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THE PLACE OF COHABITATION IN UGANDAN MARITAL JURISPRUDENCE: AN APPRAISAL

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ABSTRACT

This article critically analyses the legal status and consequences of cohabitation within Ugandan matrimonial law. Its objective is to examine the extent to which cohabiting unions, which have become increasingly common within Ugandan society, are categorized and safeguarded under current legal regimes. Operating within a doctrinal research design, the study examines pertinent provisions of the Constitution, legislation, custom, and court precedents that inform the legal treatment of cohabitation in Uganda. The research findings indicate that cohabitation is a widespread manner of union; it enjoys a marginal and frequently ambiguous legal status within Ugandan law, lacking informal recognition and legal protection accorded to legislation-based, custom-based, and faith-based marriages. However, challenges exist in the right over property, inheritance of property and assets, custody of children, and protection against domestic violence, specifically against female spouses within the unions. In conclusion, the article asserts that Uganda's matrimonial legal framework remains incapable of absorbing the reality of cohabitation and holds that legislative amendment and judicial activism are necessary measures to ensure non-discriminatory treatment and legal protection of cohabiting spouses.

Keywords: Cohabitation, Matrimonial Law, Marriage, Marital Jurisprudence

INTRODUCTION

Recent Uganda Registration Services Bureau (URSB) data indicate that the number of Ugandan couples cohabiting is now extremely higher than the number of legally registered marriages, highlighting the growing preference for informal unions (Gahene, 2023). Data from the Uganda Bureau of Statistics and the shows that between 2001 and 2011, the proportion of women aged 15–49 in cohabiting unions rose from 14% to 27% (Lwanga, and Kalule-Sabiti and Ayiga). In 2016, the Uganda Demographic and Health Survey (UDHS) showed that 27% of women and 15% of men aged 15-49 were cohabiting (UBOS) and ICF, 2018). In 2024, it was reported that 1 in every four Ugandan aged 18

years and above are cohabiting without any formal marriage procedures (Nsheeka, 2025) translating to 26.6% of adult Ugandans. In addition, Apio notes that cohabitation in Uganda is increasingly common, citing UDHS 2016 figures and indicating a shift toward alternative union forms (Apio, 2023). Empirical research also observes that cohabitation is 'on the rise' in Uganda, reflecting broader social change in marriage and family formation (Lwanga, and Kalule-Sabiti and Ayiga, 2025).

Increasing numbers the youth and urban poor couples, are cohabiting without proceeding to formal marriage rituals, whether statutory,

customary, or religious. These developments are driven by socio-cultural and economic factors (Uganda Law Reform Commission, 2020) like, among others, unemployment (Oppenheimer, 2003), the prohibitive expense of traditional marriage ceremonies, changing perceptions of commitment (Miller, and Sassler, and Kusi-Appouh, 2011), changing gender roles, and the general trend to informality in personal relations. Despite its growing sociocultural relevance, cohabitation remains poorly addressed by Uganda's legislative regime (Uganda Law Reform Commission, 2020), making countless individuals, especially women and children, vulnerable to legal uncertainty and exploitation. In contrast with statutory or customary marriage, unions of cohabiting couples are not defined or recognized by extant marriage legislation, with the consequence that such unions produce inconsistent legal results when they lapse, or where property, inheritances, or custody of children are in dispute (Antai et al, 2025).

The main issue this research intends to investigate is the uncertain and shifting legal treatment of cohabiting unions in Uganda. Although some court decisions have attempted to fill the legislative gap by declaring certain rights of the cohabiting partners (*Kaboggoza Emmanuel v Bangi Gloria*, 2022) and children from cohabitation (*Kakooza v Nanyondo*, 2020), there remains no certain or consistent legal principle governing such unions. The failure to extend legal recognition to cohabiting unions creates challenges in ascertaining the rights and obligations arising pursuant to cohabitation, with the consequences that affected parties are exposed to unforeseeable legal remedies and consequences. In the absence of a complete piece of legislation or policy addressing cohabitation, questions are raised as to how the law defines and treats cohabiting unions, whether their partners have a right to legal entitlements akin to formal marriage, and to what extent the courts can exercise jurisdiction to protect parties in cohabiting unions (Antai et al, 2025).

