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A Comparative Account of the Continuous Influence of Customary Law on Judicial Institutions in the Development of Legal Jurisprudence for Ugandan Family Law from Colonial to Post-colonial Settings

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A COMPARATIVE ACCOUNT OF THE CONTINUOUS INFLUENCE OF CUSTOMARY LAW ON JUDICIAL INSTITUTIONS IN THE DEVELOPMENT OF LEGAL JURISPRUDENCE FOR UGANDAN FAMILY LAW FROM COLONIAL TO POST-COLONIAL SETTINGS

Mugabi K. IVAN[1] and Nabalende WITNESS[2]

Résumé

Cet article est conçu sur la base d'une approche méthodologique comparative visant à enquêter sur les récits historiques socio-juridiques des coutumes en utilisant la jurisprudence de différentes décisions des tribunaux de la famille ougandais. Les précédents jurisprudentiels utilisés sont tirés de communautés ancestrales d'indigènes qui comprennent la région de Buganda au centre de l'Ouganda en Afrique de l'Est. Ces affaires faciliteront la discussion en démontrant comment certaines des cultures africaines ont utilisé et continuent d'utiliser pendant des années les tribunaux de droit de la famille comme institutions stratégiques pour consolider la promotion et la préservation continues de leurs normes culturelles. Les affaires de droit des deux familles qui approfondissent l'analyse juridique ci-dessus comprennent celle de Kabali contre Kajubi, une décision de justice rendue à l'époque coloniale et celle de Bruno Kiwuwa contre Ivan Serunkuma et Juliet Namazzi, une décision beaucoup plus récente rendue dans le contexte postcolonial. Une approche méthodologique basée sur des études de cas est utilisée pour choisir Baganda, comme l'une des tribus bantoues en Ouganda. Ce choix est utilisé comme une représentation illustrative des systèmes de droit de la famille afrocentrique.

Mots clés : *Droit de la famille, droit coutumier, période coloniale et post-coloniale*

Abstract

This paper is designed upon a comparative research design set out to investigate socio-legal historical accounts of customs by using case law from different decisions of Uganda's family courts. The case law precedents used are drawn upon ancestral communities of natives that comprise the Buganda region of Central Uganda in East

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Africa. Those cases shall aid this discussion by demonstrating how some of the African cultures have for years used and continue to use family law courts as strategic institutions for consolidating the continued promotion and preservation of their cultural norms. The two-family law cases that are furthering the above legal analysis include that of Kabali v Kajubi a court decision made during colonial times and Bruno Kiwuwa v. Ivan Serunkuma and Juliet Namazzi a much latter decision made in the post-colonial context. A case study-based research design is used in choosing Baganda, as one of the Bantu tribe in Uganda. This choice not a symbolic of preferential treatment to Baganda than other Ugandan tribes but it is solely used as an illustrative representation of Afrocentric family law systems.

Keywords*: Family Law, Customary Law, Colonial and Post-Colonial Times*

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Introduction

Structurally, this discussion shall commence with explaining in a summarised context the facts and the relevant court decisions of the two-family law customary related cases. For purposes of a chronological narrative attention shall first be accorded to evidence of Buganda customs in a much earlier court decision from the colonial settings. Thereafter attention shall be shifted on how the customs have maintained their notoriousness in the much latter decision made in the post-colonial context. In the colonial context, the case of *Kabali v Kajubi*,[3] is used whereby there will be special attention centered on the legal complexities that the polygamous nature of customary family law presented to the understanding of suitable remedies by the British judge at the Ugandan High Court.[4] That appellate decision of the High Court shall be contrasted with the overruled and reinstated decision of the *Lukiiko* (a quasi-judicial body that comprised the lower court during the colonial time). Bearing in mind that the *Lukiiko* was often comprised of Buganda chiefs. Some explanation shall also be given using Buganda customary patriarchal ideologies associated with genealogies of clanships.[5] *Nsenene* clan (grasshopper clan) and the clanship aspect in Buganda needs explanatory clarity.[6] Here the analysis should expound how children from a family in polygamous marriage lawfully enjoyed the right of belonging to the same clan as that of their family. Thus, the discussion shall investigate the rationale that justified the legal reasoning of the *Lukiiko* in adopting Afrocentric clanship rule in recognising the legitimacy of the allegedly illegitimate children from families of polygamous relationships. The discussion demonstrates how the case was key in determining distribution of the estate of a father that died intestate.

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[3] *Kabali v Kajubi (1944) 11 EACA 34.*

[4] A. N. Allott, *'The Judicial Ascertainment of Customary Law in British Africa',* The Modern Law Review Vol. 20, No. 3 (May 1957), pp. 244-263.

[5] Florence Akiiki Asiimwe, 'Gender Inheritance laws and Practice Experience of Urban Widows in Uganda', in *Contemporary Social Issues in Africa: Cases in Gaborone, Kampala, and Durban'*, Mokong Simon Mapadimeng and Sultan Khan eds. Bhubezi Printers, Pretoria South Africa, 2011. pg. 238.

[6] Muzafaru Nsubuga and Issa Aliga, '*Kabaka urges clan heads to document Buganda's history',* Daily Monitor on Wednesday 12 June 2019.

The discussion then progresses to the post-colonial context by detailing facts in *Bruno Kiwuwa v. Ivan Serunkuma and Juliet Namazzi*[7] (2006) another Ugandan court decision made 60 years later. Special attention here shall be centered on understanding how the legal reasoning supported by customary law was used to secure an injunction from the family law division of the Uganda High Court. This paper shall explain how the customary rules of clans in this context the intended bride and groom being from the same *Ndiga* clan (Sheep clan) are presented again to the court once as an anthropological consideration perhaps in similarly useful legal family context as they had been more than 60 years ago in the earlier case of *Kabali v Kajubi.*[8] The paper also uses *Bruno Kiwuwa v. Ivan Serunkuma and Juliet Namazzi*[9] in extrapolating how customary rules were useful to the applicant in persuading court to grant them an injunction. The analysis is advanced in the subsequent part of the study in order to make a comparative-historical reflection on the consistent role of customary practice in decisions of family law. This shall expound how customary practices can inform and influence the application of family law.

