

## Implication of Dowry on Burial Disputes

By Charles A. O. Oduke<sup>i</sup>

My intent in this paper is to do a philosophical reflection on dowry and how it bears on burial disputes among the Luo people of East Africa. The paper is in two parts, in part one I will make preliminary remarks to convey my position on dowry, and then in part two discuss implications of dowry on Veronica's burial dispute. I will utilize Bernard Lonergan's Transcendental Method in this thought process. (Lonergan, 1996) The transcendental method is derived from Lonergan's cognitional theory – experiencing, understanding my experience, judging the understanding of my experience, willingness to act informed by the judgment of the understanding of my experience, and finally leading to intellectual, moral, and religious conversion – in the context of this forum which has to do with consciousness raising, we can transpose the method into an invitation to engage into the following five imperatives: be attentive, be intelligent, be reasonable, be willing, and be loving in our discourse on dowry and its long term implications. (Oduke-Onyango, 2005)

The word dowry is derived from related Greek-Latin cognate terms. The nouns *dos* and *dot* both mean gift in Latin and Greek respectively. The Latin verb *do*, *dodare* means to give. (Webstar, 2005) Dowry is therefore a gift that is given. It is a symbolic gesture of simultaneous gratitude and benefaction to another.

In western and some Asian societies dowry is a portion of wealth given to the bride by her family at the start of her marriage. It can take the form of gold, real Estate, money, or some other precious metal such as diamonds. (Coontz, 2005) Dowry is also the sum of money, gold, silver or its equivalent required of postulants by some religious communities of cloistered nuns before a candidate enters the convent. (Webstar, 2005)

In most African societies dowry takes the form of benefaction to the bride's father, it is a goodwill gesture, a generous giving without strings attached, and if the father is deceased the dowry is received by her brothers or older male relatives. Among Luo's of Western Kenya the customary dowry is a negotiated amount in the form of cows that are still alive, a minimum of two is the norm. In some instances even if cash has been given the symbolic two cows is non-negotiable.

For purposes of this reflection let us make a distinction between bride-wealth and dowry. The former refers to resources brought into a marriage by the bride, while restricting the term dowry to the gift the groom gives to the family of the bride, also referred to as bride-price.

What is therefore the meaning of dowry? In marriages arranged by parents or agreed to by parents it is of major significance and it is what legitimizes an African marriage (Mbiti, 1969). Once a family has received dowry from the groom they cannot shortchange him by giving the girl to another man, even if the other potential suitor is richer and offers a higher amount of dowry; however pressure is later piled on to the groom to give more. The immediate consequence of dowry payment is that the girl cannot return to her father's home in the event of a failed marriage and in the event of death, her family of birth cannot claim her remains.

Luos are a patriarchal society. It is the male members who give and also receive dowry, they are therefore the ones who marry and in turn the female members are married (Mboya, 1969). Because of dowry the bride is the one who leaves her family, renounces her maiden name and takes on the family name of the groom's family. Because of dowry a traditional Luo marriage does not begin on equal footing. Within this context, the New Testament ideal of a man leaving her mother and father and a woman doing likewise remains a challenge and in many instances a value yet to be realized.

In some instances if the negotiated dowry was more than the proverbial two cows the balance is given after the woman has conceived and given birth, preferably to a male offspring. In the event that a woman is barren a portion of the dowry is demanded back or a younger sister of the barren woman is to be given in marriage to the man who paid dowry.

Dowry has been commercialized, evidence for this is in our vocabulary, most of the terms we use in connection with dowry have to do with payment in the sense of a monetary economy and less to do with benefaction or gift. The consequence has been a gradual dehumanization of the value of the lives of our mothers, sisters, and daughters. They are considered property of their fathers, brothers, and male relatives. They are married off in exchange for quantifiable goods. The higher the education level of a girl the more the dowry.

If dowry has not been given yet a woman at the behest of the male cohabits with her, she is not considered married but one who has eloped. A female child born in such a relationship will belong to the man who will have paid dowry, hence considered acquired property. In the event that a woman

who has eloped dies, in order for the man to bury her he will have to pay dowry first. Also if a woman cohabiting with a man dies, leaving behind female children, the man will make every effort to pay dowry before the burial takes place, or else he will forfeit dowry owed to him for his daughters. (Mboya, 1969)

Commercialization of dowry dehumanizes women, reduces them to the level of merchandise to be battered in exchange for a set of animals. In the same way that animals are beasts of burden, analogically the rural married women are at times treated like glorified slaves, they do all the housekeeping, till the fields, fetch water, gather firewood, forage for food, and satisfy the sexual needs of the man. Failure to do any of these will earn her a thorough beating. Like animals women are mute, they are supposed to endure all forms of violence visited on their person, they are there to be seen and not to be heard.

The good Luo woman is one who is blindly obedient, she is resilient and acquiesces to the demands of her husband, hence a true Luo –the literal meaning of the term Luo is “one who follows...norms, traditions, customs, rituals, etc....”