This research has reference to three central research questions: (a) How and to what degree does Ugandan marriage law acknowledge and control cohabitation? (b) How does cohabiting give rise to rights or duties? (c) Is concurrent cohabiting legally safeguarded as much as statutory or conventional marriage? These questions serve as a point of commencement for an exploration of the role of cohabitation in Ugandan marriage jurisprudence. The central objective of the research is an exploration of the legal classification of cohabitation in Uganda, canvassing its repercussions on cohabiting persons and charting gaps and contradictions in current law. The research also lays out prospective legal and policy changes towards equitable treatment of cohabiting companions and Uganda's up-to-date jurisprudence of marriage as responses to today's reality. The research is notable in that it brings into focus an emergent though legally underemphasized dynamic of family life in Uganda (Antai et al, 2025). With an escalation of the incidence of cohabitation over time, the absence of legal certainty threatens basic rights, well-being, and dignity of people in cohabiting unions. In regard to a review of current laws, ruling cases of the courts, and custom-based traditionalism, the research provides an ample map of cohabitation issues and adds a contribution to the literature on the reform of Uganda's marriage law. Moreover, it provides actionable guidelines toward legal evolution, judicial interpretation, and public policy, and thereby results in an inclusive and responsive system of marriage law (Aidonojie et al, 2025).

Conceptual Clarification

In an examination of cohabitation under Ugandan family law, it becomes important that one constructs transparent conceptual vocabulary and theoretical frames on which to construct the examination.

At the genesis of controversy lies the very name cohabitation itself, broadly defining a residential arrangement where an unmarried couple lives

conjugal lives in an arrangement imitative of marriage, usually sharing a room and an intimate relationship. In Ugandan conditions, cohabitation has neither a statutory definition nor an express recognition as a legal union in the current marriage law. It is usually viewed as an antecedent of traditional marriage or an informal substitute thereof, but lies largely outside the ambit of the law with extensive implications in terms of rights and duties of the parties (Ajah et al, 2025). While endeavoring to situate cohabitation within the broader legal context of reference, the first act is thus required to delineate cohabitation from marriage as provided within Ugandan law. Uganda has three basic forms of marriage: statutory, customary, and religious; which are further divided into Civil, Moslem, Church, Customary, Hindu (National Identification and Registration Authority, 2025). Statutory marriage provided under the Marriage Act, Cap 251, is monogamous and must be conducted in the presence of the Registrar General in Kampala or Chief Administrative Officers in the 146 districts including the 11 Cities. and consists of stiff formalities. Customary marriage provided under the Customary Marriage (Registration) Act lies subject to the variegated utilization of Uganda's ethnic communities and has the option of being polygamous, and is an expression of an ancient rite and an acknowledgment through customary forms of the community. Religious unions such as Christian and Islamic, and Hindu marriages take forms according to religious pronouncement and usually acquire recognition upon instant registration through the act of statutory law (Antai, 2025).

All three forms of marriage provide diverse forms of legal recognition under Ugandan family law as well as rights and duties. Marital jurisprudence that is, judicial decisions and legal pronouncements as well as scholastic commentary on marriage and family life almost and practically excludes or over-represents the cohabitation reality to lead to legal

uncertainty and social marginalization of non-formal unions (Okpong, D. E, Antai, & Ndifon, 2025).

Theoretical Approaches to Cohabitation

For an in-depth understanding of cohabitation within Ugandan marriage law, three interlocking theoretical models are utilized within this research. Legal pluralism is the first model aware of the reality that there exist plural legal systems within one location (Benda-Beckmann and Turner, 2018). Uganda is a legally plural country where the statutory law, the customary norms, and the religious commands all interlock and determine the regulation of personal and household lives (Josephine, 2025). The plurality of systems renders the legal elaboration of cohabitation difficult since the non-recognition of equal legal recognition between systems translates into patchy and contested legal repercussions. Statutory law does not explicitly recognize cohabitation, but some of the traditional forms might regard long cohabitation payment or bride price as setting up an instituting de facto marital union; even though, the passage ritual remains incomplete. Second, feminist legal theory provides an analytical critique of the cohabitation's gendered effects. This theory analyzes the role of patriarchal structures in shaping the law, and how the law can be used to advance gender equality (Francis, 2025). Ugandan cohabiting unions tend towards reproducing and upholding patriarchal models with women, now bereft of conjugal status and on an equal standing denied protection in controversies of ownership of property, inheritance of property and children, and domestic violence. Feminist legal critique resists how the law, through a preference for conjugal forms of marriage, renders women within cohabiting relationships and ignores issues of disparities of power and vulnerability of the social status behind them. Finally, the utilization of the application of the socio-legal approach towards family law provides a wide-angle perspective through which cohabitation is viewed no more a legal anachronism but as a social phenomenon

warranting legal interlocution. The approach bridges the gap between law on the books and law in action through an examination of legal rules and how they interact with everyday lives, society's values, and cultural usage (Antai et al, 2025).

Against this backdrop, the research considers the way of constructing the law to include the changing face of intimate relationships in Uganda and ensure equity for all people in all types of families. All these conceptual and theoretical constructs offer a solid basis upon which to investigate the legal invisibility of cohabitation in Ugandan marriage law, the effects of it on affected people, and broader resonances for law reform on the topic of family and personal law (Antai et al, 2025).