Before delving into the details of relevant case law, it is imperative to start off this analysis by detailing a comprehensive explanatory account of the context and legal contents of a custom. The law dictionary defines a custom as a practice that has been followed in a particular locality in such circumstances that it is to be accepted as part of the law of that locality. And that in order to be recognised as part of customary law, such a practice must be reasonable in nature in addition to having been continuously followed and its rightful occurrence is ascertainable as having been into existence ever since the commencement of legal memory.[10]

According to Ugandan domestic law, the term custom is also defined under section 1(a) of the Hindu Marriage and Divorce Act as a rule which, having been continuously observed for a long time, has attained the force of law among a community, group or family, being a rule that is certain and not

[7] Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi High Court Civil Suit No, 52 of 2006
[8] *Kabali v Kajubi* (1944) 11 EACA 34
[9] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.
[10] Elizabeth Martin (Ed), Dictionary of Law, 4th Edition, Oxford University Press, 122

unreasonable, or opposed to public policy and in the case of a rule applicable only to a family, has not been discontinued by the family.[11]

Custom as a source of law is present in every legal tradition. For instance, the English common law was drawn upon local custom.[12] As such, customary law is defined as a rule or set of rules, established, accepted and binding on the members of a given society in their social relations.[13] For instance, in Uganda, particularly among the Baganda, there are specific areas of law in which customary law has been remarkably pronounced because of its predominance. Examples of such areas include laws relating to marriage, laws on succession in the event of either dying testate or intestate, and other legal aspects of sociological jurisprudence.

It is worthwhile noting that although the establishment of British Protection rule over Uganda was also characterised with it the importation of foreign law and the enactment of a legal regime based on English principles, this historical occurrence neither reduced nor obliterated influences of indigenous customary law.[14] Thus, customary norms thrived within the Ugandan native communities considering the high respect which the country's colonial judiciary afforded to customary practice. Such judicial receptiveness to customary norms was not only evidenced from Uganda's legal history of the 1940s colonial era judgements,[15] but also well reflected in the judicial reasoning of more recent postcolonial judgements.[16] In which case various judges have made several pronouncements where they authoritatively approve the application of customary law. Case law decisions in *Marko Kajubi v Kulanima Kabali*[17] and *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[18] will usefully demonstrate the above role of customary discourses in shaping and informing the legal history and the foundational tenets of family law in Uganda specifically. Although the Baganda of Uganda

[11] Section 1(a) Hindu Marriage and Divorce Act Cap 250.
[12] Mary Glendon et al, Comparative Legal Traditions (1982)
[13] Joseph Kakooza., Application of Customary Law in Uganda, Vol. 1 No. 1, The Uganda Living Law Journal, 2003, p. 24.
[14] Morris, H.F., & Read, J.S, Uganda: The Development of Its Laws and Constitution, (1966), 254-55
[15] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34.
[16] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.
[17] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34
[18] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006

are a resourceful case study in advancing this analysis, the relevance of the observations from the two cases shall bear significance that transcends Uganda as they are in many respect reflective of the interplay of customary values in most, if not all, African communities in sub-Saharan African.[19]

A. The Background of the Key Cases

It is imperative at this stage to use each of the respective cases in availing an insight of family law related aspects and where practicable the intricately inseparable concept of succession law. A narrative approach is used in this section considering its ability to comprehensively explain how and why the dispute arose as well as the legal regime that courts applied while affording remedial action to the different parties involved. This shall play a key role equipping the readers with a broader understanding of the interconnected context between norms Afrocentric customs and the patriarchal conceptualisation of family law under a hybrid of both polygamous and monogamous settings as exemplified by each of the cases, respectively. Moving forward the explanatory account shall start with what transpired in *Marko Kajubi v Kulanima Kabali*[20] (a renowned polygamous family court case of the 1940s colonial times) before progressing further to deal with *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*.[21]

1. Marko Kajubi v Kulanima Kabali (1944) Colonial Time

In the above case, Kabali was one of fifty (50) orphans that had been fathered by the then late Masembe (hereinafter referred to as the deceased) who died intestate. Out of those 50 children, 43 are illegitimate and 7 legitimate.

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[19] *Eshugbayi Eleko v. Nigerian Government* (1931) AC 662, a related customary and family centred decision is one of the cited and followed precedents in *Kajubi v Kabali* (1941) EACA. 34

[20] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34

[21] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006

According to the customs of the Baganda, the clan head[22] who was Marko Kajubi in this case is tasked with the duty of distributing the deceased's property among his legitimate and illegitimate children. In making the distribution, Marko followed the Baganda customary practices that are applicable to cases of intestate succession and the apportionment made by him was submitted to the Kabaka (the King of Buganda Kingdom) in Council (Lukiiko) and confirmed by him. However, Kabali appealed to the High Court of Uganda disputing the distribution and arguing that the children of the marriage should acquire a higher status than the illegitimate and that consequently they should receive greater shares in the distribution than any of the illegitimate children.[23] The High Court in its holding agreed with Kabali consequently pronouncing a judgment in favour of his objection to the distribution of their late father's estate. Consequently, Kajubi appealed against the decision of the Ugandan High Court to the East African Court of Appeal and this court, upheld the decision of the Buganda Lukiiko Court that all children of the deceased both legitimate and illegitimate were entitled to share in the estate of their deceased father. In particular, Sir John Gray C.J stated

> *"The court did not have any authority to interfere with the distribution effected by the clan head. He added, […] I am fully satisfied that this is a custom which is unimpeachable and also one which no court ought to try and go behind."*[24]

2. *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi (2006) Post-Colonial Time*

As already noted, that legal analysis suggests that the recognition and preservation of customs by family law courts has continued to maintain its

[22] A clan in Buganda represents a group of people who can trace their lineage to a common ancestor. It is a large extended family and all members of a given clan regard each other as brothers and sisters regardless of how far removed from one another in terms of actual blood ties. See www.buganda.com. Visited 18th July 2020.

[23] A. N. Allott, 'The Judicial Ascertainment of Customary Law in British Africa', The Modern Law Review Vol. 20, No. 3 (May 1957), pp. 244-263.

