

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 2

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Partners in the Nature of African Customary Marriage: Luo Wedlock Perspective, Kenya

DR. JOANES OTIENO WU'ADONGO OFWA¹

ABSTRACT

This paper focuses on partners in the nature of African Customary marriage; the Luo wedlock perspective, Kenya. Any state has no higher duty than to ensure that the institution of marriage is protected and the rights of the partners in the nature of the marriage are respected. It is important to note that, occasionally the Judicial officers tasked to determine the validity of the African customary marriages treat it as live-in relationship and the presumption of the nature of marriage by cohabitation and an act of general repute. The Luo Community had certain customary rites performed before the wedlock is declared. This study adopted desktop/online research design. The researcher gathered primary data from the Kenya constitution 2010, the statutes and the cases. The secondary data was sourced from journals, law text books and periodicals. The study revealed that African customary marriage has procedures and customary rites to adhere. I may conclude that Marriage Act 2014, has amplified the ingredients of a valid African Customary Marriage.

Keywords: *Live-in Relationship, Cohabitation, African Customary and wedlock.*

I. INTRODUCTION

Scholars have made several fervent attempts to define or rather describe marriage as natural phenomenon within an environment under pinned in the moral or legal institute of marriage². According to Black's Law Dictionary³, *'Marriage is the legal union of a couple as spouses in which in their marriage, the parties are legally capable of contracting to marriage, the mutual consent or agreement, and an actual contracting in the form prescribed by the law with consequences in many areas of law such as torts, criminal law evidence, debtor -creditor relations and contracts.'*

Traditionally, marriage was defined as a union between a man and a woman with children born to the woman being recognized as legitimate offspring to both parents (**Royal Anthropological**

¹ Author is a PhD student at Jaramogi Oginga Odinga University of Science and Technology, School of Business and Economics, India.

² Sneha R.Iyer, Relations in the nature of Marriage and legal Wedlock, International journal of Law, Management and Humanities, 2018, India

³ Black's Law Dictionary Bryan A. Garner 1999, West Thomson Reuters

Institute, 1951). Marriage was thought to change the status of a man and a woman, stipulate the degree of sexual access for the married partners, establish the legitimacy of the children born to the wife, and create relationships between the kin of both the wife and husband⁴. Anthropologists have since noted the exceptions to this standard definition and have expanded it to reflect broader practices. As such, Miller (2008) offers a working definition of marriage given the complexity of practices that fall under the umbrella of marriage— “a more or less stable union, usually between two people, who may be, but are not necessarily, co-residential, sexually involved with each other, and procreative with each other” (p. 140).

The recorded practices of marriage can be seen in Mesopotamia which is dated back to 2350 B.C. Thereafter, it is widely spread throughout the world developing its own unique culture and tradition. In ancient time polygamy, polyandry, child marriages, plural marriage and forced marriages were widely practiced in various part of the world but legal practices have been enacted to control the practices.

In Scotland, the concept of marriage “by cohabitation with habit and repute and a state of affairs recognized by the consent of the community as a condition.” The concept of putative marriage was adopted by the Napoleonic Code in those states having a civil -law tradition, such as California, Louisiana and Texas. This kind of marriage the husband or the wife believes in good faith that the two are married, but for some technical reason they are not formally married (as when the ceremonial official was not authorized to perform a marriage. putative marriage is typically treated as valid to protect the innocent spouse. It may mean the marriage *de co-venance*, the marriage entered into from calculated self-interest or expediency. It is worth noting that it is upon the community to recognize marriage -or to refuse and to oppose it, however there was no mathematical moment for the spouse to sleep together. As stated by (Aries, 1980, p.8):

“People passed from courtship to final conjugality through a series of consents and agreements, and also of ceremonies... The situation changed when the church, the states and progress of the law combined to make marriage what is today: a public, Punctual written Act”.

The Church of Jesus Christ of Latter-day Saints, advocated for the plural marriage where one man marries more than one woman at the same time. By revelation, the Lord commanded Joseph Smith who was the church President to institute the practice of plural marriage among the members in the early 1840s.