The cohabitation reality has attracted increased research interest in the Ugandan marriage law. Legal scholars and researchers have argued about the legal status of cohabitation, its implications on property rights, child welfare, succession, and protection against domestic violence. A number of studies have indicated that cohabitation is gaining lots of social currency, as its legal definition is uncertain and keeps changing. For example, Kagaba (2012) contends that while cohabitation is a substitute for normal marriage in economically vulnerable individuals, the law continues to hold firm in considering such a union a mere nothing and thus denying the cohabitants the much-needed protection accorded to persons in normal marriage. In addition, Matovu (2025) states that the doctrine-based Ugandan courts' approach, within which it is noted that judicial officers have, in certain instances, recognized cohabitation within cases of property division as well as custody of children. Nevertheless, he asserts that such a recognition continues to be more a matter of discretion on the part of the judiciary rather than categorical legislative backing, and thus, this creates uncertainty and inconsistency of effect. The judiciary is not left out - the High Court of Uganda at Kabale held that irrespective of the number of years spent together, cohabiting is not marriage

under the law (*Baryamureeba James v Kabakonjo & 6 Ors*, 2013). Such incongruence between the law in the statute book and social reality creates the added vulnerability of cohabiting spouses, particularly women.

In spite of burgeoning literature on cohabitation in Uganda, gaps exist. Firstly, research either centers on customary or statutory marriage and ignores proper thought on the rising trend of non-marital unions. Thousands of pages of literature describe and map the problems of cohabiting couples, but fail to provide normative and jurisprudential analysis of how the law ought to develop and accept these unions. Secondly, while there have been some judgments that are illustrative of certain rights that accrue from cohabitation, such circumstances exist out there in disjointed and under-analyzed amounts within academic literature, and therefore omit an understanding of how judicial trends may spur legislation into action (Antai, 2025). Thirdly, with the tabling of the Marriage Bill 2024, which infamously proposes to criminalize cohabitation, very little research takes up the effect it might have on marital jurisprudence within Uganda. Media controversy has been played out within media commentary and opinion of non-governmental organizations, but not within systematic academic analysis underpinned by legal thought and jurisdiction based on rights (Obioji et al, 2025).

This study seeks to fill these gaps through an extensive exploration of cohabitation within Ugandan marriage law. It will integrate statutory interpretations, judicial pronouncements, and socio-legal commentary into an exploration of the status of cohabitation within the Ugandan legal framework. Through an exploration of the history and operations of evolving legislation, namely, contentious clauses of the proposed Marriage Bill 2024, the study will offer insights on whether there is evolution towards greater inclusiveness or deterioration of legislation. More importantly, the study will offer practical legal changes towards

Uganda's marriage law regularization of cohabitation reality on the ground and the related socio-cultural dynamics through comparative readings of other jurisdictions where cohabiting unions have been regularized within family law. In the process, it will significantly enhance policy and scholarly literature by not only unearthing gaps within literature but also providing an avenue of action towards legal protection and acknowledgment of cohabiting couples within Uganda (Esavwede, Gasiokwu & Antai, 2025).

Legal Framework Governing Marriage and Cohabitation in Uganda

The Ugandan legal framework on marriage and cohabitation is founded on an intermix of the constitution, statutes, decisions of courts, and customary norms. While marriage is specifically stated and secured in the framework, cohabitation is in its infancy stage and dealt with from time to time, with no comprehensive protection by law (Majekodunmi et al, 2024). The 1995 Uganda Constitution is a higher legal framework and includes fundamental provisions that indirectly find application in cohabiting relationships. Article 31 provides for the right of men and women of full age to marry and form a family, and further requires that marriage shall be on the basis of equality. Article 33 enhances the rights of women and provides that women have the same dignity as men and rights to equal treatment and protection by law, including in property matters and family matters. Additionally, Article 21 provides for equality before the law and nondiscrimination and thus forms the basis for attacking legal frameworks lacking protection of persons in cohabiting relationships. While the Constitution has nothing to offer regarding any reference to cohabitation as such, its overall commitment to equality and nondiscrimination, and protection of the family has a strong implication towards ensuring all-around legal protection of different forms of families (Ogu, Enyia & Antai, 2024).

Statutory law in Uganda regulates formal marriages under diverse regimes but remains silent or unclear regarding cohabitation. The Marriage Act Cap 251 regulates civil (statutory) marriages and imposes compulsory formal ceremonies, registration, and monogamy. It has no statutory sanction for live-together couples outside their approved contexts. The Customary Marriage (Registration) Act, 1973 makes valid marriages performed in conformity with the custom of Uganda's plural ethnic communities and permits their registration, although many of these marriages are not registered. Although in reality the customary law may accept long-term cohabitation as evidence of marriage, where especially bride price has been paid or where there are children, the statutory law does not make the same statutory (Okpong & Antai, 2024).

