

Case Study.

The Survival of the Customary Matrimonial Law among the Nandi of Kenya in the Changing Times

By

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The happiness of every culture and society is founded on the extent to which as a people, it is able to propagate itself and acquire personal immortality. This explains the nature of marriage as a sacrosanct institution in any society. However, Western culture and modernity have exerted numerous influences on the general marriage institution in Africa—changing values not excluded. It is on this basis that this paper examines traditional matrimonial dynamics among the Nandi community of the Rift Valley Province, Kenya. It is based on a research study carried out in Uasin Gishu county involving oral interviews with selected traditional Nandi elders. On the overall, the paper presents two issues. First, it reflects on the Nandi matrimonial laws in the light of cultural dynamism. Second, it examines how these values are either retained or discarded over time and space. The paper shows how value-dynamics can be modified and synchronized with modernity in order to accommodate the needs of the present and future generations.

Key Words: Western culture, Marriage, Nandi matrimonial laws, Kenya.

1.1 Introduction

The purpose of this paper is to assess the Nandi matrimonial law and how it has managed to withstand the tide of changing times. The Nandi people are a number of Kenyan tribes living in the highland areas of the Nandi Hills in the Rift Valley Province who speak the Nandi languages. They are a sub-group of the Kalenjin people.

The Nandi live in Nandi county, Uasin Gishu county, Trans-Nzoia county, Nakuru county, Laikipia county and parts of Narok county. Before British colonization, they were sedentary cattle-herders, sometimes also practicing agriculture. Their settlements were more or less evenly distributed rather than being grouped into villages. They traditionally practice circumcision of both sexes, although female circumcision is fast fading as a rite of initiation into adulthood. Today boys' circumcision is divided into two. First the "traditional" practice where the initiates still stay in the forest and second, the "modern" practice where initiates are taken to hospital and secluded. Here the boys are taught by several professionals on contemporary survival skills. Girls' circumcision took place in preparation for marriage. Today female genital mutilation in Kenya is illegal and the practice is no longer in place.

1.2 Purpose of the Study

As change is inevitable, the Nandi have succumbed to the phenomenon both consciously and unconsciously taking great care to discard or retain those activities and practices that still have a societal value. In most cases such values have been modified and synchronized with

the Western culture to accommodate the needs of present and future generations (Fedders and Salvadori, 1970). This history is important since it is a factor, which, for good or bad, has shaped the lives of the people today. The future, whatever it holds, can hardly be predicted and much less guiding without a thorough knowledge of the past. It is hoped that some reminder of the past events will help in an evaluation of the present: that this record of the past will be available to the future generations of our unsurpassed society (Chang'ach, 2011).

This is the reason why a reflection on the past has been considered necessary in order to accomplish the mission of writing history. Without knowledge of the Nandi in the past, the future generations would be disadvantaged, as the history would not have any foundation on which to build their hopes and aspirations.

A reflection on the positive cultural values and social norms which form the Nandi traditional practices help to reinforce the acquired modern value which has resulted from change. Without the information on those values and norms in the past, there would be no comparison to be made between the past and the present for the purpose improving livelihood as a result of change. As change takes its toll on the social and traditional practices and beliefs at a gradual but almost constant rate, culture which is the wheel of a society just like time keeps rolling and ticking away respectively, leaving the people with no alternative but to yield to its effects without much option (Chebet and Ton Dietz, 2000).

The recording of the oral traditions of the Nandi will forever remain a vital link between the coming generations and the departed forefathers. This will create a repository of knowledge which will help hold the society together in form of beliefs and moral obligations between men and women, wives and husbands, children and their parents, the young and the old (Langley, 1979).