(A) Precolonial validity of the Luo Customary Marriage

⁴ Marriage Research Paper, <https://www.iresearchnet.com/research-paper-examples/anthropology-research-paper/marriage-research-paper/#:~:text=Marriage%20and%20families>

The Luos, believed to have originated from Sudan, are currently settled around Lake Victoria in Kenya and Tanzania⁵. In Kenya, the Luos are the fourth largest ethnic group. They are known for their quest for perfection, musical skills and instruments⁶.

The validity of the Luo customary marriage was established if the marriage rites were fulfilled. The potential husband was expected to conduct himself in a manner of repute by ensuring that the dowry or the bride price was negotiated and paid by his parents. In most cases, the bride price was paid in bits over a period suitable to the man's father, however, time was of essence to avoid temptation of the girl getting attracted to a new suitor, causing the parents of the girl to receive the dowry from another potential spouse.

The man had to first formally visit the parents of the lady to take "Ayie"⁷. It was a gesture to the in-laws that the man was satisfied with the lady. He would then proceed to seek her hand in marriage. 'Ayie' was a token given specifically to the bride's mother, handed over during the first visit by the man, in the presence of relatives of both the bride and the men who had accompanied him. On the day of the visit, the girl's mother prepared the suitor delicious meals (chicken and or beef). This first visit opened the opportunity for dowry negotiation "Kenya" or "Nyombo". (dowry payment). It was paid according to the capacity and ability of the suitor, however it was to be sufficient in the eyes of the elders. Dowry payment was significant as marriage.

The wedding or marriage ceremony was conducted at the man's home, "dala". The girl arrived accompanied by her sisters, step sisters and female cousins, when singing and dancing "dodo" the occasion was also referred as "Ndaria". The man's mother usually brewed small quantity of beer for her husband and his brothers. The young people were not given beer. The marriage had to be consummated in the man's hut "Simba". She slept in the hut with her betrothed, and sexual intercourse was allowed.

The marriage could be declared void if the consanguinity or affinity was detected, marrying a person one related by blood was a great *taboo*, and when identified, it had to end. It is during the dowry process that vetting for consanguinity happened. The same sex marriage was Prohibited. The Luo community did not recognize the live-in relationships as genuine marriage unless and until the dowry is negotiated and paid by the man's parents.

According to Weinreb⁸ traditionally Luo marriage was outbred, post-marital residence,

⁵ Otieno Ochola(2022), Traditional Luo Marriage Process...

⁶ Otieno Ochola(2022), Traditional Luo Marriage Process...

⁷ Ibid

⁸ Weinreb, Alex. May 2000. Ph. D. Dissertation in Demography and Sociology, University of Pennsylvania. "Notes

patrilocal, and inheritance patrilineal. Nowadays these norms are weakening. For example, sons are setting up homes outside or away from their fathers' compound at younger ages. The failure to pay the bride wealth weakens relations between husband and wives' families and may also lead to more marital disruption. This occurs because if bride wealth is paid and a couple divorces, the woman's family must return at least some of the bride wealth to the husband. The woman's family – especially her brothers/close male cousins who traditionally relied on the receipt of bride wealth to subsidize their own marriages – therefore have an incentive to support marriage

Polygamy and the practice of "wife inheritance" served economic, cultural and psychological functions among the Luo⁹. The BBC report¹⁰ explains that it "is the traditional Luo way of looking after the economic needs of a widow" (7 June 1999)¹¹, while the AANA report explains that the institution of polygamy was expected to reinforce the spirit of communal solidarity which was essential for the controlled exploitation of the local resources to improve the welfare of its members. And in the event of the death of a mother, this institution provided orphans with both emotional and psychological comfort (21 Jan. 2001).

(B) Problem Statement

The African customary marriage is conducted in accordance to the customs of the community of either one or both of the parties to the marriage in question. Marriage in the nature of live in relationship is perceived as similar as marriage. The female in the live in partner enjoys similar rights of that of married woman. The Children born in such relations are considered to be legitimate and have the rights to inheritance of the property.