The Divorce Act regulates the dissolution of statutory marriages, with provisions regarding grounds for divorce and division of property, but no protection or provision at all is made by the law for cohabiting couples whose unions end. Similarly, the Succession Act regulates inheritance and estate administration and largely within the context of formal marriage. While by way of amendments, the reach has been extended to include dependents and children of live-together unions also, the law hardly affords any definiteness regarding the rights of surviving cohabiting partner/s to inheritance (Umo et al, 2025). The Domestic Violence Act affords protection against abuse in domestic relationships and covers those living together in a domestic relationship (*Mifumi (U) Ltd & Anor v Attorney General & Anor*, 2020). Significantly, the Act extends the reach of a domestic relationship to bring cohabitation into perspective and affords some legal sanction and protection rights to partner/s outside of marriage in the context of abuse of violence, and neglect.

The courts have taken the lead in shaping and even broadening the boundaries of law with regard to cohabitation in Uganda. In *Kampala City Council v*

Nakito, the court legitimized a cohabiting partner's right of occupancy of a house under municipal law, by the way confirming cohabiting unions as worthy of legal recognition. Likewise, in *Aserua v Okello*, the High Court had regard to the length of cohabitation and the parties' conduct in deciding a property case in which the informal union had broken up. Although the rulings don't leave a settled doctrine and grant outright legal status to cohabiting unions, these illustrate an increasing judicial willingness to move steps towards eliminating harmful side effects of non-recognition. These rulings, however, by the absence of a legislative basis, become arbitrary and discretionary and are at the will of individual judges (Wakili et al, 2025).

Customary law complicates the scene since there is extensive variation between Rwanda and other Ugandan ethnicities. In most cultures, extended cohabitation, especially where children have been born or bride price has been partially settled, may be tolerated as evidence of a marriage. In Baganda of Uganda see cohabitation as “*okwambaganya obulamu*” (sharing life) and often treat it as marriage if the man has paid part of the bride price or performed an introduction ceremony (*kwanjula*). Among the Acholi, once the family of the woman accepts *ayom* (a token dowry), the couple is recognised as husband and wife even before full payment. *Namukasa v Kakondere* [2015] Such recognition is informal and bears no procedural protection that comes with a registered customary marriage, such as inheritance rights, as well as protection of property rights. Moreover, customary recognition of cohabiting unions tends to be patriarchal and awards rights as well as control predominantly in the male partner or his family, and thus augments the legal and social vulnerability of the female partner within these informal unions. Generally, Uganda's legal framework of marriage is well developed with crisp constitutional and statutory provisions defining and securing formal unions (Antai et al, 2025). Cohabitation, on the

other hand, remains largely unsanctioned, with recognition being patchy and dependent on judicial discretion or customary law. This legal vacuum places cohabiting partners and especially women and children excessively vulnerable and subjects them to severe risk and legal insecurity, and thus calls for emergent reform in ensuring protection of all types of families, inclusive and equitable in Uganda's dynamic jurisprudence on marriage (Antai et al, 2025).

The Marriage Bill 2024 has some contentious provisions aimed at redefining the legal boundaries of intimate relationships, thereby effectively criminalizing cohabitation. Clause 89 of the Bill criminalizes those “holding out” to be married the definitions of which are living like husband and wife, owning property in common, having children, or a woman adopting a partner's surname without a valid marriage contract. Offenders are liable to three years' imprisonment or a fine of UGX 10 million. This clause has a retributive policy of classifying cohabiting relationships as criminal and morally reprehensible rather than as a valid social reality. In so doing, other provisions of the Bill, in particular Clause 61 of the Bill, notably give courts a discretion to presume marriage in cohabiting relationships for limited purposes, e.g., for child maintenance or property rights. This leads to a stark inner contradiction: cohabitation is punished and, coincidentally, treated as being legally effectively indistinguishable from marriage. This contradiction is the Bill's conflicted policy of punishing cohabitation while imprecisely acknowledging it as part of an existing reality of legal procedure (Antai et al, 2025).

