

Uganda

## Trustees Act Chapter 164

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Trustees Act  
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# Uganda

## Trustees Act Chapter 164

Commenced on 8 April 1954

*[This is the version of this document at 31 December 2000.]*

*[Note: The version of the Act as at 31 December 2000 was revised and consolidated by the Law Reform Commission of Uganda. All subsequent amendments have been researched and applied by Laws.Africa for ULII.]*

**An Act relating to trustees.**

### Part I – Preliminary

#### 1. Interpretation

In this Act, unless the context otherwise requires—

- (a) “**authorised investments**” means investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;
- (b) “**contingent right**” as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;
- (c) “**court**” means the High Court or a judge of the High Court;
- (d) “**instrument**” includes Act of Parliament;
- (e) “**land**” includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, and other corporeal hereditaments; also a rent and other incorporeal hereditaments and an easement, right, privilege, or benefit in, over or derived from land; and in this definition “**mines**” and “**minerals**” include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof; and “**hereditaments**” means immovable property which under an intestacy would devolve on an heir;
- (f) “**mortgage**” means an instrument of mortgage capable of being registered under the Registration of Titles Act;
- (g) “**mortgagee**” includes every person deriving title under the original mortgagee;
- (h) “**pay**” and “**payment**” as applied in relation to stocks and securities and in connection with the expression “**into court**” include the deposit or transfer of stocks and securities in or into court;
- (i) “**personal representative**” means the executor, original or by representation, or administrator for the time being of a deceased person;
- (j) “**possession**” includes receipt of rents and profits or the right to receive rents and profits, if any; “**income**” includes rents and profits; and “**possessed**” applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;
- (k) “**property**” includes immovable and movable property, and any estate, share and interest in any property, immovable or movable, and any debt, and any thing in action, and any other right or interest, whether in possession or not;
- (l) “**rights**” includes estates and interests;

- (m) “**sale**” includes an exchange;
- (n) “**securities**” includes stocks, funds and shares; and “securities payable to bearer” includes securities transferable by delivery or by delivery and endorsement;
- (o) “**stock**” includes fully paid-up shares, and so far as relates to vesting orders made by the court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;
- (p) “**transfer**” in relation to land or any estate or interest in it as applied to any person includes the execution by that person of every instrument or document (including an assent) for transferring, assigning, appointing, surrendering or otherwise disposing of land of which he or she is seised or possessed or in which he or she is entitled to a contingent right, either for his or her whole estate or for any less estate together with the performance of all formalities required by law for the validity of the transfer and as applied to any instrument or document means an instrument which is capable of being registered under the Registration of Titles Act;
- (q) “**transfer**” in relation to stock or securities includes the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;
- (r) “**trust**” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception, “trust” and “trustee” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “trustee” where the context admits, includes a personal representative, and “new trustee” includes an additional trustee;
- (s) “**trust corporation**” means the public trustee or a corporation appointed by the court in any particular case to be a trustee or a corporation entitled under any Act to act as a custodian trustee;
- (t) “**trust for sale**” in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale;
- (u) “**trustees for sale**” means the persons, including a personal representative, holding land on trust for sale.

## 2. Application of Act

- (1) This Act, except where otherwise expressly provided, applies to trusts, including so far as this Act applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Act.
- (2) The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.
- (3) This Act does not affect the legality or validity of anything done before the commencement of this Act, except as otherwise hereafter expressly provided.

## Part II – Investments

### 3. Authorised investments

A trustee may invest any trust funds in his or her hands, whether at the time in a state of investment or not, in the following manner—

- (a) in any securities in which trustees in England are for the time being authorised by the law of England to invest trust funds;
- (b) in any securities the interest on which is guaranteed by the Government of Uganda or of Kenya or of Tanzania;
- (c) in any public debentures issued under the authority of or guaranteed by any Act of Uganda or of Kenya or of Tanzania;
- (d) in any stock or securities issued in respect of any loan raised by the Government of Uganda or of Kenya or of Tanzania;
- (e) in immovable property in Uganda held for a freehold or mailo estate in respect of which a certificate of title under the Registration of Titles Act has been issued or held on a leasehold estate for a term of years of which not less than thirty years is unexpired and which is not subject to a rent exceeding 5 percent of the unimproved value thereof or to any condition of reentry except for nonpayment of rent.