[24] *Marko Kajubi v Kulanima Kabali* 11 Ext. A 34 (1944)

influence throughout the judgements made in the post-independence era.[25] Following the legal developement in the post independent context, detailing an account of the current state of Uganda's legal regime on the application of customs becomes inevitably important. The 1995 Constitution of the Republic of Uganda provides that *"every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others."*[26] Uganda's Judicature Act also provides for customary law as one of the sources of law in Uganda.[27]

Most recently, the family law application of customary norms is evidenced in *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[28] the plaintiff was the father of the bride (Juliet Namazzi) who wanted to be lawfully wedded in church. The plaintiff instituted a suit to prevent the celebration of the church marriage of the first and second defendants on the ground that both defendants, like the plaintiff, being Baganda by tribe, belonging to the same clan of "Ndiga" (Sheep),[29] cannot lawfully by reason of an obtaining custom, contract such marriage. The plaintiff argued that such a marriage "is abominable, immoral, unethical, uncustomary and illegal". Further, that on the basis of the right to culture under Article 37 of the 1995 Constitution of Uganda, the court was enjoined to enforce the custom in issue as the same was the right of the Baganda as a tribe. On their part, the defendants argued that a marriage between the two of them as clan-mates would merely be culturally repugnant but not illegal under the Marriage Act, Cap. 251 as the written law on prohibited degrees of consanguinity did not cover this legal aspect. The Court's decision turned on whether or not the defendants, being Baganda by tribe and being members from the same '*Ndiga'* i.e. sheep clan, can lawfully contract a marriage under the Marriage Act, Cap. 251 or any other laws of Uganda.

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[25] Morris, H.F., & Read, J.S, Uganda: The Development of Its Laws and Constitution, (1966), 254-55

[26] The 1995 Constitution of the Republic of Uganda As Amended Article 37.

[27] Laws of Uganda, Judicature Act Cap 13 Section 14.

[28] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.

[29] Matsiko Godwin Muhwezi, '*Analysis of Cultural and Constitutional Responses to Comprehensive Sexuality Education in Uganda'*, Centre for Policy Analysis (CEPA) Policy Series Papers Number 2-10 on November 2016. Pg. 17.

In resolving this issue, Justice Remy Kasule navigated the legal history and current laws on the promotion of culture, the ideas on indigenous and native rights and based on these, asserted the uncontested applicability and recognition of customary law. The learned Justice further observed that there was no provision in the Marriage Act that excludes the observance of a customary law and practice by those intending to contract the type of marriage that the Marriage Act allows.

In furthering his line of reasoning, Justice Kasule relied on a scholarly article by Professor Joseph Kakooza in which it was observed that: *"Because of the fact that over time, since the advent of the colonial era and Christianity, native Ugandans kept to their customs in marriage, it became necessary for the religions to give due recognition to some of these customs in the celebration of marriage."*[30]

He further observed that as such, 'a marriage under the Marriage Act became a combination of both what is religious and what is customary although remaining a church or civil marriage'. The judge then concluded that although not within the prohibited degrees of consanguinity, compliance with customary practice was a valid procedural requirement for the solemnisation of a marriage under the Marriage Act.[31]

Accordingly, judgment was entered for the plaintiff declaring that the first and second defendant's intended marriage was illegal, null and void by reason of the custom that, being *Baganda* by tribe both belonging to the same clan "*Ndiga*" (sheep), the defendants could not lawfully contract a marriage as between themselves. The decision of the court clearly upheld the custom of the *Baganda*, which is to the effect that a *Muganda* man and a *Muganda* woman of the same clan cannot contract a marriage between themselves.

[30] Joseph Kakooza., Application of Customary Law in Uganda, Vol. 1 No. 1, The Uganda Living Law Journal, 2003, pg. 24

[31] Ibid. pg. 24.

II. COMPARATIVE ANALYSIS OF COLONIAL AND POST-COLONIAL FAMILY DECISIONS

In this section, effort is devoted to advancing a coherent analysis of the similarities noted from the study through a comparative research design. In this regard patterns from both cases are carefully examined with the aim to advance a neatly interwoven descriptive and demonstrative discourse of how customary ideologies have endlessly preoccupied approaches to African case law on family matters.[32] In this context this comparative research design is adopted given its comprehensive role in exposing customary narratives and exhaustively exploring socio-legal discourses in this area of Afrocentric family law.[33] Consequently, the paper classifies the forthcoming analytical themes into two broad categories. Namely the first analysis deals with identifiable similarities in tends of these main family law cases and the second part of this analysis shall deal with identifiable differences from legal.

A. **Similarities in Trends and Ideas of the Two-Family Law cases**

1. Norms of Customary law

First and foremost, there is a considerably high level of an underlying force of customary norms in both case law decisions. Such norms act as normative benchmarks that appear to safeguard the legal reasoning of judges in as far as the colonial and post-colonial contexts of family law cases are concerned.

The above evidence of customary influence is exemplified in the legal reasoning of the decision of *Kajubi v Kabali*[34] according to which customs from succession practices of the *Baganda* tribe are applied in the broadest context possible. Officials of the *Lukiiko*[35] are clearly supporting the applicability *Baganda* customary norms and bearing in mind that all parties to the dispute belonged to the same African tribe. Subsequently all members

[32] A. N. Allott, *'The Judicial Ascertainment of Customary Law in British Africa',* The Modern Law Review Vol. 20, No. 3 (May 1957), pp. 244-263.
[33] Sylvia Tamale, '*Decolonisation and Afro-Feminism'*, Daraja Press, 2020 Canada, pg. 132-133.
[34] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34
[35] A quasi-judicial traditional tribunal that is said to comprises of the king's appointed arbitrators.