Members of Parliament and faith groups have indicated an interest in involvement concerning these provisions. Inter-Religious Council of Uganda (IRCU) advanced an argument for criminalization while supporting sanctions under Clause 89, as well as propounding a separate Bill to regulate parties to such unions (Kansiime, 2025). IRCU petitioned Parliament not to provide for a cohabitation-only

standalone Bill, but instead cluster punishment and protection provision together within the Marriage Bill 2024. Some other Pentecostal clerics urged a different solution: that five-year-plus cohabiting spouses shall be deemed automatically legal spouses unless each of them is already, in itself, legally the spouse of another person (Achom, 2025). This template will be identical to presumptions utilized elsewhere to provide legal status for long-term de facto unions, but is precisely the mirror-opposite of the more diffuse criminalizing direction of the Bill. Women's lobby groupings and civil society groups have opposed strongly and categorically the criminalization approach as potentially punishing disproportionately economically marginal groups of persons who come into cohabiting unions precisely for the prohibitive cost and procedural barrier of formal marriage. Critics observe that as many as 27 percent of Ugandan couples cohabit outside of any sort of formal legal status, and that the addition of criminal sanctions will disproportionately impact fully half of all domestic partnerships (Wanyenya, 2025). Generally, the Marriage Bill 2024's cohabitation treatment is an intensely contradictory method. In one breath, it imposes severe sanctions on informal unions and thereby stigmatizes cohabitation as an affront to marriage. In another breath, however, provisions thereof effectively permit courts to re-make gaps within the law through treating cohabitants as spouses for support and property purposes and thereby legitimize the factuality of such unions (Antai et al, 2025). Uganda's religious stakeholders range from the punishment of cohabiting couples to an automatic validation of couples on extended cohabitation. All civil society groups on record oppose criminalization and instead advocate for the protection of cohabiting couples through legislation and not prosecution (Kiiza, 2025). From the broader cohabitation debate of Ugandan marriage law, the Bill has pivotal questions of legal certainty, policy coherence, and convergence between policy and constitutional and human rights imperatives. In

implementation, its clauses of punishment lay it open to deterioration of the legal vulnerability of cohabiting couples, particularly women and children, while its conflicting clauses compromise coherent jurisprudence and legislative integrity (Ogu et al, 2025).

Comparative Legal Perspectives

Comparative examination of legal treatment of cohabitation in other African jurisdictions holds differential measures of recognition, protection, and regulation, fruitful lessons on learning and overhauling Uganda's response (Antai et al, 2025). In Kenya, though cohabitation is neither explicitly accepted as legal marriage nor categorically excluded either way, courts of Kenya have evolved jurisprudence of providing certain legal consequences of such a union within the presumptions of marriage doctrine. Courts have been applying that where a couple cohabits long enough, holds out as a husband and wife, and exhibits interdependence between them, then there may be a rebuttable presumption of marriage. This has helped courts in determining spousal rights disputes on division of property and child custody vis-à-vis a cohabiting couple, though there is a formal marriage. In *Hortensia Wanjiku Yawe v Public Trustee* (1976), the Court of Appeal held that long cohabitation and general reputation as husband and wife create a presumption of marriage in favor of the party asserting it, unless rebutted by contrary evidence. This principle was later upheld in *Mary Njoki v John Kinyanjui Muthuru* (1985) and subsequent cases such as *Phylis Njoki Karanja v Rosemary Mueni Karanja* (2009) and *MWG v EWK* (2010). Though uncoded, this trend of jurisprudence is an attempt towards narrowing gaps between law and social reality and safeguarding of cohabiting couples vulnerabilities and esp., especially of women (Antai et al, 2025).

South Africa offers a more advanced matrix. South African law does not accept cohabitation as marriage per se, but rather through the concept of common law "universal partnership", courts have

granted cohabiting couples liberal protection of the law. This concept demands four requirements- a) the aim of the partnership must be to make a profit; b) both parties must contribute to the enterprise; c) the partnership must operate for the benefit of both parties; and d) the contract between the parties must be legitimate. It holds the cohabiting couple's assertion of a fraction of the joint estate on the basis of joint contribution, financial interdependence, and conjugal partnership in life (Shepherd, 2024). For instance, in *Butters v Mncora* (2012) universal partnership was recognized between unmarried cohabitants. In addition, the Domestic Violence Act 116 of 1998 has specifically provided for cohabitants as domestic relationships entitled to protection against abuse. In addition to these, the South African Law Reform Commission (South African Law Reform Commission) has recommended legal amendments towards codifying and regulating domestic partnership as legal conjugality as a result of growing will of legislation towards narrowing gaps within the scope of family law (Antai et al, 2025).