### 4. Discretion of trustees

Every power conferred by [section 3](#) shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust or by law with respect to the investment of the trust funds.

### 5. Power to retain investment

A trustee shall not be liable for breach of trust by reason only of his or her continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

### 6. Enlargement of powers of investment

- (1) A trustee having power to invest in freehold or mailo estate securities may invest and shall be deemed always to have had power to invest on mortgage of property held on a leasehold estate for a term of years of which not less than thirty years is unexpired, and not subject to a reservation of rent greater than 5 percent of the unimproved value thereof, or to any right of redemption or to any condition for reentry, except for nonpayment of rent.
- (2) A trustee having power to invest in freehold or mailo estate securities shall accept the security in the form of a mortgage under the Registration of Titles Act.
- (3) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may invest in the debenture stock of a railway company or such other company as aforesaid.

### 7. Investment in bearer securities

- (1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments; but securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by the trustee for safe custody and collection of income with a banker or banking company.

A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this subsection, be deemed to be such an express prohibition as aforesaid.

- (2) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of the deposit and collection shall be paid out of the income of the trust property.

## **8. Loans and investments by trustees not chargeable as breaches of trust**

- (1) A trustee lending money on the security of any property on which he or she can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court—
  - (a) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situated or elsewhere;
  - (b) that the amount of the loan does not exceed two third parts of the value of the property as stated in the report; and
  - (c) that the loan was made under the advice of the surveyor or valuer expressed in the report.
- (2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making the loan the trustee dispensed either wholly or partly with the production or investigation of the lessor's title.
- (3) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement of this Act.

## **9. Liability for loss by reason of improper investment**

- (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced on it, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess of that sum with interest.
- (2) This section applies to investments made before as well as after the commencement of this Act.

## **10. Powers supplementary to powers of investment**

- (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that the money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.
- (2) On a sale of land for a freehold or mailo estate, or on a leasehold estate for a term of years of which not less than thirty years is unexpired, by trustees, the trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a mortgage of the land sold, with or without the security of any other property, that mortgage, if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire to the full value of the buildings with an insurance company approved by the trustees.
- (3) The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such mortgage, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage.

- (4) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement—
- (a) for the reconstruction of the company;
  - (b) for the sale of all or any part of the property and undertaking of the company to another company;
  - (c) for the amalgamation of the company with another company;
  - (d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

- (5) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may, as to all or any of such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title to it to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith; but the consideration for any such assignment shall be held as capital money of the trust.
- (6) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.
- (7) Where the loan referred to in subsection (1), or the sale referred to in subsection (2), is made under the order of the court, the powers conferred by those subsections respectively shall apply only if and as far as the court may by order direct.

## 11. Power to deposit money at bank and to pay calls

- (1) Trustees may, pending the negotiation and preparation of any mortgage, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect of the account shall be applied as income.
- (2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

## Part III – General powers of trustees and personal representatives

### *General powers*

## 12. Power of trustees for sale to sell by auction, etc.

- (1) Where a trust for sale or a power of sale of property is vested in a trustee, the trustee may sell or concur with any other person in selling all or any part of the property either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

- (2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part of the land, whether the division is horizontal, vertical or made in any other way.

### **13. Power to sell subject to depreciatory conditions**

- (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.
- (2) No sale made by a trustee shall, after the execution of the transfer, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.
- (3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.
- (4) This section applies to sales made before or after the commencement of this Act.

### **14. Power of trustees to give receipts**

- (1) The receipt in writing of a trustee for any money, securities, or other movable property or effects payable, transferable or deliverable to the trustee under any trust or power shall be a sufficient discharge to the person paying, transferring or delivering the same and shall effectually exonerate that person from seeing to the application or being answerable for any loss or misapplication thereof.
- (2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for sale of land.
- (3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

### **15. Power to compound liabilities**

A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust or by law, a sole trustee is authorised to execute the trusts and powers reposed in him or her, may, if and as he or she or they think fit—

- (a) accept any property, movable or immovable, before the time at which it is made transferable or payable;
- (b) sever and apportion any blended trust funds or property;
- (c) pay or allow any debt or claim on any evidence that he or she or they think sufficient;
- (d) accept any composition or any security, movable or immovable, for any debt or for any property, movable or immovable, claimed;
- (e) allow any time for payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to him or her or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or her or them in good faith.