Among traditional Luos a woman cannot initiate a divorce. For divorce to take place a portion of the dowry has to be returned and in some instances it is required that the same cows which were given as dowry be returned, yet with the passage of time it is impossible for creatures to live forever, and so it is not possible to return the cows, this makes it double difficult for a woman to be freed from a marriage relationship that is toxic. Hence the misleading claim that there is no divorce in Luo Society.

In the Christian setup, where the basis of marriage is love, a marriage is valid if there is free exchange of consent between two free adults in the presence of witnesses, pending procreation. Even though dowry has been inculturated in the pre-nuptial phase of marriage preparation, Christian theologians ought to re-examine the understanding of dowry in light of the abuses that have crept in and follow the spirit of the Bill of Rights in Constitution of Kenya 2010, and Marriage Act of 2014 that makes no explicit requirement for dowry for a marriage to be valid; however, should one desire to give dowry it should be considered as a gift and not a bitter trade of the girl for the dowry.

## **Veronica's Story**

On 10<sup>th</sup> September 2009 there was an accident along the Katito-Sondu Road, one of the victims, Veronica, was pronounced dead on arrival at the Aga-Khan Hospital, Kisumu. Even before the body had grown cold, a heated burial dispute emerged right outside the mortuary, between two parties: Veronica's estranged in-Law's from Kamagambo-Rongo on one side and her brothers from Gem on the other.

A little background on Veronica. Prior to her death, Veronica had risen through the ranks and had become a District Commissioner for Rachonyo North. Veronica and her husband Denis had wedded in the Catholic Church, it was a mixed marriage between Veronica a Catholic and Denis an Adventist. Six years into the marriage, her husband, Denis, had been involved in an automobile accident which reduced him to the life of a paraplegic. Their two children Fred and Sam were both afflicted with Canavarn's disease (features of children resembled one with a combination of cerebral palsy and polio), children's limbs were deformed and did not live beyond age 12. Veronica was blamed and demonized by her father-in-law for having given birth to the two boys with special needs, he often insinuated that Veronica was jinxed and was the root-cause of the family's misfortune. The Father-in-law separated the two by abducting Denis from Veronica's duty house in Kakamega and taking him to their matrimonial home in Kamagambo. He further ostracized Veronica, making it clear that she was no longer welcomed to the Kamagambo home. By the time Veronica died, she had been living alone, separated from her husband for 12 years.

Veronica then decided to start a new life, she bought a piece of land in Kakamega on which she constructed a house and it became her new home. She then made it known to her brothers and her friends that in the event of death she should be buried on the said piece of land and not her matrimonial home (contrary to Luo burial custom on married women).

After Veronica's death the two families engaged in mediation talks on 2 separate occasions and could not come to any agreement. The intervention of Riaga Omollo the then Ker (Head of Luo Council of Elders) together with his council was sought, but his wisdom on Luo culture and his status could not sway the brothers of Veronica who were defending her wish and will to be buried in Kakamega and not Kamagambo-Rongo.

The two parties then subjected themselves to a quasi-judicial process organized by the then Nyanza Provincial Commissioner, Mr. Francis Mutie. The process was presided over by three respected lawyers: Honorable Olago Aluoch, Mr. Beuttah Singanga, and Mr. David Otieno. After listening to both parties they ruled in favor of Kamagambo. In their ruling they asserted that whenever there is a conflict between common law and customary law, the later takes precedence, and in keeping with customary law, Vero's personal law was Luo customary law and according to that law a married woman, one whose dowry had been paid, belonged to her husband's people and this includes her body as well. (Singanga, Otieno, & Olago, 2009)

Because the arbiters failed to take into account all the injustices that had been done to Veronica by her in laws, one of her brothers plucked courage and moved the whole matter to the High Court (Oduke Vs Onindo, 2009). 8 months later on April 9<sup>th</sup> 2010, The High Court sitting in Kisumu made a landmark ruling in favor of Veronica's wish and will and ordered that her remains be interred on her land in Kakamega where she had established her new home and the burial be conducted as per her wishes as had been communicated to her brother (Ruling on Oduke Vs. Onindo, 2010). The following week Veronica's burial took place, but a few weeks later the Kamagambo party filed a petition with the Court of Appeal praying for a judicial review and that Veronica's remains be exhumed from Kakamega and be re- interred in Kamagambo-Rongo. It is now five years since the appeal was filed and since Veronica was buried, we are still waiting for the verdict of the Court of Appeal.

What has this narrative regarding a legal burial dispute to do with dowry?

In every instance Veronica's in-laws emphasized that she was their wife (notice the collective pronoun). At the first mediation talks outside the morgue mzee A made the claim in dholuo "*wabiro kawo chiwa wadhi-iko, ne wanyuomo dhok*", translated as, we have come to claim the body of our wife for burial, the basis of our claim is a right derived from the dowry we gave in the form of cows.

Both before and after the quasi-judicial process (arbitration) the Kamagambo spokesman made it crystal clear to the brothers of Veronica that "*un uyalo wish wanto wayalo culture ... nyakanene wish ne pok oloyoga culture.*" Translated as, you are championing wish and will but us we are defending (the Luo) culture, wish and will has never triumphed over culture.