"Cohabitation, or 'come-we-stay' as it is termed simply, is not statutorily recognized in Nigeria (Attah), and there is no codification of rights flowing from such a relationship. Nevertheless, as in Uganda's case, as it were, the law of Nigeria functions under a pluralistic system of legal pluralism (Antai et al, 2025). Some customary laws will silently validate long-term cohabitation as being tantamount to customary marriage, where such is followed up with the birth of children, or where traditional rites have been partially performed. But as the lack of codified protection extended to cohabitants under statutory law in Nigeria has denied many individuals, and especially women, access to redress at the breakdown of relationships, at the moments of domestic violence, or at the times of conflicts of inheritance and property, these jurisdictions of comparisons indicate that while formal recognition of cohabitation is only barred throughout Africa,

increasingly is the awareness towards providing coverage of legal protection toward cohabiting partners. Judicial maxims, legislation attempts, and customary recognitions within Kenya and South Africa specifically provide workable models upon which Uganda may follow or borrow in an attempt towards bridging the legal gap on cohabitation (Antai et al, 2025).

In addition to regional studies, universal standards of human rights like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR) exercise wide normative effect on the development of family law. CEDAW, which Uganda ratified, binds the state parties to end all forms of discrimination against women in all dimensions of marriage and kinship relations, including the status of marriage grounds. CEDAW General Recommendation No. 21 specifically recognizes that women in de facto unions shall not be deprived of legal protection, more so on matters of property and inheritance. Correspondingly, ICCPR addresses equality before the law and protection of the family and imposes an obligation on the states that all citizens must equally be accorded legal protection irrespective of conjugal arrangements (Antai, & Aidonjio, 2024). Uganda's ratification of these universal documents imposes an obligation on the State towards the development of a domestic law that accords recognition of the social reality of cohabiting and secures subjects of such unions from being deprived of basic legal protection and entitlements. Lastly, the comparative legal regimes of Kenya, South Africa, and Nigeria, and universal international standards of human rights offer an escalating justification of legal protection and recognition of cohabiting unions. They offer an indication of the failure of Uganda's current legal approach and offer useful models and rules that shall inform legal reform. Given the dynamic trend of Ugandan society, Uganda requires a legal setting that shall be responsive so that cohabiting partners,

irrespective of legal conjugal status, shall be treated equally and with dignity and legal certainty (Antai, 2024).

Rights and Legal Implications of Cohabitation in Uganda

In Uganda, cohabitation takes an insecure and largely undefined status in the law that has severe implications for the rights and duties of the parties within cohabitation. One of the areas of highest concern currently radiating is that of property rights (Antai, 2024). While, as far as formal marriage is the case where the Divorce Act and jurisprudence give guidance on the division of matrimonial property, cohabiting spouses neither have legal nor statutory grounds to invoke rights over property accrued during the cohabiting period. Without express arrangements or joint ownership certificates, courts resist ascertaining equal rights over property, more so where property has one partner's name on it (Antai, 2024). In effect, therefore parties even though largely women who materially or in other manner contributed towards the acquisition of cohabiting period assets within the cohabiting systematically dispossessed upon breakdown of the relationship and have little redress within the law. Despite taking a few judicial cases (Ntungwa, 2015), which sought the implication of joint ownership through equitable action such as constructive trust or resulting trust (Matovu, 2025), these decisions are insecure and very vulnerable, and subject to the courts' discretion.

Legal repercussions of cohabitation also emerge in issues of child custody and child maintenance. Uganda's law, more largely the Children Act Cap 59 as amended, places focus on a child's best interests where parents reside either with or sans being spouses (Antai et al, 2024). In effect, however, cohabiting mothers end up accepting the initial care responsibility sans specific legal entitlement of paternal obligation unless expressly provided or through an action of the courts. While attempting discretion of courts of passing orders of

maintenance against the biological fathers of children born outside of or within informal cohabiting relations, enforcement remains lax, and legal proceedings are an extraterrestrial luxury to the majority of women within informal relations. These cases also get complex where the legal status of the father towards the child is not established in the context of the non-existence of legal marriage or legitimacy (Chinweze et al, 2024).

Inheritance and rights of successors also represent another significant legal obstacle that cohabiting partners must navigate. Previously, the Succession Act gave legal spouses the first option in the intestate order of intestacy, so that cohabiting partners were normally not entitled to a fraction of the late partner's estate (Edet, Antai & Itafu, 2022). Although recent statutes and judicial decisions have been opening up some inheritance rights for dependents like children and economically dependent partners, the legal status of a cohabiting survivor remains fragile (Karugaba, 2025). Any cohabiting partner dying intestate will have to establish financial dependence or other exceptional conditions to be considered a beneficiary, and thus continues standing at an obvious disadvantage compared to legal spouses. Furthermore, the uncertainty of custom between ethnic groups within Uganda also renders the situation more vulnerable to exploitation, as some might regard extended cohabitation as a ground for inheritance and others might not (Akpanke et al, 2022).