The Kenyan Judiciary has through many cases declared relations in the nature of African customary marriage legal by making reference to the presumption in the nature of cohabitation with character and repute contrary to the Marriage Act 2014 which explains that the African customary marriage rites must be completed before it is registered by the registrar of marriages in Kenya. The fundamental question this study addressed is whether live in relationship is similar to the African Customary Marriage; Luo wedlock perspective.

(C) Objective:

To evaluate the legal status in the nature African customary marriage; Luo wedlock perspective

on the Luo and Suba." University of Pennsylvania [Accessed: 4 Apr. 2001]

⁹ All African News Agency (AANA). 29 January 2001. "Culture No Longer Helpful in Averting Disasters." [Accessed: 20 Apr. 2001]

¹⁰BBC News Online. 7 June 1999. "Africa: Aids Forces Change on Kenya's Luo People." [Accessed: 20 Apr. 2001]

¹¹ Ibid

(D) Hypothesis

There is no legal status in the nature of the African Customary marriage; Luo wedlock perspective

(E) Methodology

a. Research Design

The study is basically adopted the desktop approach where the primary data is gathered from constitution, statutes and cases while the secondary contents obtained from online journals and articles

b. Literature Review

Article 45 (2)¹² of the Constitution provides for the right to marry a person of the opposite sex based on the free consent of the parties. Marriage Act 2014¹³ section (1) states that marriage is the voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with this Act . . . (3) All marriages registered under this Act have the same legal status. Section 6. (1) A marriage may be registered under this Act if it is celebrated... Article 45 of the Constitution provides for the recognition of the family as the basic natural and fundamental unit of society and thus has to be recognized and protected by the state. Consequently, the Marriage Act, 2014 was enacted to give effect to these constitutional provisions.

Marriage basically, the union of two people ¹⁴which is regulated by laws, social norms and values as well as religious aspects in which they share mutual affection, religious duty, collaboration for growing their off spring and soon, this assertion do include same sex relationship or partnership. Ordinarily, marriage occurs when two opposite sexes (male and female) are bind into a wedlock which gives them legal and social rights to have sex, give birth to the offspring, share the financial, religious and social burden and benefit to each other.

A marriage becomes a legal wedlock only when all the essential conditions for a valid marriage are fulfilled. The relations in the nature of marriage are such relations which are similar to a marriage, but are not exactly marriage¹⁵.

But the definition of marriages seems to be changing from time to time., ideally, marriage incorporate matrimony and conjugal unions. Subsisting Marriages – **No one in a monogamous**

¹² The Constitution of Kenya 2010

¹³ Marriage Act No 24 of 2014,

¹⁴ Ibid

¹⁵ Ibid

marriage can contract another marriage. No one in a polygamous marriage can contract a monogamous marriage Sec 9 of the marriage Act 2014. Where two parties are living together for a considerable period of time and represent themselves as married couple to the society, such a relationship is recognized in law as common law marriages¹⁶. **In the Robinson Women’s Legal Centre Trust Vs. Richard Gordon Volkas¹⁷ etc.**, the High Court of South Africa laid down guidelines to determine whether a

- a) relationship is in nature of marriage
- b) The commitment of the parties to the shared household.
- c) The existence of financial and other dependency between the parties
- d) The existence of significant period of co-habitat
- e) The existence of children in that relationship.
- f) The rule of the partners in maintaining the household and in the care of the children

There is no known statute that has defined the nature of relation in marriage ¹⁸. But this word has been used in *Sec 2 (f) of The Protection of Women from Domestic Violence Act, 2005*. Sec 2(f) states that “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a **relationship in the nature of marriage**, adoption or are family members living together as a joint family.”