## 16. Power to raise money by sale, mortgage, etc.

- (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession.
- (2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes.

## 17. Protection to purchasers and mortgagees dealing with trustees

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application of the money.

## 18. Devolution of powers or trusts

- (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.
- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or the other trustees or trustee for the time being of the trust.
- (3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.
- (4) In this section, "personal representative" does not include an executor who has renounced or has not proved.

## 19. Power to insure

- (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, for the full value of the building or property, and pay the premiums for such insurance out of the income of the building or property or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.
- (2) This section does not apply to any building or property which a trustee is bound forthwith to transfer absolutely to any beneficiary upon being requested to do so.

## 20. Application of insurance money where policy kept up under any trust power or obligation

- (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf, or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, be capital money for the purposes of the trust.
- (2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his or her best endeavours to recover and receive the money, and shall pay the net residue of it, after discharging any costs of recovering and receiving it, to the trustees of the trust, or if there are no trustees capable of giving a discharge for it, into court.

- (3) Any such money—
  - (a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
  - (b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.
- (4) Such money, or any part of it, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.
- (5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part of it to be applied in rebuilding, reinstating or repairing the property lost or damaged, or the rights of any mortgagee, lessor or lessee, whether under any law or otherwise.
- (6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

## 21. Deposit of documents for safe custody

Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of the deposit shall be paid out of the income of the trust property.

## 22. Reversionary interests, valuations and audit

- (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—
  - (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
  - (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
  - (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
  - (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of the release, without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.
- (2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—
  - (a) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or

- (b) to take any proceedings on account of any act, default or neglect on the part of the persons in whom such securities or other property or any of them or any part of them are for the time being, or had at any time been, vested,

until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken; but nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

- (3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any law, from time to time, by duly qualified agents, ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.
- (4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to the auditor as he or she may require; and the costs of the examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

### 23. Power to employ agents

- (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether an advocate, banker, stockbroker or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.
- (2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating or otherwise administering any property, real or personal, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside Uganda or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising by it.
- (3) Without prejudice to the general power of appointing agents as aforesaid—
  - (a) a trustee may appoint an advocate to be his or her agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the advocate to have the custody of, and to produce, a deed having in the body of it or endorsed on it a receipt for the money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
  - (b) a trustee shall not be chargeable with breach of trust by reason only of the trustee having made or concurred in making any such appointment; and the production of any such deed by the advocate shall have the same validity and effect as if the person appointing the advocate had not been a trustee;
  - (c) a trustee may appoint a banker or advocate to be his or her agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance,

by permitting the banker or advocate to have the custody of, and to produce, the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with breach of trust by reason only of the trustee having made or concurred in making any such appointment,

but nothing in this subsection shall exempt a trustee from any liability which the trustee would have incurred if this Act and any enactment replaced by this Act had not been passed, in case he or she permits any such money, valuable consideration or property to remain in the hands or under the control of the banker or advocate for a period longer than is reasonably necessary to enable the banker or advocate, as the case may be, to pay or transfer the same to the trustee.

- (4) Subsection (3) applies whether the money or valuable consideration or property was or is received before or after the commencement of this Act.

#### **24. Power to concur with others**

Where an undivided share in the proceeds of the sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or her or their own right or in a fiduciary capacity.

#### **25. Power to delegate trusts during absence abroad**

- (1) A trustee intending to remain out of Uganda for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person, including a trust corporation, the execution or exercise during the trustee's absence from Uganda of all or any trusts, powers and discretions vested in him or her as trustee, either alone or jointly with any other person or persons; except that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this subsection.
- (2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.
- (3) The power of attorney shall not come into operation until the donor is out of Uganda, and shall be revoked by his or her return.
- (4) The power of attorney shall be attested by at least one witness and shall be registered under the provisions of the Registration of Documents Act within thirty days of execution, if executed in Uganda, or within ninety days, if executed out of Uganda, with a statutory declaration by the donor that he or she intends to remain out of Uganda for a period exceeding one month from the date of the declaration or from a date mentioned in it.
- (5) If the power of attorney confers a power to dispose of or deal with land or any interest in land, the provisions of the Registration of Titles Act relating to powers of attorney shall apply to it.
- (6) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.
- (7) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by the donor's death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself or herself done the act or executed the instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before the act was done or instrument executed.