Despite the broader legal invisibility of cohabitation, however, protective cover is provided within the Domestic Violence Act of 2010. Significantly, the Act defines those within "domestic relationships," including those cohabiting as husband and wife, as a way of providing a legal umbrella through which cohabiting partners could pursue protection orders against physical and emotional, and financial abuse. Such legislation represents a historic though moderate step towards recognition of the everyday reality of cohabiting couples and protection of such

unions against domestic abuse. Yet, the practical realization of such protection is replete with complications involving low awareness of the public majority, stigma, and accessibility barriers towards justice and especially in rural and underserved communities (Anifowose et al 2024).

In family law matters, cohabitant spouses still face intimidating challenges based on the absence of statutory recognition. Cohabiting spouses, and particularly women and children, end up at the periphery of legal protection in matters of essence, such as one's right over estate, child maintenance, right of inheritance, and personal security. Subsequently, courts are incapacitated by the absence of statutory guidance on how to handle conflicts arising from cohabitation and thus end up making decisions of doubt. For example, spousal support claims, division of assets, or establishment of relationship rights commonly lie outside the statutory jurisdiction of the Marriage Act or Divorce Act and thus only apply to formal marriages. The cohabiting marriage litigants thus end up resorting to circumlocutional legal theorems, such as one of unjust enrichment or constructive trust, with a greater evidence requirement and no guarantee of success (Antai et al, 2024).

Failure to provide extensive legal protection and recognition of cohabiting relationships not only compromises social justice but also disrespects the constitutional canons of equality and non-discrimination. As the phenomenon of cohabitation becomes more prevalent, an urgent need for law reform is presented that does justice by providing clear, balanced, and achievable rights for those in these marriages and thus ensures Ugandan family law catches up with modern social reality (Antai, 2024).

Challenges and Gaps in the Legal System

The Ugandan cohabitation law is afflicted with a formidable list of issues and systemic gaps that require redrafting of legislation and policy. These challenges are discussed to wit:

- a) The uncertainty of statute definitions and the failure of legal recognition of cohabiting unions: Uganda's statute law of marriage under the Marriage Act, the Customary Marriage (Registration) Act, and ancillary legislation fail to define cohabitation or to classify cohabitation as a legal union. Such silence of the statute creates a gap where cohabiting consorts become unseen by the law, afflicted with neither codified rights nor corollary obligations to ensue from such unions. Thus, cohabiting consorts fall outside of the protection normally afforded to spouses, including spousal rights over property and household belongings, inheritance, and support. Denial of statutory recognition also deprives courts of express legal standards of reference for determining closure of disputes surrounding such unions, afflicted on occasion with judicial discretion or equitable maxims, always subject to differential application (Antai et al, 2024).
- b) Judicial interpretation inconsistency: Interpreting in the absence of statute, courts have on occasion gone on to fill the legal blank with jurisprudential imagination. While certain courts have extended protection to cohabiting couples through the invocation of constructive trusts or unjust enrichment frameworks, other courts have refused on the grounds of the non-existence of legal entitlement (Justice Centers Uganda, 2021). This incompatibility of judicial thought takes with it a feeling of uncertainty and unpredictability, where similar cases will result in conflicting decisions depending on the courtroom, judge, or jurisdiction. This also frustrates the development of uniform marital jurisprudence in Uganda and brings into the picture another belief that the judicial system isn't up to the job of handling the

complexity of new forms of family (Antai et al, 2024).

- c) Infusing complexity into these legal uncertainties is the pervasive presence of social disapproval and cultural critique of cohabitation. Despite being on the ascendancy, cohabitation remains more routinely sanctioned as an ethically tainted or socially inferior union rather than an institution of legal marriage. For most Ugandan communities, and especially those with strong views regarding faith or tradition, cohabiting couples will be perceived as living in sin or affrontery of one's culture. This social disapprobation does more than cast on the periphery those of cohabiting unions: it also discourages candid discussion and legislation driven toward expanding legal rights toward them. Furthermore, the cultural ascendancy of legal marriage has a way of constraining policymakers and legislators toward the redressing of the legal needs of cohabiting partners lest they be criticized as denigrators of custom or proponents of moral decadence (Antai et al, 2024).
- d) Intensified vulnerability of women within cohabiting relationships: Women within cohabiting relationships carry a disproportionate burden of the lack of legal protection, specifically in property rights, child custody, and economic dependence. Women within these relationships provide notable accommodations within the sphere of money, household work, or emotional support towards the household or accumulation of property, and yet remain excluded from ownership or inheritance in the event of separation or demise of the male partner. Inurement of non-recognition of effort increases entrenched gender disparities and exposes women within cohabiting relationships to an elevated risk

of exploitation, abandonment, and destitution. Moreover, the de facto status of the relationship creates the effect of making it harder for women to have rights or redress through the law, specifically for those residing within the rural areas where access to legal services remains low (Antai et al, 2024).