Oral traditions form the basic values, which must be retained for the cohesion of the society and its survival. Their perception will nevertheless, ensure the procreation and socialization of a responsible generation to take care of the future (Thierry, 1990). These great values which bound our society together from time immemorial, acting as moral and behavioural guidelines to individuals in the society, should be encouraged and practiced even at the helm of the encroaching modernization. It is nevertheless, important to note that only the positive elements of a society should be retained in order for the useful values to thrive, though, there will always be those internalized negative practices which threaten to outweigh the positive ones in terms of survival.

Thierry argues that a deeply rooted culture is vital to society. Among the Nandi the most internalized feature culture include: the ancestral myths, archetypes, forms of spirituality, religious attributes and values that have offered the most enduring resistance to cultural disintegration. When this base is affected, however, the worst is to be expected, for there is then a "withering away" of an atrophying consciousness itself, and unless the latter can recover, the process may well become irreversible. The tragic nature of such a process must be stressed, for when a people is stripped of its identity, they are no longer capable of self-determination. Society, in such a case, disintegrates and is no longer able to function in cohesion and such is the ultimate result of cultural association.

1.3 **Marriage (Kaatusinyeet)**

Marriage is an extremely important feature because it links the formal system of social control and the reproduction with the means by which command over resources and reproduction is achieved (Moore, 1986). In order to understand the Nandi traditional customs relating to marriage, it is necessary to have background information on the nature of relationships that are involved in the exercise among members of the society.

In the views of Radcliffe and Daryll (1989), marriage is essentially a rearrangement of social structure which is the arrangement of any persons on institutionalized relationships. By marriage, certain existing relationships in most societies change. New social relations are established, not only between husband and wife, and between the husband and the wife's relatives on the one side and between the wife and husband's relative on the other, but also, in a great many societies, between the

relatives of the husband and those of the wife, who, on the two sides, are interested in marriage and in the children that are expected to result from it. Marriages, like births, initiations at puberty or deaths, are re-arrangements of structures that are constantly recurring in any society; they are moments of the continuing process regulated by nature and custom in a society. There are institutionalized ways of dealing with such memorable events.

In the past, among the Nandi, the union of two people in marriage to become husband and wife did not necessarily arise out of romance. The two individuals did not need to have met before, but this relationship developed gradually thereafter into a strong affection resulting from mutual understanding and cemented, of course by the arrival of children. In the present time this is no longer the practice after the community embraced Christianity and education. Marriage was and still is considered a turning point in the life of an individual. The ceremony that put to test the ability of an adult Nandi to take full charge of family responsibilities ingrained those in this particular rite. For a man, the task ahead was the combination of family and society's roles; and for a woman, her reproductive role and nurturing of offsprings would begin immediately after marriage rites were concluded.

The Nandi considered marriageable age to be between 25 and 30 years for men and any period above 20 years for the girls. This enabled men to spend some time serving the community as warriors and in accumulating the most required commodity, livestock, for payment of bride wealth. The women did not need any prior arrangement before marriage, as theirs was only to bear and rear children in addition to family and community responsibilities; which were more or less conditioned by men and elder women.

Marriage did not only solemnize the union of two people as husband and wife, but also involve the arrival of wife which meant an additional member to the new family and clan not as an individual, but together with the children she would bring forth. Today marriage still plays an important role in society.

1.4 **Arrangement of Marriage**

In a way, it can be said that the Nandi believed in arrangement marriages between two families and their children (Burnette and Gerald, 1995). This could be carried out through parents' friends and other close relatives who identify a suitable girl for their son, brother or friend depending on the relationship. The girl was expected to be of good character, hard-working and from a family background which was free from all kinds of social ills like sorcery, witchcraft, or murder (Chang'ach, 2011). This of course, does not mean that men did not participate in getting wives on their own. With advert of

Christianity and western education, parents play a minimal role in identifying a suitable girl for their son and vice versa.

The men could travel long distances in search of a village where there were initiates and when home was identified, he could present himself to the family and made his request for marriage in advance, or could involve a number of tactics to get a woman to marry, for example they could elope a woman who was found to be suitable for marriage. The idea of eloping with a woman was acceptable in the society. This was one way of acquiring a woman of marriageable age by a man who was considered ready for marriage (Burnette and Gerald, 1995).