Under this act, ‘*a relationship in the nature of marriage*’ protects

- i) Women in marriage which is considered as void or voidable in the eyes of law, where all other elements of a marriage exist.
- ii) Women in common law marriage who represent to the world that they are married.
- iii) Women who are in the relationship of cohabitation or live-in-relationship

Marriage and families are found in all societies; however, marriage and family customs vary significantly across cultures. Cultures differ with regard to what is considered appropriate premarital behavior, whom one marries, how one marries, a proper marriage ceremony, and length and purpose of the marriage. From an anthropological perspective, there are various marriage systems or “marriagelike” relationships that fulfill both biological and social

¹⁶ Nazish Kaleem, RELATIONSHIP IN NATURE OF MARRIAGE, *Uttarakhand Judicial & Legal Review*, page no-50

¹⁷ Piers [(1849) 11 HLC 331]

¹⁸ Sneha R. Iyer, ‘RELATIONS IN THE NATURE OF MARRIAGE AND LEGAL WEDLOCK’- A STUDY (2018)

functions. Regarding families, all societies have parent-child social groups but the size and form of the family varies. Although marriage remains customary across societies, it does not necessarily constitute the basis for family life.

In Hebrew, marriage '*ownah*' means cohabitation with conjugal rights, thus one man and one woman unite in the bond of marriages before God. In Tanzania – The Law of Marriage Act, 1971, as amended by Act 23/73, Act 15/80 and Act 9/96. Sections 10(2), 13(1) and 15 of Tanzania's Law of Marriage Act of 1971¹⁹ allow men to contract polygamous marriages, and permit the marriage of 15-year-old girls, while the minimum age of marriage for boys is 18. However, in October 23, 2019, the Tanzania Court of Appeal upheld the landmark 2016 ruling by the High Court against child marriage. The High Court ruled that marriage under the age of 18 was illegal and directed the government to raise the minimum age of marriage to 18 for both boys and girls within one year. When young girls are forced to marry, they face potentially lifelong harmful consequences. They are essentially subject to state-sanctioned rape and are at risk of increased domestic violence, forced pregnancy and negative health consequences, while being denied education and economic opportunity. It is stated in Sections 10(2), 13(1) and 15 of *Tanzania's Law of Marriage Act, CAP 29 [R:E 2019]* allow men to contract polygamous marriages, and permit the marriage of 15-year-old girls, while the minimum age of marriage for boys is 18. The danger of this prevailing law is that the children rights is violated by denying them the opportunity to quality education, and productive health related challenges. Section 15. Subsisting Marriage²⁰ states:

- (1) *No man, while married by a monogamous marriage, shall contract another marriage.*
- (2) *No man, while married by a polygamous or potentially polygamous marriage, shall contract a marriage in any monogamous form with any person.*
- (3) *No woman who is married shall, while that marriage subsists, contract another marriage.*

In Uganda, the requirements for a valid marriage²¹ are:

- a) minimum age of 18 years;
- b) free consent of each party to the intended marriage;
- c) both parties must be of sound mind;
- d) parties must not be within the prohibited degrees of relationship; and

¹⁹ Law Marriage Act, CAP 29[R:E209]

²⁰ The Law of Marriage Act, CAP 29 [R:E 2019], Tanzania

²¹ Uganda Marriage Bill 2017

e) the parties intending to marry must be of the opposite sex.

Concerning, widow inheritance; The customary practice of widow inheritance where a male relative of a deceased husband inherits the widow as wife is *prohibited and punishable*. The bill makes provisions for *Prenuptial Agreement*;²² A prenuptial agreement is one entered into before a marriage by the two people intending to marry. The agreement spells out how property owned by either or both parties shall be dealt with during the marriage and at the dissolution of the marriage or death of either or both of the parties.

Islamic Marriages (Sec 48 to 49 of the marriage Act 2014²³); the marriage is between persons who profess Islamic faith, Kadhi, sheikh, Imam authorised by Registrar to officiate, record of marriage delivered to Registrar and Marriage amongst cousins professing Islamic faith not forbidden (*Sec 10(4)*)

Hindu Marriages (Sec 46 to 47 of the marriage Act 2014²⁴), the marriage is between the persons professing Hindu faith, persons authorised by Registrar in accordance with Hindu rituals officiates the marriage, person officiating to deliver record to Registrar

Christian Marriages is where a party is a Christian (*Sec 17*), is conducted by a marriage officer, a licensed church minister appointed by the Registrar (*Sec 18*). A person who knows of impediment to intended marriage may give a written notice of objection to person in charge of the public place of worship where marriage notice has been posted (*Sec 19*).