- (8) For the purpose of executing or exercising the trust or powers delegated to him or her, the donee may exercise any of the powers conferred on the donor as trustee by law or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself or herself to delegate to any attorney power to transfer but not including the power of delegation conferred by this section.
- (9) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

### *Indemnities*

#### **26. Protection against liability in respect of rents and covenants**

- (1) Where a personal representative or trustee liable as such for—
  - (a) any rent, covenant or agreement reserved by or contained or implied in any lease;
  - (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent charge; or
  - (c) any indemnity given in respect of any rent, covenant or agreement referred to in paragraph (a) or (b) of this subsection,

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may transfer the property demised or granted to a purchaser, legatee, devisee or other person entitled to call for a transfer of the property, and thereafter—

- (d) the personal representative or trustee may distribute the residuary movable and immovable estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or among the persons entitled to it, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the lease or grant;
  - (e) notwithstanding the distribution, he or she shall not be personally liable in respect of any subsequent claim under the lease or grant.
- (2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons among whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.
- (3) In this section—
  - (a) “grant” applies to a grant whether the rent is created by limitation, grant, reservation or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant;
  - (b) “lease” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease;
  - (c) “lessee” and “grantee” include persons respectively deriving the title under them.

## 27. Protection by means of advertisements

- (1) With a view to the conveyance to or distribution among the persons entitled to any movable or immovable property, the trustees of a settlement or of a disposition on trust for sale or personal representatives may give notice by advertisement in the *Gazette*, and in a daily or weekly newspaper circulating in Uganda, and such other like notices, including notices elsewhere than in Uganda, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representative within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his or her claim in respect of the property or any part of the property to which the notice relates.
- (2) At the expiration of the time fixed by the notice the trustees or personal representatives may transfer or distribute the property or any part of the property to which the notice relates to or among the persons entitled to it, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice, and shall not, as respects the property so conveyed or distributed be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section—
  - (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
  - (b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.
- (3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

## 28. Protection in regard to notice

A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he or she has obtained notice of it merely by reason of his or her acting or having acted for the purposes of another trust or estate.

## 29. Exoneration of trustees in respect of certain powers of attorney

A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or was bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his or her so acting or paying; but—

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he or she would have had against the trustee.

## 30. Implied indemnity of trustees

- (1) A trustee shall be chargeable only for money and securities actually received by the trustee notwithstanding his or her signing any receipt for the sake of conformity, and shall be answerable and accountable only for his or her own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust money or securities

may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his or her own wilful default.

- (2) A trustee may reimburse himself or herself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

### *Maintenance, advancement and protective trusts*

#### **31. Power to apply income for maintenance and to accumulate surplus income during a minority**

- (1) Where any property is held by trustees in trust for any person for any interest, whether vested or contingent, then, subject to any prior interests or charges affecting that property—
- (a) during the infancy of any such person, if his or her interest so long continues, the trustees may, at their sole discretion, pay to his or her parent or guardian, if any, or otherwise apply for or towards his or her maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—
- (i) any other fund applicable to the same purpose; or
- (ii) any person bound by law to provide for his or her maintenance or education; and
- (b) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees may thenceforth at their sole discretion pay the whole or such part, if any, as they may think fit of the income of that property and of any accretion to it under subsection (2) to him or her, until he or she either attains a vested interest in it or dies, or until failure of his or her interest,

but in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his or her requirements and generally to the circumstances of the case and, in particular, to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

- (2) During the infancy of any such person, if his or her interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the residue and the resulting income from it from time to time in authorised investments, and shall hold those accumulations as follows—
- (a) if any such person—
- (i) attains the age of twenty-one years, or marries under that age, and his or her interest in such income during his or her infancy or until his or her marriage is a vested interest; or
- (ii) on attaining the age of twenty-one years or on marriage under that age becomes absolutely entitled to the property from which the income arose, the trustees shall hold the accumulations in trust for such person absolutely and so that the receipt of such person after marriage, though still an infant, shall be a good discharge; and
- (b) in any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes,

but the trustees may, at any time during the infancy of such person if his or her interest so long continues, apply those accumulations, or any part of them, as if they were income arising in the then current year.