In this case, the woman was kept away until she had conceived and then clan elders were sent again to make marriage arrangements with the relatives of the woman. All these forms of acquiring a wife by a man were acceptable in the society as long as there were no blood relationships between the two families. A small fine was only imposed on the bridegroom, which was gladly paid for by individual or any other member of the close family as the wife was married to the kin as a whole.

According to the Nandi customary law, the marriage of a man and a woman was arranged by their parents or guardians of the prospective bridegrooms; a man with a marriageable daughter was obliged to wait until approached with an offer or marriage. On the other hand, although the last word lay with the fathers of the pair, a young man could ask his father to get a wife for him and he could name the particular girl of his choice. Provided there was no feud between the families or other sufficient reason for refusing, his request would be acquiesced in, though the girls father was of course entirely free to repudiate the suitor (Chang'ach, 2011).

Polygamy was widely practiced by the Nandi, as it was common to have two wives. A man's subsequent marriages were, arranged by his father, if he was still alive. In a case where the father was no longer alive, the marriage was arranged by the man himself in conjunction with his senior wife and one or two village *kokwet* elders negotiating directly with the parents of the prospective new wife, the bridegroom being required to find the bride wealth from his own stock (Holhis, 1969). Marriages were recognized between Nandi men and women and members of other Nandi speaking tribes. A Nandi might also take as a junior wife, a woman of non-Nandi speaking tribe which practiced female circumcision.

1.5 Marriage Negotiation (*Koito*)

Koito is the term used to describe the negotiations undertaken by clan elders during the rite of marriage negotiations, *raretab koito*. This was the official acknowledgement and approval of the girls' kin on the

proposed relationship. The rite bears an important significance not only to the individual, the family and the clan but also the society. The rite entails the responsibility bestowed upon the individual in terms of raising and protecting the immediate offsprings and the spouse in relation to social basic needs and economic advancement.

To the clan, it means an additional member to the important institution, which plays the role of social cohesion and religious indoctrination. The individual joins other members of the society with additional responsibilities of accountability for his/her deeds and behavior regulation at every interval with the social norms.

The rite started with the family of the would-be bridegroom introducing themselves by sending their representative to undertake the exercise. Upon arriving at home of the would-be bride, the suitor's representative stood outside the backdoor *kurgab njor* awaiting to be noticed and his spear held for him as a welcome sign (Holhis, 1969). He was then led into the house where he was interviewed by the clan elders at the family level. The questions were intended to identify the clan *oret* which had sent him for the mission. The respondent gave the name of the totem for their clan. Another question followed, "why have you decided to seek a hand for marriage in our family"? Respondent: "because our great grandmother was married in your clan and we have come to return her cooking stick." On the above grounds the respondent's request was acknowledged and took the positive marriage information back home.

The actual *raretab koito* followed later with full attendance from both families and their clan representatives. This is where the details of both clans were discussed making sure that there was no trace of any blood relationship or any bad omen, which had, befallen each of the families especially from the side of the bridegroom. In most cases such incidences were detected during the identification stage so that if a case of such nature was discovered, the negotiations were terminated at the very early stage. There were also private investigations carried out secretly by both parties to make sure that all required information was adduced before an agreed decision was reached.

At the end of the day's deliberations, the bridegroom was allowed to take his bride home, awaiting a wedding ceremony. A relative of the bridegroom and the bride were anointed on the forehead with home and made butter. The party will then leave the home of the bride to the home of the would-be husband.