The prohibited marriage relationship is with aunts, cousins, nephews, uncles, parents, sisters, brothers, grandparent, child, or grandchild of spouses or former spouse and a person one has adopted or by whom adopted.

II. THE LEGAL REQUIREMENT OF AFRICAN CUSTOMARY MARRIAGE

For wedlock to be legal in African customary marriage, certain conditions must be fulfilled. Section 6 of the Marriage Act of 2014 states “A *Customary marriage is a marriage that is conducted in accordance to the customs of the community of either one or both of the parties to the marriage in question*”.

A marriage under this law is celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage. Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage. All Customary Marriages must be registered. The

²² Ibid

²³ The Marriage Act 2014, Kenya

²⁴ Ibid

Registration of customary marriages in Kenya is governed by the Marriage (Customary Marriage) Rules, 2017, under the Marriage Act, 2014. 1st of August 2017. On 3rd April, 2017 the Marriage (Customary) Rules 2017 were gazetted vide *Legal Notice No. 46 and its operative date set for 1st of August, 2017*. As such all parties married under African Customary law are required to register their marriages and marriage certificates issued to that effect. Other conditions include

At the time of registration, the parties must not have entered into either a *Civil or Christian* marriage and the registration of a customary marriage is only applicable to Kenyans who have contracted African customary marriage rites. Both parties present themselves to the Registrar of Marriages office to be interviewed to establish the following:

- a) Marital and mental capacity
- b) The laws and customs applied
- c) Date when the customary marriage was conducted
- d) Whether the basics were met – parents’ meetings, payment of dowry, the period the couple has been living together
- e) Existence of the marriage to be registered
- f) Existing and previous spouses
- g) Consent by both parties to register the customary marriage
- h) Check details on identification documents

Parties who wish to contract customary marriages after the commencement date i.e after the operative date of 1st August, 2017, are required to notify the Registrar of the status conferred on them as husband and wife within three (3) months of completion of the relevant customary rites pursuant to the provisions of Section 44 of the Marriage Act, 2014.

In Civil appeal No 133of 2019, between ASA and NA and another,Migori High Court,**eKLR**²⁵, the appellant made claims that She was the wife of the deceased.It was her claim that she had a child with the deceased by the name BO(hereinafter **Minor**).She got married to the deceased through Luo Customary Law on **15th December 2012** where the deceased paid dowry of 2 cows and KShs. 10,000/- to her parents.

That they stayed with the deceased from the year 2010 while she was still a student and he used to pay her school fees. She further stated that she was chased from the matrimonial home and

²⁵ Civil appeal No 133of 2019, between ASA and NA and another,Migori High Court,**eKLR**

her attempts to go back were refuted by the Respondents until the death of the deceased. Based on the foregoing, the Appellant sought a declaration to issue recognizing her and the minor as widow and child of the deceased respectively. The court was to determine *whether the Appellant was a wife of the deceased. It was held that on a balance of probability and having regard to the foregoing analysis and authority, this court is not convinced that dowry was paid.*

In order to determine an existence or non-existence of the Customary marriage, it shall be based on satisfaction of the provision of **section 43 of the Marriage Act, No.4 of 2014** which provides that;

43 (1) a marriage under this Part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage.

(2) Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage.

In Kimani v Gikanga [1965] EA 735. It was observed that;

“... As a matter of necessity, the customary law must be accurately and definitely established. The Court has a wide discretion as to how this should be done but the onus to do so must be on the party who puts forward customary law. This might be done by reference to a book or document reference and would include a judicial decision but in view, especially of the present apparent lack in Kenya of authoritative text books on the subject, or any relevant case law, this would in practice usually mean that the party propounding customary law would have to call evidence to prove that customary law, as would prove the relevant facts of his case.”

