embedded with social-cultural elements both at institutional and interpersonal level. In this study I argue that the state is one of the roadblocks to a widow's inheritance rights. State laws carry with them cultural ideologies that regard women as subordinates.

Ugandan inheritance practices are patrilineal whereby property is passed on from father to son, bypassing the widow. The widow is not allowed to inherit the matrimonial home both through customary or statutory law. The first-born boy child of the deceased inherits the matrimonial home. The widow is only guaranteed user rights of the home until she remarries, whereupon she is required to vacate the home. The married woman's user rights of the matrimonial home can easily be jeopardized in cases where she was not married under any recognized marriage. In this case the married woman is only guaranteed of user rights of the home as a guardian of the children. Even in situations where a husband dies before he acquired the title deed of the home, a widow can only register the matrimonial home in her name through manipulation of the legal system. In this case the widow must have enough money to pay for the transfer costs and must receive support from her in-laws. Therefore, a widow's right to inheritance is not automatic even in situations where she can use the opportunity available.

On cultural ideological and interpersonal level, there is a complex nature of patriarchal customary beliefs that are deep rooted in men's actions. Firstly, since married men insist to register the matrimonial homes solely in their names during marriage, it indicates that they do not wish their wives to inherit the matrimonial home upon their death. In addition, the husbands' relatives are not willing to transfer the matrimonial home to the widow even in a situation where her husband died before he acquired the title deed. Instead, they prefer to register the home in his children's names to ensure that the home remains in the male line. Secondly many men do not leave behind valid Wills. The few husbands, who make Wills, rarely bequeath the matrimonial home to their wives as sole executors and sole beneficiaries.

When a husband does not name his wife as sole executor and sole beneficiary, he leaves the widow at the mercy of the other executors. She cannot for example acquire a loan from any financial institution using her husband's title deed because she needs consent of the other executors. In this case the widow is at the mercy of the other executors. Since most husbands do not make will, this simply implies that they prefer the matrimonial home to remain in the male line. Hence a widow is disadvantaged at every level and therefore has nowhere to run to demand for her inheritance rights.

Widows not only have to negotiate around patriarchal statutory law at institutional level, but they also have to negotiate with customary laws at the interpersonal level.

10.6 Dominant gender contract challenged?

Although a dominant homeownership gender contract exists whereby men control ownership rights and women are deprived of homeownership rights through marriage and at widowhood, this dominant gender contract can be redefined and challenged. The gender system can be shaken in situations where roles of women and men change, women become economically independent and are aware of their ownership rights in a patriarchal dominated society. As a result married women can no longer be in a subordinate position. Married women becoming homeowners is an indication that the gender system is not static but is subject to change. Women are able to negotiate the dominant married women homeownership gender contract in which they are homemakers but not homeowners. This can be done through a wife's involvement in the purchase and registration of the land in which the matrimonial home is built, her control over a regular income, her assertiveness, and her ability to negotiate. In so doing a new gender contract is created whereby women become homeowners instead of users.

In some cases a total reverse of the gender contract whereby the wives become the sole owners of the home is also possible. However the special circumstances through which married become homeowners indicate that becoming a homeowner is not an easy task for married women as it is for unmarried women with married male adulterers. Hence it can be argued that becoming a homeowner in a patriarchal society is through a complex process.

Although the intestate Succession law deprives widows of inheritance rights, the major contradiction lies in the vital role the Registration of Titles Act plays in guaranteeing individuals of ownership. Hence, the only legislation that can protect married women from deprivation of ownership is the Registration and Titles Act.

Married women, whose names are incorporated on the title deed of the home, stand a better chance to retain ownership of home upon the death of their husbands in contrast with those whose names do not appear on the title deed. In this case the issue of inheritance does not arise since the widow legally owns the home. In such cases, in-laws rarely attempt to evict the widow from the home. Therefore, a widow is able to survive biased patriarchal laws if her name is on the title deed.

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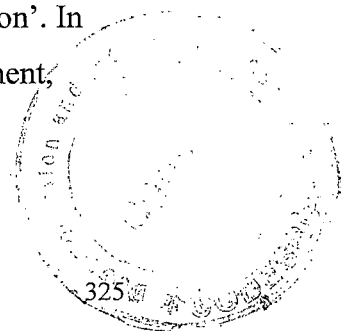
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