of the extended polygamous family, not only subscribed to the same cultural norms but are also presumably familiar with cultural discourses of Buganda customs. Especially pertaining to the manner in which those customs determine the nature of interactions between family law on one hand and succession law on the other. Bearing in mind that *Baganda* customary marriages are usually (though not always) associated with a tradition of polygamous trends for all purposes and intents, it is therefore unsurprising that the *Lukiiko* is reluctant in adopting a stricter legal approach that is similar to that of monogamous matrimonial marriages which tended to exclude issues/children born outside the wedlock from the inheriting the estate of the deceased.[36] Consequently, in this context the *Lukiiko* exemplifies its approval to the clan head's decision as a symbolic gesture of an Afrocentric understanding of family law natural justice by ensuring that the law extends equal treatment to each and every single child from any of the deceased's wives. It is upon that backdrop that *Baganda* culture desists from approving the applicant's proposition of seeking to classify the children from the matrimonial married wife as legitimate children whereas portraying the children from the rest of the deceased's polygamous wives as illegitimate children from cohabiting relationships.[37] Although the High Court decision of *Kajubi v Kabali*,[38] illustrates a failure by Justice Pearson, whose seemingly rigid colonial perspective potentially accounts for a verdict that underestimated estate distribution of the clan head by rendering the Marriage Ordinance of 1902 supremacy to customary norms of the African subjects.[39]

In the same ethos, in *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[40] a much latter decision of the post-colonial context also illuminates the popularity of customary norms in legal reasoning of family law cases by African judicial bodies. On this occasion it must be appreciated

[36] Shaw v. Shaw (1954) 2 ALLER 638.
[37] Uganda Marriage Ordnance, 1902, See also the pronouncements of Justice Pearson at pg. 35.
[38] *Kajubi v Kabali* Civil Appeal No. 2 of 1944.
[39] Lominda Afedraru and Lydia Mukisa, 'Uganda: Court Orders Same Clan Marriage Parties to Take DNA Test', in the Daily Monitor 13 July 2006<https://allafrica.com/stories/200607120995.html> on 31/03/2020.
[40] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.

that the case demonstrates how *Baganda* customs extended their control in determining the legality of parties intending to undertake a marriage. In this regard the pivotal role of customs lies on a view that some Afrocentric communities like the *Baganda* take a stricter and broader standard of using their clan lineages as guiding thresholds in determining and defining what constitutes prohibited degree of consanguinity.[41] Consequently, so long as two people are from the same clan, then *Baganda* customs will automatically inhibit them from getting married to each other based on having close degrees. In this regards the intended bride and groom were allegedly identifiable with the same clan and thus genetically related,[42] which led to a state of affairs that the parent was unwilling to permit.[43] Consequently, the father to the bride was able successfully secure a prohibitive injunction as a remedial order from the High Court of Uganda. It is self-evident that the clanship ideology plays an instrumentally vital role in as far as matters of customary significance are concerned.

2. Customs as tools of Traditional Institutional Structures

Both cases have an element of demonstrating the valuable legitimacy of using customary tents as socio-legal engineering tools for enhancing moral authority traditional institutions in not only influencing the past and the present conceptualisation of the perceivably underlying societal rules of family laws. It must be appreciated that in as much as the time when the decision in *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[44] was made the Lukiiko was no longer an existing judicial body following its abolition in 1960 as the relationships between the monarchist and the Uganda People's Congress deteriorated,[45] thus affected some institutions. However, in as

[41] Edward Anyoli, '*Uganda: Clan Marriage Case for Today',* Reported in The New Vision News on 3 May 2007. Accessed from <https://allafrica.com/stories/200705040114.html> on 31/03/2020.
[42] Sebidde Kiryowa, *'Same clan wedding blocked: The Inside story',* Reported in New vision 30th June 2006 at <https://www.newvision.co.ug/news/1145623/clan-wedding-blocked-inside-story> 01/09/2020.
[43]Matsiko Godwin Muhwezi, '*Analysis of Cultural and Constitutional Responses to Comprehensive Sexuality Education in Uganda',* Centre for Policy Analysis (CEPA) Policy Series Papers Number 2-10 on November 2016. Pg. 17.
[44] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.
[45] Kanyeihamba, G.W (2002) '*Constitutional and Political History of Uganda from 1894 to the Present*,' Centenary Publications. pg. 8-10.

much as the presence of the *Lukiiko* ended, compliance with the customary practices which the institutional body used to oversee maintained an endless trend through clanship practices. In essence the presence and absence of the *Lukiiko* as symbolic icon of traditional institution hardly constrained the unchallenged power of customs on the socio-legal family constructions that underpin the conceptualisation of family law. For example, in *Kabali v Kajubi*,[46] the role of a clan head as the authorised distributor of the deceased's estate on dying intestate among their children is not only demonstrated but further evidenced in the context of the emerging social developments. At the same time, the rules of Baganda clans are also seen as clearly applicable in as far as the guiding of the judicial decision in *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[47] is concerned. Unlike the decision during colonial times where the Lukiiko worked closely with the clan head in enforcing customary values, in the post-colonial context customs the role of parenthood is supporting customs underpinned by clanship norms is vividly demonstrated. Either way in both cases the clans are portrayed as more than just societal structures but also as social entities through which Buganda communities have used customs in maintaining a legacy on the shaping of family law.

3. Heteronormativity and Patriarchy Nature Customary Family law

Both cases of family law are perceivably illustrating customary narratives as norms that consolidate characteristics of heteronormativity and patriarchy in Afrocentric contexts. In this context the both the decision of *Kajubi v Kabali*[48] and that of *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*[49] demonstrate a legal reasoning of family law that is centred upon a patriarchal approach. However, such patriarchy is also embedded with discourses of heteronormativity. For purposes of unpacking this aspect, the patriarchal context shall be examined before proceeding to afford attention

[46] *Kajubi v Kabali* Civil Appeal No. 2 of 1944.
[47] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.
[48] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34.
[49] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.

to how, where, and why aspects heteronormative discourses characterise the colonial and post-colonial legitimacy of family law cases.