- e) Lack of policy guidelines and reforms of the laws: This solidifies even further, the precarious legal status of cohabitation. Although cohabiting unions have gained more social visibility, Uganda has failed to adopt significant legislation striving to define, regulate, and protect such unions. While other jurisdictions have enacted legislation including domestic partnership acts, civil union acts, and cohabitation contracts, Uganda's legal framework remains static with no special guidance and effort at bridging the legal lacuna accompanying cohabitation. Such failure to articulate policy is an overarching failure of providing the legal system with contemporary social reality, since all such rights of an important and increasing part of the population remain unprotected and denigrated (Antai et al, 2024).

Generally, Uganda's legal concerns regarding safeguarding and recognizing cohabitation arise deeply out of the statutes' silence, courts' incoherence, cultures' conservatism, societies' patriarchal socialization, and legislation's complacency. These lacunae have to be bridged through multi-dimensional action, including bringing legal reform together with judicial training, population and societal awareness, and sensitivity so that all types of family existences are accorded dignity and shielding and legal certainty through Ugandan jurisprudence on marriage (Antai, 2024).

Recommendation and Conclusion

The research on cohabitation within Ugandan matrimonial law starkly contrasts the gap between

law and Ugandan everyday lives. The *raison d'être* of this research is that while cohabitation has emerged as a socially salient and ubiquitous accompaniment of intimate union, legislatively it remains invisible and unrecognized within Uganda's statute book. Lack of an express legal status or definition of cohabiting relationships has significant repercussions on impacted persons, i.e., on the dimensions of property rights, child custody and maintenance, inheritance, protection from domestic violence, and access to justice within family-based disputes. Judicial responses have remained haphazard and unrelated and offered patchwork solace through doctrines of constructive trusts or unjust enrichment on a hit-and-miss and non-uniform premise. Moreover, cultural resentment, social marginalization, and female vulnerabilities; more specifically of females, have additionally fortified the vulnerable legal status of cohabiting partners. Omission of providing legislation or policy frameworks of cohabitation has left many vulnerable to the lack of protection in order to ensure their dignity, autonomy, and welfare rights.

This analysis again underscores the necessity of legal certainty and full protection of persons in cohabiting unions. As society in Uganda continues to become more dynamic and complex, so must the law adapt to the evolving nature of the family. State and international human rights mandate that it must keep pace to foster equality, safeguard the family in all its forms, and eliminate all forms of marital status discrimination. The legal void now prevailing instead undermines these demands while further entrenching inequality and legal unpredictability for an increasing number of citizens. There is therefore a need to re-imagine the family law regime in ways that embrace and secure cohabiting unions without abandoning the institution of formal marriage. Various law reform proposals are therefore required. First and foremost, Uganda should consider enacting a standalone law setting and regulating cohabitation

and defining the rights and obligations of cohabiting co-partners in property distribution, spousal maintenance and support, childcare, and separation in terms of definiteness. Such law shall provide certainty and foreseeability in cohabiting unions and ensure that vulnerable co-partners—especially women and minors—are not discarded or left exposed. Secondly, current marriage and family laws have been required to be reformed and include provisions taking into account the legal consequences of informal unions so that cohabiting co-partners shall not be denied rights and protection on account of mere formal marital status. Lastly, judicial activism must also be enhanced as a vehicle to secure equitable results in cases concerning co-partners in cohabiting unions. Courts must then, on a continuous basis, utilize progressive and expansive interpretations of already prevailing legislation on grounds of fairness and equality and best interests of the child, pending legislation reforms.

Apart from that, Uganda needs big-scale public sensitization and legal literacy campaigns to educate the masses regarding the rights and prohibitions of cohabiting relationships. Various people enter such unions on the basis of imperfect knowledge of their legal status, so that they are ill-prepared to meet the consequences of separation or death. Finally, Uganda needs attempts towards standardization of statutory and custom-based regimes of law so that protection and recognition of cohabiting relationships are uniform in regimes of law. This involves documentation and codification of already subsisting custom-based rules which acknowledge cohabitation as *de facto* marriage and thus bring together the law and locals. Finally, Uganda's future family law jurisprudence is contingent upon the vigor of the state to meet new social realities by means of inclusive rights-based and pragmatic legal reforms. Protection and recognition of cohabiting relationships does not weaken formal marriage but is instead an expression of a commitment towards

justice and equality, and the protection of all those, irrespective of their union preference. A balanced and all-rounded legal response towards cohabitation is not only a matter of standards contemporarily demanded but also indispensable towards ensuring Uganda's legal system upholds the dignity and rights of all those in Uganda's citizenry.

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