Throughout the arbitration process the Kamagambo party aimed to prove that Veronica was married according to Luo customary law, and so each of the four elders, though they contradicted each other and

gave false testimonies, narrated the part they played during the dowry payment. One could not recall the number of cows given but insisted that they were transported by a lorry (truck) to Nairobi and given to the girl's mother. Since they were questioned separately like the proverbial story of Susana, another alleged that they took two cows to Veronica's home in Gem but could not recall who they gave them to. The father-in-law produced 2 receipts as evidence for the purchase of the cows that were given as dowry for Veronica.

When the case moved to the High Court the Kamagabo party hung on to the claim that they had paid dowry and gave the two receipts as exhibits. Though they could not explain how they were still in possession of the receipts. Whenever dowry is paid, as proof that the cows were not stolen the suitors party hand over the stock movement receipts to the one they give dowry to. In the suit of the Kamagambo Party still pending in the court of appeal, they pray for a judicial review because in their opinion the High Court erred in their ruling because it failed to take into consideration Luo customary law on marriage.

In all the four sets of proceedings the Kamagambo Party refused to acknowledge the various forms of domestic violence, verbal abuse, public humiliation, witch-hunting and demonizing visited upon the person of Veronica both by her father and mother in law when she was alive, precipitating the separation. The claim of the brothers was simple, because of the subhuman conduct of the in-laws towards the deceased they were undeserving of being given her body for burial, doing so would have been the final spite.

The brother's position was informed by a dynamic notion of culture while the in-laws' was a classical notion of culture. If culture is perceived classically then there is but one culture, to whose norms all have to conform, it is static and cannot change. The way things were done by our ancestors is the way they are to be done in the present and forever shall be. But if culture is perceived dynamically then it admits the possibility of growth, development, and transformation. A dynamic or a modern notion of culture is a way of thinking historically, learning to retrieve what was deemed significant and looking for new authentic modes of expression in keeping with the times (Lonergan, 1996). That cultural norm which in classical notion of culture is defended as tradition was at one point new. (Gyekey, 1997)

Even if it turned out that it was true the in-law's of Veronica had paid dowry and so had a rightful claim Veronica as their wife, according to the brothers it did not justify the inhuman treatment she had endured at the hands of his father-in-law, who was the chief claimant in this case.

Essentially if Veronica's brothers had not put up a stiff fight for her wish and will to be respected, they would have acquiesced to a repugnant cultural norm, that condones violence visited on married women and whose voices are muzzed, all in the name of dowry. There are many Veronicas in the Luo society and because of the cost and time that litigation involves many shy of from championing the cause. If you were Veronica's brother what would you have done?

This burial dispute is an instance of how gender based violence continues to be visited upon women even in death, because someone claims to have paid dowry, whether the claim is fictitious or true. Thank God the High Court ruling of April 9<sup>th</sup> 2010 set a new precedence in Kenyan law regarding the wish and will of a married woman, until overturned, regardless of dowry a woman's last wishes if reasonable will be accorded by the laws of Kenya .

This forum invites us to be attentive by recalling and engaging our individual and collective experience of dowry, to be intelligent by applying our understanding to the meaning and significance of dowry, to be reasonable and responsible by not turning a blind eye to the ramifications and abusive claims associated with dowry which in some instances have led to the enslavement of our sisters. We will be loving if we make a genuine effort to retrieve the symbolism of dowry as both benefaction and gift and not a batter trade that inadvertently sells the female members of our households to a form of indentured slavery.

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Coontz, S. (2005). *Marriage a History: From Obedience to Intimacy or How Love Conquered Marriage*. New York: Penguin Group.

Gyekey, K. (1997). *Tradition and Modernity: Philosophical Reflection on the African Experience*. Oxford: Oxford University Press.

Lonergan, B. (1996). *Method in Theology*. Toronto: Toronto University Press for Lonergan Research Institute.

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Mbiti, J. (1969). *African Religions and Philosophy*. Oxford: Heinemann.

Mboya, P. (1969). *Luo Kitgi gi Timbegi (The Nature of the Luo and their Culture)*. Kisumu: Anyange Press.

Oduke Vs Onindo, Civil Suit 143 of 2009 (The High Court of Kenya October 2009).

Oduke-Onyango, C. (2005). *Loneragan's Notion of Cosmopolis: A Study of a Higher Viewpoint and a Creative Framework for Engaging Individual and Social 'Biases' with Special Relevance to discourse on Socio-Political Challenges of Kenya and the Continent of Africa*. Boston: Boston College.

Ruling on Oduke Vs. Onindo, Civil Suit No. 143 of 2009 (High Court of Kenya April 9, 2010).

Singanga, B., Otieno, D., & Olago, A. (2009, October). Arbitration Proceedings: Veronica J.A. Wambi Burial Dispute. Kisumu.

Webstar. (2005). *Webstar Dictionary*.