- (3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing *in loco parentis* to, the legatee, if and for such period as under the general law the legacy carries interest for the maintenance of the legatee, and in such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five percent per year.
- (4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.
- (5) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Act.

### 32. Power of advancement

- (1) Trustees may at any time pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share of it, whether absolutely or contingently on his or her attaining any specified age or on the occurrence of any other event, or subject to a gift over on his or her death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and the payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he or she belongs; but—
  - (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property; and
  - (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of the share; and
  - (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless the person is in existence and of full age and consents in writing to the payment or application.
- (2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale, calling in and conversion, and the money or securities or the proceeds of the sale, calling in and conversion are not by law or in equity considered as land.
- (3) This section does not apply to trusts constituted or created before the commencement of this Act.

### 33. Protective trusts

- (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called “the principal beneficiary”) for the period of his or her life or for any less period, then, during that period (in this section called “the trust period”) the income shall, without prejudice to any prior interest, be held on the following trusts—
  - (a) upon trust for the principal beneficiary during the trust period or until he or she, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power by which if the income were payable during the trust period to the principal beneficiary absolutely during that period, he or she would be deprived of the right to receive

the income or any part of it, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the income shall fail or determine;

- (b) if the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the income shall be held upon trust for the application of the income for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons—
- (i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
  - (ii) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he or she were actually dead, be entitled to the trust property or the income of it, or to the annuity fund, if any, or arrears of the annuity, as the case may be,

as the trustees in their absolute discretion, without being liable to account for the exercise of their discretion, think fit.

- (2) This section does not apply to trusts coming into operation before the commencement of this Act, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.
- (3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

## Part IV – Appointment and discharge of trustees

### 34. Limitation of the number of trustees

- (1) Where, at the commencement of this Act, there are more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.
- (2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Act—
  - (a) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as trustees, the four first named, who are able and willing to act, shall alone be the trustees unless appointed on the occurrence of a vacancy;
  - (b) the number of the trustees shall not be increased beyond four.
- (3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply—
  - (a) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or
  - (b) where the net proceeds of the sale of the land are held for like purposes.

### 35. Power of appointing new or additional trustees

- (1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of Uganda for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him or her, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, then subject to the restrictions imposed by this Act on the number of trustees—
  - (a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

- (b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representative of the last surviving or continuing trustee,

may, by writing, appoint one or more other persons (whether or not being the person exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of Uganda, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid.

- (2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed as if he or she were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, but subject to the restrictions imposed by this Act on the number of trustees.
- (3) Where a corporation being a trustee is or has been dissolved either before or after the commencement of this Act, then, for the purposes of this section and of any enactment replaced by it, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.
- (4) The power of appointment given by subsection (1) or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of the surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of the trustee without the concurrence of any executor who has renounced or has not proved.
- (5) A sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.
- (6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the court or otherwise, then, and in any such case—
  - (a) the person or persons nominated for the purpose of appointing new trustees, by the instrument, if any, creating the trust; or
  - (b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the instrument, if any, creating the trust or any law provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

- (7) Every new trustee appointed under this section as well before as after all the trust property becomes by law or by assurance or otherwise vested in the trustee, shall have the same powers, authorities and discretions, and may in all respects act as if he or she had been originally appointed a trustee by the instrument, if any, creating the trust.
- (8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.
- (9) Where a person of unsound mind, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his or her place shall be made by

the continuing trustees or trustee, under this section, unless leave has been given by the court to make the appointment.