1.6 Bride wealth

The bride's father stated the bride-price *kanyiok*, which varied from clan to clan. The *kanyiok* would be in the

region of two head of cattle (one heifer and one ox) and three sheep or goats. The latter were interchangeable. The bride wealth and other gifts given by the suitor's family were not considered as a form of payment. In fact the relationship that developed thereafter between the two families did not in any way suggest that the girl could have been bought. The exchange of gifts did not end at the engagement period but continued even after the girl had bore children, hence her relationship to her parents and other kin was not discontinued. The '*kanyio*k' were shown out to the bride's father on the first morning of the wedding and were collected a few days later, the Nandi also accepted the transfer of bride-wealth in installments (Chang'ach, 2011).

1.7 Wedding Ceremony

The marriage ceremony was presided over by the wedding elder '*boiyotab katunisiet*', a respected senior member of the '*kokwet*' who was usually the same person who presided over male initiation rites in the capacity of '*boiyob tum*'. The ceremony centred around traditional cereal and honey beer provided by the bridegroom's father and lasted several days, according to the host's recourses. Much of the social celebrations served the purpose of stressing the essentially family nature, in the wider sense, of the union and giving it public affirmation.

One of the most important parts of the rite and greater in significance consisted in placing on the ground of a piece of '*segutiet*' grass. The pair stood on it, the bridegroom then tied a piece on the bride's wrist and the latter performed the same act on her husband's. This was conducted in the backdoor '*kurgab njor*' of the hut and the act created the legal bond of first betrothal or marriage (Chebet and Ton Dietz, 2000).

The wedding day was a culmination of all the rituals. It was a very happy occasion for everybody in the vicinity, that is the clan, the family and the community as a whole '*pororiet ak oret*'. There was plenty of food and drinks, singing and dancing purposely to welcome a new member not only on the family but also to the clan and community. This was because marriage was considered in a wider context not only as a union of two individuals as husband and wife, but the union of both families. Therefore the bridegroom returned to the '*sigroino*' while his wife lived with her mother-in-law until their new house was ready for occupation.

1.8 Birth of Children

If a woman failed to bear children she could be released to try her luck with somebody else, though she also had an option to stay as the husband married another wife. Child bearing was almost the only way a woman could gain a degree of security and acceptance in family and the community. It was not only the bearing of children

that mattered but the sex of the child was of paramount importance. The birth of male children was a source of security for a woman compared to the birth of girls which placed her almost in the same position as a childless woman. This is because the Nandi are a patrilineal society and male children were considered to be automatic heirs to their fathers and they acted as a social security to the aged parents later in life.

Children constituted the most important visible signs of success and achievement. Offsprings were essential to ensure a man's social position for prestige and influence within his lineage and the community. Likewise for a woman, the regular birth of children was indispensable to ensure her status. Indeed, children were the justification of her very existence as a wife.

All women wished to avoid the pitiable condition of being childless or a sub-fertile wife. Women bring three things to marriage, their agricultural labour, their domestic labour and reproductive potential, but the most important of all the three is their ability to beget children, especially sons.

The spirits of deceased near ancestors were believed to dwell in children and it was considered of importance for this reason alone for a man to have children in order that the spirit '*oindet/oik*' of, for example, his deceased father might not stay trapped in the ground, where it would remain on decease until so liberated. Hence the birth of a child was attended by the father with some anxiety; a quick delivery was held to signify the entry of the spirit into the infant.

1.9 Traditional Family Planning Method

The Nandi had strongly rooted cultural methods of family planning which were applied long before the introduction of the Western culture. The Nandi family planning methods were regulated by the community, which required couples to practice sexual abstinence in order to space children born to one mother. This resulted in one woman not having more than five children (Molnos, 1973).

The community monitored the number of children that a couple bore because the community was concerned about the family's well being. A couple could not conduct their affairs independently of the community's wishes and so it actually decided when a couple could have another child. This was ensured by waiting until the youngest child was able to care for, herself or himself in times of danger. This would enable a pregnant mother without necessarily picking up the child to run away from danger. This child needed to be as tall as the length of the mother's chastity belt, and he had to be independent enough to be sent with something to his father who could be some distances away. The mother did not conceive another child while still wearing a leather guide around

her waist which served as a chastity belt in addition to that she kept long hair until the community decided that she could have another child. It was a taboo for her to conceive while under the conditions stated above.