In **TSA vs SO [1979] eKLR**, a civil appeal No 57 of 1978, High Court of Kisii. The appellant **T S A** and the respondent **S O** were married under Luo customary law in 1967. She was the respondent's first wife; but subsequently the respondent married two others. The appellant and respondent had no children. In September 1976 **T S A** petitioned for divorce in the District Magistrate's Court, Homa Bay, alleging (a) persistent cruelty, (b) constant references to her as a barren wife, (c) disrespect to the appellants' parents, and (d) refusal to allow the appellant to go to church. In his answer the respondent particularized all the marvellous things he did for his wife; and, in short, said that he was a wonderful husband and loved his wife. He denied all allegations of cruelty.

The magistrate rejected the allegations of disrespect to the appellants' parents and refusal to allow her to go to church. The magistrate consequently refused to grant a dissolution.

The appellate court, was of the view that persistent cruelty was not proved in this case. If this had been a statutory marriage that would have been the end of the matter because, as the law now stands in the Matrimonial Causes Act, the establishment of a ground (*ie a matrimonial offence*) is a condition precedent to the grant of a divorce. But this was not a statutory marriage, but a customary marriage; and different considerations therefore apply. In the case of **Hortensia Wanjiku Yawe v The Public Trustees, Civil Appeal 13 of August 6, 1976**, Justice Kneller JA, laid down three principles regarding proof of customary marriages in Court. They are:

- i. The onus of proving customary law marriage is generally on the party who claims it;*
- ii. The standard of proof is the usual one for a civil action, namely, one the balance of probabilities;*
- iii. Evidence as to the formalities required for a customary law marriage must be proved to that evidential standard.*

Eugene Cotran opines in “*Restatement of African Law; The law of Marriage and Divorce* states as follows;

- *Effect of non-payment of marriage consideration*
- *No legal marriage can arise in Luo if no dhok kenya is paid.*

III. INTERNATIONAL AND REGIONAL INSTRUMENTS RELEVANT TO MARRIAGE UNION

Under international law, specific enforcement bodies, usually specialized agencies, committees or special rapporteurs, monitor a nation's human rights situation. These bodies also review reports and complaints about human rights violations, generally submitted by non-governmental organizations (NGOs) but also sometimes by individuals. The Universal Declaration on Human Rights states that *marriage should only be entered into “with the free and full consent of the intending spouses.”*[1] This language was subsequently codified in the Marriage Convention,[2] International Covenant on Civil and Political Rights,[3] International Covenant on Economic, ...

Article 21 of the African Charter on the Rights and Welfare of the Child, 1990 provides on protection against Harmful Social and Cultural Practices as follows;

- (1) States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the

child; and (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

(2): **Child marriage and the betrothal of girls and boys** shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Article 16(1) of Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 1948 states : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. **Article 16(2):** Marriage shall be entered into only with the free and full consent of the intending spouses.

Article 6: of Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 Marriage: - States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

- (a) no marriage shall take place without the free and full consent of both parties;
- (b) the minimum age of marriage for women shall be 18 years.

IV. CONCLUSION AND RECOMMENDATION

Conclusion and recommendation is based on the analysis of the statutes, constitution and the case laws examined;

The dowry must be negotiated and paid and also a suitor must be accompanied by his brothers and friends when going to pay dowry in agreement with the Luo culture.

The family of the husband and the family of the wife must be involved in the preparation of the marriage ceremony.

The man and the woman must enjoy equal rights be regarded as equal partners in the marriage institution.

The minimum age of marriage for both the boy and the girl is 18 years and above with marriage duly registered by the Registrar of Marriage,

The parties to the marriage shall have free and voluntary full consent of both.

It may be recommended that the parties to the marriage adhered to the provision of section 43 of the marriage Act No 4 of 2014

V. REFERENCES

- The Constitution of Kenya 2010
- the marriage Act No 4 of 2014
- The Judicature Act, Cap 8, Laws of Kenya.
- Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 1948