### **36. Supplemental provisions as to appointment of trustees**

- (1) On the appointment of a trustee for the whole or any part of trust property—
  - (a) the number of trustees may, subject to the restrictions imposed by this Act on the number of trustees, be increased;
  - (b) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereafter provided, one separate trustee may be so appointed;
  - (c) it shall not be obligatory, save as hereafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his or her trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; and
  - (d) any assurance or thing requisite for vesting the trust property, or any part of it, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.
- (2) Nothing in this Act shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

### **37. Evidence as to a vacancy in a trust**

- (1) A statement, contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of Uganda for more than twelve months or refuses or is unfit to act or is incapable of acting or that he or she is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.
- (2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

### **38. Retirement of trustee without a new appointment**

- (1) Where a trustee is desirous of being discharged from the trust, and after his or her discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if the trustee as aforesaid by deed declares that he or she is desirous of being discharged from the trust, and if his or her co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged from the trust under this Act without any new trustee being appointed in his or her place.
- (2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

### 39. Vesting of trust property in new or continuing trustees

- (1) Where by a deed a new trustee is appointed to perform any trust, then—
  - (a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any transfer or assignment, to vest in those persons as joint tenants and for the purposes of the trust, the estate, interest or right to which the declaration relates; and
  - (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary contained in it, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.
- (2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—
  - (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any transfer or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates; and
  - (b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary contained in it, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estate, interests and rights with respect to which a declaration could have been made.
- (3) An express vesting declaration, whether made before or after the commencement of this Act, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.
- (4) This section shall not extend to—
  - (a) any estate or interest in land which is only transferable in the manner directed by or under the Registration of Titles Act;
  - (b) any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in a manner directed by or under an Act of Parliament.

## Part V – Powers of the court

### *Appointment of new trustees*

#### 40. Power of court to appoint new trustees

- (1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

- (2) Without prejudice to the generality of subsection (1), the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a person of unsound mind or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.
- (3) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.
- (4) Nothing in this section gives power to appoint an executor or administrator.

#### **41. Power to authorise remuneration**

Where the court appoints a person or corporation, other than the public trustee, to be a trustee either solely or jointly with another person, the court may authorise the person or corporation to charge such remuneration for his or her or its services as trustee as the court may think fit.

#### **42. Powers of new trustee appointed by the court**

Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him or her have the same powers, authorities and discretions and may in all respects act as if he or she had been originally appointed a trustee by the instrument, if any, creating the trust.

### ***Vesting orders***

#### **43. Vesting orders of land**

- (1) In any of the following cases, namely—
  - (a) where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
  - (b) where a trustee entitled to or possessed of any land or interest in land, whether by way of mortgage or otherwise, or entitled to a contingent right in land, either solely or jointly with any other person—
    - (i) is under disability;
    - (ii) is out of the jurisdiction of the court; or
    - (iii) cannot be found, or, being a corporation, has been dissolved;
  - (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
  - (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
  - (e) where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
  - (f) where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right in it, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement;
  - (g) where land or any interest in land is vested in a trustee, whether by way of mortgage or otherwise, and it appears to the court to be expedient, the court may make an order (in this Act called a “vesting order”) vesting the land or interest in land in any such person in

any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct.

- (2) Notwithstanding subsection (1)—
- (a) where the order is consequential on the appointment of a trustee, the land or interest in land shall be vested for such estate as the court may direct in the persons who, on the appointment, are the trustees; and
  - (b) where the order relates to a trustee entitled or formerly entitled jointly with another person, and the trustee is under disability or out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

#### **44. Orders as to contingent rights of unborn persons**

Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect of the interest, become entitled to or possessed of that interest on any trust, the court may make an order releasing the land or interest in it from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

#### **45. Vesting order in place of transfer by infant mortgagee**

Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

#### **46. Vesting order consequential on order for sale or mortgage of land**

Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right in it, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part of it for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other person.

#### **47. Vesting order consequential on judgment for specific performance, etc.**

Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the transfer of any interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare—

- (a) that any of the parties of the action are trustees of any interest in the land or any part thereof within the meaning of this Act; or
- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his or her lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act,

and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

#### 48. Effect of vesting order

A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

- (a) as if the persons who before the appointment were the trustees, if any, had duly executed all proper transfers of the land for such estate or interest as the court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper transfers of the land for such estate or interest as the court directs,

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a transfer or release to the effect intended by the order.

#### 49. Power to appoint person to convey

In all cases where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to transfer the land or any interest in the land or release the contingent right, and a transfer or release by that person in conformity with the order shall have the same effect as an order made under the appropriate provision.