2.1.1.1 Customs of Family law in Paternalistic Patriarchy-Maternalistic Matriarchy

According to the *Baganda* culture the children regardless of their gender have and will always belong to their father's clan both within monogamous and polygamous family contexts and subsequently they are allocated their names are based or selected according to the father's clan rather than the mother's clan that is different from that of their mother as a matter of cultural normativity.[50] It is apparent that clanship-based naming is more than just a feature of cultural identity. Given that naming also acts as an iron fist concealed in velvet gloves through which the notions of gender empowerment implicitly compromised within power structures of some African families. For example, the pedestal of masculine supremacy could explain why *Kajubi v Kabali*[51] demonstrates men's exclusive enjoyment of clan-related roles rather than women. Similarly, in *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[52] norms of patriarchy are also evidenced in the control on the decision-making mandate of the father rather than that of the mother in as far as determining the acceptability of the daughter's choice to get married to her partner allegedly belonging to the same clan as that of her patriarchal lineage.[53] For purposes of expounding engendered aspects underling Afrocentric patriarchy, the receptiveness expressed by the bride's mother on the basis of claims that her daughter was fathered by another man from a different Ugandan tribe. Consequently, the mother had permitted the couple to progress with their wedding arrangements. However, the father insisted that the choice and wishes of her daughter defied the customary marital rule of not marrying the person from the same

[50] Sylvia Tamale, '*Decolonisation and Afro-Feminism'*, Daraja Press, 2020 Canada, pg. 132-133.
[51] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34.
[52] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.
[53] Sebidde Kiryowa, *'Same clan wedding blocked: The Inside story',* Reported in New vision 30th June 2006 at https://www.newvision.co.ug/news/1145623/clan-wedding-blocked-inside-story> 01/09/2020.

clan as their paternal/patriarchal clanship identity.[54] In this context Dr. Ivan *Serukuuma* (the intended groom) was alleged to be from the same sheep clan (*Ndiga* clan) as the girls' father (Mr. *Kiwuuwa*). Amidst this worthwhile noting the absence of any mentioning of the mother's clan, a tendency attributable to the legal insignificance that Baganda tribe associates with the maternal/matriarch ties of clanship.[55] This paternalistic patriarchal clanship identity among in discourses of Buganda's customary narratives advance an approach that not only promote gender imbalances but also enhance norms of unchallenged masculine supremacy.

2.1.1.2 Heteronormativity in Family law of African Customs

Both cases manifest useful characteristics to inform legal scholars of the relationship between clanship lineages of Buganda customs and their influences on family law's interactions with broader themes of heteronormativity.[56] Both decisions of family law depict the unchallengeable and unchanging dominance of the heteronormativity context upon which customary law of African cultures conceives legitimacy of family structures. For example, in colonial times, the 1940s decision of *Kajubi v Kabali*[57]*the* legitimacy of a marital institution is portrayed under the naturalist school of jurisprudence as a polygamous social arrangement that subsists between a man with several women rather than one man with several men or one woman with several women. Consequently, in a customary context, the clanship doctrine portrays each man as a symbolic representation of a patriarchal lineage that not only ascribes brotherhood but also clanship identity among the off springs. The post-colonial decision of *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*[58] manifests legitimised affirmation of heteronormative of family life through lenses of the same natural law school

[54] Matsiko Godwin Muhwezi, *'Analysis of Cultural and Constitutional Responses to Comprehensive Sexuality Education in Uganda',* Centre for Policy Analysis (CEPA) Policy Series Papers Number 2-10 on November 2016, pg.17.

[55] Muzafaru Nsubuga and Issa Aliga, *'Kabaka Urges Clan Heads to Document Buganda'sHhistory'*, Daily Monitor on Wednesday 12 June 2019.

[56] Gargi Bhattacharyya, '*Sexuality and Society: An Introduction',* (Routledge 2002), pg. 97.

[57] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34.

[58] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.

of jurisprudence as more than six decades later. These family law cases demonstrate a high likelihood for the legal force of Buganda's customary law to enhance a stronger applicability of heteronormativity while restraining the acceptability and room for legitimacy of the queer theory.[59]

4. Legal Pluralism and Family Law in a Colonial and Post-Colonial Context

There is evidence of legal pluralism in both of the cases,[60] whereby in the colonial context *Kajubi v Kabali*[61] exhibits presence of a customary law centred legal regime, which is permitting polygamous marriage on one hand, and the presence of the Common law Marriage Ordnance of 1902,[62] that used to legalise the presence of a monogamous marriage on the other hand. In this context the Ordinance seems to have caused controversy by encouraging the conversion of a pre-existing customary polygamous marriage into a matrimonial monogamous marriage.[63] In *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[64] the legal pluralism of Uganda family law is evidenced by the combined reference to having Common law ideas of a monogamous marriage by holy matrimony, but those ideas are contextualised alongside clanship ideas of Buganda's customary law. This approach demonstrates legal pluralism since there is clear evidence of more than one or two different legal systems that are designed to legalise a simultaneous operation of legal authorities of family law that are sourced from a common law legal tradition as well as native customary law of Buganda kingdom. However, a possibility of conflict of laws[65] in a domestic context, is likely challenge of legal pluralism that judges should be mindful

[59] Nikki. Sullivan, *'A Critical Introduction to Queer Theory',* (Edinburgh University Press 2003), pg. 43.
[60] Sylvia Tamale, '*Decolonisation and Afro-Feminism',* Daraja Press, 2020 Canada, pg. 132-133.
[61] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34.
[62] *Kajubi v Kabali* Civil Appeal No. 2 of 1944.
[63] A. N. Allott, '*The Judicial Ascertainment of Customary Law in British Africa'*, The Modern Law Review Vol. 20, No. 3 (May 1957), pp. 244-263.
[64] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.
[65] Mugabi. I. K, '*Conflict of laws cross to public international laws: the conflicting models in the conceptualisation of disability rights under international humanitarian law and human rights law'*, in Scientia Nobilitat Reviewed Legal Studies, D. Stanek, M. Vrabko, M. Selucka and R. Siucinski, (eds.) (2014, Poland) pp. 52-73.

about as a tangential concern. Therefore, the concurrent presence of monogamy and polygamy with equal legitimacy under the same jurisdiction is a consequential attribute of judges and practitioners from the family division of Uganda's courts unknowingly applying approaches from legal pluralism.

B. Differences in Trends and Ideas of the Family Law Cases.

1. Ratio Decidendi for Both Cases is distinguishable:

It is imperative to note the presence of distinctive trends in as far as the legal basis upon which the two case studies are based. For instance, the rationale decidendi for *Kabali v. Kajubi*[66] is framed upon premises that intestate succession implies absence of a will hence a need for an equitable distribution of the deceased's estate is fundamentally vital to ensure fairness to all the orphans. This ratio decidendi resonates themes of equitable succession rights,[67] as well as advancing legal theory from a right-based approach of not discriminating children on grounds of the marital status of their maternal backgrounds. This reasoning could also be attributable to the previously examined concept of legal pluralism that accords an equally indiscriminative playing field for all women as well as their children.

Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi,[68] the ratio decidendi for this case resolves around a person's illegality to marry because of a Buganda customary law which prohibits people marrying each other so long as they are from the same clanship identity. Therefore, the interlocutory order granted by Justice Remmy Kasule was founded on the need of ascertaining whether both the groom and the bride that is (Dr. Serukuma) and (Namazzi) belonged to the same clan. This case is distinguishable from the earlier one because in this case a legitimate marriage had not been formed as of yet whereas in the previous case the marriage had already happened and possibly come to an end following intestate death of Mr.

[66] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34.
[67] Abdullahi A. An-Na'im ed. 'Islamic Family Law in A Changing World: A Global Resource Book', Zed publishers Ltd 2002 pg. 50.
[68] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.

Masembe the father to the children. Therefore, customary law is clearly dealing with different aspects in cases upon which the ratio decidendi of either decision is based.

2. Distinctive in Branches of Law and Nature of Evidence in both Family Decisions

2.2.1.1 The Appropriate Branch of Law Complementary to Family law

The branches of law and the nature of procedural evidence that is being required and applied is distinctive in both of the cases. For instance, the law on property allocation in the event of a person dying intestate is applied in the decision *Kajubi v Kabali*[69] subsequently as a matter of case law contribution to legal jurisprudence of family law, the decision is categorically classifiable under customary succession law. Whereas in *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[70] it is apparent that there was an issue of a preliminary issue of disputed paternity that needed to be resolved before a marriage and subsequently formation of the family can be permitted.[71]

2.2.1.2 Different Evidence needed in both family law cases

In an evidentiary context, the family law court that makes its decision in colonial times deals with questions of evidence concerning the equitability of distributing the estate of the deceased rather than the post-colonial decision that requires evidence for proving of paternity. Bearing in mind that the bottom-line of the dispute in 1940 revolved around the alleged change of circumstances as a result of a wedding that was seemingly misconstrued to have discarded the polygamous family and replaced it with a monogamous family that was more seemingly appealing in eyes of common law colonial ideas. That created an erroneous impression of superiority leading to the

[69] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34

[70] Matsiko Godwin Muhwezi, '*Analysis of Cultural and Constitutional Responses to Comprehensive Sexuality Education in Uganda'*, Centre for Policy Analysis (CEPA) Policy Series Papers Number 2-10 on November 2016. Pg. 17.

[71] Edward Anyoli, '*Uganda: Clan Marriage Case for Today',* Reported in The New Vision News on 3 May 2007. Accessed from <https://allafrica.com/stories/200705040114.html> on 31/03/2020.

married widow and her orphans expecting a more favourable legal treatment than other widows. Perhaps evidence the applicants could have adduced evidence of marriage in challenging the clan-head's property distribution of their father's estate. It is highly probable that ascertaining some of that evidence was pre-requisite to Justice Pearson overruling the *Lukiiko's* decision. In 2006, Justice Remy *Kasule* was more interested in the evidence from the results of the DNA tests undertaken in *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*.[72] That was needed to resolve the conundrum of contested clanship identity.[73]

3. Difference in Rights Based Trends in the Colonial and Post-Colonial Context

Trends of right-based approaches are clearly distinguishable in family law decisions pronounced during colonial times from those made in the post-colonial context. The right-based approach in 1940 had barely developed both domestically and globally. Considering that globally speaking the earliest human rights instrument was the Genocide Convention,[74] that came into force much later in 1948 as such the idea of equitable distribution was skewed to normative discourses of common law in the eyes of the British judge, who have overruled the *Lukiiko* decision. The post-colonial decision of 2000, the African judge appears to appreciate the right to justice and fair hearing as a right that closely linked to parental authority to promote customary rights. The post-colonial approach of the Ugandan High Court for the family division, particularly in *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi*,[75] is affording a higher regard to customary issues than how the same court reacted in colonial times.

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[72] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.

[73] Lominda Afedraru and Lydia Mukisa, '*Uganda: Court Orders Same Clan Marriage Parties to Take DNA Test*', Reported in the Daily Monitor on 13 July 2006 <https://allafrica.com/stories/200607120995.html> on 31/03/2020.

[74] Genocide Convention 1948, The International Convention on the Civil and Political Rights 1966.

[75] *Bruno Kiwuwa v Ivan Serunkuma and Juliet Namazzi* High Court Civil Suit No, 52 of 2006.

4. Different number of Appeals and Overruling Decisions of the Trial Court

During the colonial period there is some element of conflict in the legal reasoning of judges in as far as the application of foreign common law and native customary law is concerned to the family dispute is concerned. That clash in those two sources of family law accounts for the granting of an appeal by the High Court against the ruling of the *Lukiiko*.[76] A related aspect underlying the overruling of decisions in the presence of a renvoi doctrine in the context.[77] The renvoi doctrine refers to a legal situation under which two different legal systems take differing approaches on the same point of law.[78] In this regard according to the legal reasoning of the Buganda's quasi-judicial body (the *Lukiiko*), the manner in which property had been equally distributed among the orphans of the deceased was impartial and appropriate since customary succession law disregarded the argument of classifying the orphans into illegitimate and legitimate children.[79] Although after a further appeal, the East African Court of Appeal in Arusha (as it was then), overruled the decision of the Uganda High Court at Kampala and reinstated the *Lukiiko* decision that had approved the apportionment made by the clan-head.[80] It is imperative to reinstate that the case undergoes three different stages of hearing with judgements reflecting renvoi concept. It must be borne in mind that renvoi doctrine is more associable with branches of private international law rather than those of public international law. Arguably its application in this case suitable considering that the case relates to family law.

The post-colonial decision was exclusively handled under the High Court possibly in light of jurisdictional reforms that have happened in Ugandan family in the past six decides. Jurisdictional reforms are of statutory for the

[76] *Kajubi v Kabali* (1941) East African Cases of Appeal. (E.A.C.A) pg. 34

[77] Ernest Gustav Lorenzen, 'Cases on the Conflict of Laws: Selected from Decisions of English and American', Creative Media Partners 2018 pg. 95.

[78] K. Lipstein, 'Principles of the Conflict of Laws National and International', Martinus Nijhoff 1981 pg.105.

