

Reconsidering the Interstate Succession Act and the Little Land Security it Provides to Women in Polygamous Marriages.

By Chasu Longwe,

The practice of polygamy in Africa has been openly accepted into the customary laws of many African states. In Zambia, polygamy continues to be practiced along tribal lines and although the practice has not been legislated, the Interstate Succession Act of 1989 does recognize polygamous marriages and provides for the devolution of an estate in these marriages when one dies interstate, i.e. one dies without leaving a written will. While the Act was implemented in good faith, and came at a time when land grabbing by the deceased relatives was a common practice, the historical development of the Intestate Succession Act has received a lot of criticism over the years and has led to its amendment^[3]. Although the Act was amended to provide protection for women's land rights, many long-standing challenges regarding women's rights to inherit their deceased spouse's property still exist^[3]. Simpaya writes that with the stipulations under the Act, women in polygamous marriages are provided weaker protections under the Intestate Succession Act. This article analyses how the Interstate Succession Act through Article 2(2) and Article 5(a) provides little protection for women's land rights. This Article will focus on the little land security provided for widows from polygamous marriages.

Under Article 2 (2) of the Interstate Succession Act, the article writes that; "This Act shall not apply to; (a) land which at the time of the intestate's death had been acquired and was held under customary law."

With the above stipulation, it can be said that the Interstate Succession Act provides land security to a minimal share of the countries land mass and its owners as state land comprises of only 6% of Zambia's landmass and customary law comprises of 94% of the land^[2]. This would imply that the legal protection provided under the Act would only apply to a minority of Zambia's land mass as customary law has no obligation to comply to statutory law^[3]. Regrettably, this leaves the land rights of many widows under threat as they are many insecurities that come with an estate been held under customary law. Customary held land unfortunately does not guarantee women's land rights as;

- 1) Customary law does not have a formal land administration and it often relays on traditional, unwritten and locally relevant rules on how to use and allocate land^[3].

2) Gender plays a huge impact in the division of land in traditional Zambian culture as in these cultural systems, patriarchal customary principles are often applied to ensure that male relatives inherit land and property to the exclusion of widows ^[1]. Here, priority of inheritance is given to the male heir and/or even to the brother of the deceased.

The highlighted insecurities that come with customary law are only worsened with the provision of Article 2(a). This provision does not make the land insecurities that come with customary land any better but instead exposes many Zambian widows weak land security that leaves women's land rights vulnerable to a dominant patriarchal system with an informal land administration. In these traditional administrations, even the village registrations books do not provide full security as they are either misplaced or may only bear the name of one wife and not of the others. In many cases, wives in polygamous marriages become vulnerable to insecure land rights and may require clan intervention for protection. However, while clan elders may facilitate allocation of land and patrilineal inheritance procedures, Geovarelli, et.al (2013) argues that, their authority to regulate and protect women and children from land grabbing or land sales upon spousal death or divorce has been weakened. These issues disadvantage many widows as in Africa, majority of women access customary held land through their husbands ^[2].

Furthermore, Article 5(a) of the Interstate Succession Act is another stipulation that does not provide full protection of women's land rights to the widows under polygamous marriages.

The article states that;

“ 5(a) twenty percent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their marriages to the deceased; and other factors such as the widow's contribution to the deceased's property may be taken into account when justice so requires”

According to the article, the stipulation that the same percentage that is been allocated to a widow from a monogamous marriage is the same percentage that is also been allocated to widows from a polygamous marriage is a huge disadvantage on many grounds. If 20% of an estate is been shared among 4 wives, this means that each wife only gets 5% of the stipulated 20% from the inheritance. While the matter of sharing 20% may not be an issue if the estate is of much value, this unfortunately is not usually the case in Zambia where majority of the population is impoverished, and polygamy is widely practiced in the poor rural areas.

Assuming that the estate been inherited is of little value, once the stipulated 20 % is shared among the widows, each wife's share is drastically reduced, especially in marriages where they were more wives. This condition only leaves each widow with little to restart their lives or to acquire land of their own for habitation or cultivation. The little inherited share does not secure the widow's land rights as they have now lost their marital home. In these cases, widows find themselves back to living at their parent's or relatives' home, condemned to a life of poverty.

Further consideration under Article 5(a) adds that of the 20 % intended share of the inheritance, it's devolution may be carried out proportional to duration of their marriages, while also considering each widow's contribution to the property. The stipulation, while seemingly fair to the first wife, it is unfair to the other wives as when it comes to marriage duration, it is the first wife who would stand to inherit a larger percentage of the inheritance than the other wives.

In regard to the contributions made to the estate, it is plausible that the first wife, having been married to the deceased the longest, may have had more time than the other wives to contribute to the estate and hence would stand to inherit more on these grounds as well. As for the other wives who might have not contributed to the estate due to lacking capacity or were newlywed to the marriage, there is more to consider during devolution of the estate than contributions made^[3]. Unfortunately, Article 5(a) is ambiguous on the term 'contribution' as because a widow did not contribute to the estate financially does not mean that she did not contribute in another form of capacity (provide maintenance support to the household or even emotional support to the head of the house). These other forms of contributions cannot not be disregarded when devolving an estate.

With the considerations of duration and contributions to mentioned in Article 5 (a) as grounds for an estate's devolution, it can be concluded that the Interstate Succession Act favors the hierarchy in polygamous marriages more than it provides land security to the widows. The local terms '*Mai nini*' and '*Mai 'gulu*' meaning '*Small mommy*' and '*Big mommy*' surely have an influence not only in traditional Zambian culture but in Zambia's legislatives as well. This is the case in many African systems where the second or subsequent wives face insecure land rights due to their status within the family^[3]. In Burundi, for example, the law does not recognize polygamous marriages, so only the first wife's children are entitled to inherit land. This has led to increased female poverty and household food insecurity^[1]. A report by Women's network found that polygamous marriages only contribute to poverty as when the husband die, it is the widow and the children who are left to suffer.

Based on these realities, more statutory amendments are needed that will better provide security towards women's land rights. Currently, the existing statutory laws aimed to promote women's land rights are weakened as these laws lack in adequate sensitization and enforcement. These laws are also often faced with cultural and social norms that limit women's willingness to exercise their rights under the law ^[1]. The limited knowledge that women have of their property rights creates gaps in the legal system that only prevents inheritance and co-ownership of property acquired in marriage ^[1]. These factors inevitably contribute to the insecurity faced in women's property rights and only contribute to the unequal land access between men and women. In order for women's land rights to be provided stronger securities even in the death of their spouse, better enforcement and grassroots sensitization is needed to ensure that women's land rights are protected in both rural and urban areas.

For Further Reading

1. Giovarelli, R, et al (2014) Land Tenure, Property Rights and Gender, (Accessed on 05-05-2022),<https://www.land-links.org/issue-brief/land-tenure-property-rights-and-gender/>
2. Kalaba, E and Spichiger, R (2014), *Gender and Land Administration in Zambia*, (Accessed on;05/05/2022) https://www.files.ethz.ch/isn/178094/WP2014_Gender-land-zambia_Rachel-Spichiger_Edna-Kabal_web.pdf
3. Simpaya, D. P (Accessed on 04/05/2022) <https://landportal.org/blog-post/2021/03/realising-women%E2%80%99s-land-rights-context-inheritance-zambia>
4. The Interstate Succession Act, Cap 59 of the Laws of Zambia, Available at; <https://www.parliament.gov.zm/sites/default/files/documents/acts/Intestate%20Succession%20Act.pdf>(Accessed on 02/05/22)