#### 50. Vesting orders as to stock and things in action

- (1) In any of the following cases, namely—
  - (a) where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
  - (b) where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action—
    - (i) is under disability;
    - (ii) is out of the jurisdiction of the court;
    - (iii) cannot be found or, being a corporation, has been dissolved;
    - (iv) neglects or refuses to transfer stock or receive the dividends or income of it, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled to it, for twenty-eight days next after a request in writing has been made to him or her by the person so entitled; or
    - (v) neglects or refuses to transfer stock or receive the dividends or income of it, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him or her;
  - (c) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
  - (d) where stock is standing in the name of a deceased person whose personal representative is under disability;
  - (e) where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient, the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividend or income of it, or to sue for or recover the thing in action, in any such person as the court may appoint.

- (2) Where, under subsection (1)—
  - (a) the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and
  - (b) the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.
- (3) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer; but the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.
- (4) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act may transfer the stock to himself or herself or any other person, according to the order, and all corporations, associations and companies shall obey every order under this section according to its tenor.
- (5) After notice in writing of an order under this section it shall not be lawful for any corporation, association or company to transfer any stock to which the order relates or to pay any dividends on the stock except in accordance with the order.
- (6) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Act is to be exercised.
- (7) The provisions of this Act as to vesting orders shall apply to shares in ships registered under any written law relating to merchant shipping as if they were stock.

### **51. Vesting orders of charity property**

The powers conferred by this Act as to vesting orders may be exercised for vesting any interest in land, stock or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

### **52. Vesting orders in relation to infant's beneficial interests**

Where an infant is beneficially entitled to any property, the court may, with a view to the application of the capital or income of it for the maintenance, education or benefit of the infant, make an order—

- (a) appointing a person to transfer such property; or
- (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of the stock, or to receive the dividends or income of it, or to sue for and recover such thing in action, upon such terms as the court may think fit.

### **53. Orders made upon certain allegations to be conclusive evidence**

Where a vesting order is made as to any land under this Act founded on an allegation of any of the following matters, namely—

- (a) the personal incapacity of a trustee or mortgagee;
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved;
- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor;

- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage, is living or dead; or
- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his or her personal representative or the person interested,

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section does not prevent the court from directing a transfer or surrender or the payment of costs occasioned by any such order if improperly obtained.

### *Jurisdiction to make other orders*

#### **54. Power of court to authorise dealings with trust property**

- (1) Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit, and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.
- (2) The court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.
- (3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

#### **55. Persons entitled to apply for orders**

- (1) An order under this Act for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or thing in action, whether under disability or not, or on the application of any person duly appointed trustee of the land, stock or thing in action.
- (2) An order under this Act concerning any interest in land, stock, or thing in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

#### **56. Power to give judgment in absence of a trustee**

Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve the person with a process of the court, and that the person cannot be found, the court may hear and determine the action and give judgment in the action against that person in his or her character of a trustee as if he or she had been duly served, or had entered an appearance in the action, and had also appeared by his or her advocate at the hearing, but without prejudice to any interest the person may have in the matters in question in the action in any other character.

### **57. Power to charge costs on trust estate**

The court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any transfer in pursuance of an order, to be raised and paid out of the property in respect of which the order is made, or out of the income of the property, or to be borne and paid in such manner and by such persons as to the court may seem just.

### **58. Power to relieve trustee from personal liability**

If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he or she committed the breach, then the court may relieve the trustee either wholly or partly from personal liability for the breach.

### **59. Power to make beneficiary indemnify for breach of trust**

- (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through the trustee.
- (2) This section applies to breaches of trust committed as well before as after the commencement of this Act.

### ***Payment into court***

### **60. Payment into court by trustees**

- (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court; and the same shall, subject to rules of court, be dealt with according to the orders of the court.
- (2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.
- (3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the money or securities into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others.
- (4) Where any such money or securities are deposited with any banker, broker or other depository, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.
- (5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if it had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

### **61. Indemnity for acts done in pursuance of Act**

This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it.

## Part VI – General provisions

### 62. Rules of court

The Chief Justice may make rules of court regulating the practice and procedure in respect of any proceedings in the High Court under this Act.

### 63. Act binding on Government

The provisions of this Act bind the Government of Uganda.