[79] A. N. Allott, 'The Judicial Ascertainment of Customary Law in British Africa', The Modern Law Review Vol. 20, No. 3 (May 1957), pp. 244-263

[80] Muzafaru Nsubuga and Issa Aliga, '*Kabaka urges clan heads to document Buganda's history',* Daily Monitor on Wednesday 12 June 2019.

Marriage Ordnance of 1902, was repealed and substituted by a number of different statutes that are permissive to the various types of marriage.[81]

5. Different Institutional framework in the Both cases

In this context the nature, of institutional structures has considerably changed over period of time. Particularly during colonial period, the *Lukiiko* was one of the lowest trial courts that was held in high esteem in as far as disputes of family and succession law cases are concerned. However, at the moment (as of 2020) the *Lukiiko* is no longer in existence ever since the abolition of kingdoms the declaration of the Republic in the 1960.[82] The absence of this court earmarks an institutional gap in responding the specialised matters of customary law. Arguably the demise of this institution and the fundamental role that its presence played, has impacts of compromising the enriched development of native customary law in areas of socio-legal nature such as family and succession. Related to the above is the slow-paced judicial activism in generating of customary law through court-based decision-making processes. The composition of this quasi-judicial organ is another key feature that is worthwhile taking not consideration. Whereby local chiefs from among communities of native Buganda constituted the *Lukiiko* during the colonial period. In essence even though the British judges comprised the country judicial service system of the time, native exclusivity of this body made it a social engineering tool for safeguarding the promoting of local customary practices.

In post-colonial and contemporary settings, it is crystal clear that the high court handles all kinds of family-related disputes pertaining to succession or contestation of marriages. Unlike in the colonial times, the office of the Administrator General appears to be the only public office that is exclusively mandated to undertake the roles previously played by the clan-head. In essence in the event of intestate death, the application for letters of probate coupled with the issuance of a certificate of no objection was procedures

[81] Customary Marriage (Registration) Act (Cap. 248), Divorce Act (Cap. 249), Hindu Marriage and Divorce Act (Cap. 250), Marriage Act (Cap. 251), Marriage of Africans Act (Cap. 253).

[82] Kanyeihamba, G.W (2002).Constitutional and Political History of Uganda from 1894 to the Present, Centenary Publications. pg.10.

that are vested under the mandate of the aforesaid office. These changes in the offices that are assigned the above roles becomes pivotal in appreciating how the nationalisation of succession laws might have some effect on the functionality of state institutions.

III. LEGAL SIGNIFICANCE OF TRENDS IN THE CONTEXT OF AFRICAN FAMILY LAW

In terms of envisaged jurisprudential and epistemological significance of the above trends, the research advances the following observations.

First and foremost, the paper has used analysis of those trends in generating knowledge necessary for legal scholars, family lawyers and law students in appreciating the interactive facets as to how customary norms have informed legal reasoning of courts. In this regard the research paper has expounded on how and why judges manifest their awareness of cultural and customary considerations before pronouncing their judgments. It is unclear though highly unlikely that neo-liberal social institutions from western Family law courts have maintained a similarly consolidated traditional model of customary norms especially in as far as paradigms of marital rights for same sex couples,[83] by reconstructing the queer theory in Africa.[84]

The trends deducible from the illustrations of the above case law portray customs as a perceivably useful social tool for studying epistemological discourses that underpin facets of legal reasoning. Such discourses are relevant in demonstrating the importance of family law as one of those branches of law through which courts are applying customary concepts. This makes family law a vital tool in creating ideas of anthropological and sociological value for jurisprudence of legal scholarship. That observation makes this analysis not only educative but also persuasive to scholars in legal theory and those interested in legal history. Although the similarities and differences in analysed trends may be equally resourceful to Afro-centric legal scholars especially those with interest in understanding factors

[83] Annamarie Jagose, '*Queer Theory: An Introduction',* (Melbourne University Press 1996), pg. 16.
[84] David Halperin, '*Saint Foucault: Towards a Gay Hagiography* (Oxford University Press 1997),pg. 62.

accounting for differences in the development of family law within judicial institutions of Eurocentric and those of Afro-centric courts.

Furthermore, the use of time as a comparative aspect for the identified trends through the selection of two different cases with elements of customs in succession as well as family law. The paper has aimed to successfully deploy the narrative of legal trends in demonstrating the role of case law decisions as resourceful data sources for advancing informative studies in a socio-legal historical context. The legal analysis has established that there is evidence of a legal history of strong interaction trends of legal reasoning and customary norms. It is those interactive trends which are implicitly shaping family law judgments from the colonial era to the post-colonial context of family law decision in African jurisdictions. Consequently, these interactions are not only informing about the legitimacy of family structures but also influencing the contents of family law thereby consolidating a layer of precedents over sixty years yet with the same trend of legal reasoning in this area of law.

Conclusion

A. **Observations**

In a nutshell, the critical and analytical commentary undertaken on both cases of family law exposes some insightful findings.

In the pre-colonial context, there was a lesser likelihood that foreign British judges (who originated from none of the Afrocentric ethnic setting) would be able to understand the import of African customs of legalities for the formation of a marriage, the consequential enjoyment of subsequent rights and the succession rights as evidenced in the handling of *Kabali v Kajubi* case by justice Russel in the high court at Kampala around 1939-1940.

In the post-colonial context, there is a higher likelihood that native judges from a particular tribe would be better placed to accept and respect the value of customs when handling family law cases. This might be attributed to the comprehensive and holistic appreciation of customary law. This assertion might be largely attributed the experiences of an African judge such as Remy

Kasule who is more than likely to understand and apply native customs than a British judge such as Pearson. Therefore, foreign judges stand more chances of making decisions that are more than likely to either compromise or discard customary values.

There is a lesser likelihood for foreign judges to use sources accurately and cautiously especially if those other sources of family law that are either clashing with their western or common law perspectives whenever side-lined with norms of their home beliefs. This phenomenon is legally attributable to the limited knowledge a foreign judge might have on the sociological context of the host/colonised/dominated or conquered societies or communities.

In the post-colonial context, there is an increasing tendency by Afrocentric judicial officers to embrace the reliance on scientific evidence in resolving some of the controversies which seemed complex in the colonial period. For example, unlike in the *Kabali v Kajuba* precolonial decision, Justice Remy *Kasule*'s post-colonial decision required the parties to undertake DNA tests as a scientifically known method of ascertained paternity related disputes in cases of family law.

A correlation can also be identified between the customary laws. Some of it is criticized for socially inbuilt prejudices of gender disempowerment. In this case the customs promote a more favourable discourse to paternalistic-patriarchy than to maternalistic- matriarchy. This basically implies that the presence of clanship structures maybe posing hardships to challenging the narrative of gender empowerment.

The centrality of clanship tenets remains a social facet that is deeply entrenched in the way legal jurisprudence of Buganda customs maintain their existence with communities and across families. This clanship centrality was evident in the colonial and the post-colonial context. On this occasion the "*Ndiga*" and "*Nsene*" clans are examples upon which the two cases have been derived. However, it must be re-interested that Buganda kingdom has over thirty clans and through these social constructs, customs of native practices maintain their functionality with the society.

There is a high likelihood for customs to have a crystallised approach on the socio-legal history of a given society. In essence these customs have a tendency of consolidating their legitimacy in the legal history of sociological

and anthropological areas of law such as family law, succession law, children rights among other related branches. Regardless of the branches from which these customs are founded, their preservation and continuity intricately connects the social was lifecycles.

The increasing advocacy for protecting cultural rights is yet another key attribute enhancing the promotion of cultural and native customary rights. This is partly because in the post-colonial context, there is a growing drive not only towards the promotion of native rights but also to ensure their unrestricted enjoyment. This conceptualization embodies concepts of cultural and customary rights.

The diversification of the judicial bench for the family law judicial division remains fundamentally vital. Take for example if the alleged customary practice related to one of Uganda's marginalised tribes or communities such as the *Karamajong* or Indian Communities, the absence of *Karamajong* or Indian judges among Ugandan judges would cause more hardship to easily understand or even appreciate the alleged presence or absence of a disputed custom in question. For instance, in the post-colonial context justice, a judge sharing *Buganda* identity with lived cultural experiences that are grounded on such customs on those would easily and quickly know whether or not there is a custom of wife inheritance in Baganda heritage if alleged as a norm in a given dispute. Particularly if the issue arose in a family law matter as compared to a judge who is from that society, community or tribe hence having a fairly versed knowledge of its customs and cultural tents from his or her childhood.

There is a strong presence of complementarity between family perspectives of clanship ideas with those of natural jurisprudence. Complementarity is evidenced from the observation of heteronormativity trends that underpin norms of Afrocentric customary practices. As noted, that those customs are in many respects complementing or complemented by facets propounding, the purpose and role of law needs to be aligned to ideals of the supreme being such as compliance with normative discourses of nature. It must be recalled that the two cases have a time lapse of sixty years between themselves, but their heteronormative perspective remain

intact and show unchallengeable potential of lasting for several years without giving room to heteronormativity.

B. **Recommendations**

There might be an urgent need of equipping judges, legal practitioners, and law students on the theoretical aspects of legal pluralism and the connection this concept has with the practice of family law.

The teaching of lawyers and drafters should incorporate the "*renvoi*" doctrine that remains underestimated despite its relevance in understanding ideas of comparative family law. Particularly in the event of conflicting interpretations arising within legal pluralism. Such a conflict could arise from the concurrent application of family laws based on African customs on one hand and those based on sources of law from legal history of the common law system, on the other hand, but under the same jurisdiction. underestimate

The judicial training institute may also consider meritorious attributes of having trainings on theoretical aspects of customary law and how it interacts with specific branches of law. This might, however, necessitate a neoliberal model that perceives law as a tool for deconstructing components and contents of customary law.

There is need for a more concerted understanding of the correlations between customary norms and ideas of succession law in ways that promote streamlined complementarity. This would ensure a robust and holistic comprehension of the correlation and how these could be applied to strengthen legal reasoning.

Furthermore, the importance of exploring the negative relationship between Buganda's native customs and tenets of gender equality is long overdue. This would play an instrumentally vital role in as far as the shifting of the status quo is concerned. Therefore, the applicability and promoting of customs ought to be carefully selected and scrupulously examined in order to minimise instances of traditional prejudices inclined to the legitimization of paternalism and patriarchy.

The aspect of using family law decisions as materials for comparative research remains fundamentally important to explore the role of economic,

social, and institutional structures in the shaping and development of family law. Essentially this would entail a more holistic understanding of the ways in which economic, social, and institutional structures are informing or being informed by decisions of family law.

The Ugandan judicial service Commission should revisit and revisit the extensiveness of its judicial diversity policy and consider the role played by live encounters and personal experiences of individual judges. By judicial diversity, this paper is referring to extending the diversity of bench members from mere gender diversity to include tribal diversity.

C. **Further Research in the Area of Customary Family law**

The need for more research on how various facets of legal theory interact with Afrocentric norms of customary family law is long overdue. Therefore, more critical and analytical scholarship is needed to understand trends and patterns of legal reasoning through a textual or doctrinal based research methodology.

Afrocentric context of family law deserves a more critical engagement specifically to advance a better appreciation of its relationship with schools of legal jurisprudence. This would enable to identify the connections that subsist between judgements founded on African family law and concepts on legal positivism, pure theory of law, natural law, sociological jurisprudence, and American realism.

Empirical studies with an in-depth analysis of how the lifestyle, the experiences, the gender, or tribal identity as well as the educational background of Uganda judges impact their approaches and attitudes to family law in general but with a particular focus on customary are needed. Of course, in the event of ascertaining that such factors impact or inform judicial approaches or judicial attitudes, it would be equally useful to establish how or in what ways are those impact could be identified from the text of legal decisions if any.

There is still more urgency to use case law from family courts as resourceful materials to investigate the legal history of Ugandan family and customary law in the colonial and post-colonial contexts. This essentially implies that decided family law related case law could be construed as

sources of research materials for legal historians and socio-legal scholars. Such a multidisciplinary contextualisation of case law would enable case law precedents to be equally helpful for other disciplines of research; thereby contributing to processes of tracing narratives of African history and evidence for recollecting ways of life.