The husband was responsible for the management of the family. The man who did not observe the regulations set by community governing child spacing and sexual behavior was fined and barred from participating as a warrior. The mandatory punishment was the slaughtering of his favourite bull, which was eaten by his age-mates in his absence. This was because warriors were expected to be disciplined. The family planning methods included strict sexual abstinence, female circumcision that was supposed to reduce a woman's sexual libido and the practice of polygamy.

1.10 Divorce and Separation (*Kebet lol*)

Once children had been born of a union in which at least the minimum requirements of customary law had been effected there was no divorce possible and none of the bride wealth was returned (Snell, 1986). A form of judicial separation, however, existed, known as *kebet lol* (splitting the bag). The ceremony associated with it consisted of the filling of the hollow stalk of a plant known as *kuserwet* with fine earth; it was then grasped by both parties, who split it, naming each other as they did so. The ceremony was only valid if performed in the presence and with the consent of the *kokwet* elders, who would already have enquired into the marital relationship and have tried to effect reconciliation between the parties (Chang'ach, 2011). For apart from cases in which a man accused his wife of bewitching him or she was guilty of repeated adultery or refusal of conjugal rights, this expedient was applied to marriages in which the parties were generally recognized as incompatible and their continued cohabitation considered pointless. A woman had, however, no right of action against her husband for divorce or separation.

Divorce was possible where no children had been born of the marriage. The bridewealth was returnable and both parties were free to begin a union with another spouse. After the *kebet lol* ceremony a woman would return to her parents, taking with her such of the household equipment as was contributed by her family at the time of the marriage.

1.11 Recent Changes in Nandi customary Law regarding Marriage

The fact that to a large extent Nandi traditional law is imperfectly known to the older generation and subsequent age-grades indicates that the influence of contact with westernization over the past forty or fifty years has been considerable. Any precise estimate of its extent is, of course, impossible. Economic and social pressure, today, place upon the father of an average

Nandi family the obligations of a breadwinner; he desires for his children the best education available, for which fees have to be paid.

Western religious and moral influences are largely complementary in effect. A faith claiming universal validity and a code of morals applicable to humanity at large replaces reverence for the tribe as such, and with it the foundations on which rested many of the old tribal sanctions. Traditional religious ceremonies and ethical values which were the basis for the maintenance of tribal honour and stability are disappearing. Personal moral responsibility focuses attention upon an individual and undermines his sense of corporate security in the tribe. Hence, too, Christian marriage has become a matter of choice and of contract between persons rather than between their clans. Such marriages will tend to bring the traditional notions and law into collision with their Western counterparts when they break down and when one party abrogates the marriage unilaterally and then has recourse to the customary rite.

1.12 Conclusion

The impact of Christianity and education upon the Nandi attitude to life and relatively static ethnic system has of necessity been disruptive and has divided the community sharply into two, namely the "modern" and the "old." It may well have prepared the way for a new integration in which the community now is caught, while still retaining its distinctive Nandi character. Today, marriage ceremonies have a blend of both traditional and modern features. Traditional way of marriage negotiation is fast fading away.

REFERENCES

- Burnette, C. F. and Gerald, W. F. (1995). *The Kalenjin Heritage: Traditional Religious and Social Practices*. Kericho: African Gospel church.
- Chebet, S. and Ton Dietz, (2000). *Climbing the Cliff: A History of the Keiyo*. Moi University Press, Eldoret.
- Chang'ach, J. K. (2011). *Agro-Pastoralism in Kenya: Economic Changes among the Keiyo 1902 – 1963*. Verlag: LAP LAMBERT Academic Publishing GmbH & Co. KG.
- Fedders, A. and Salvadori, C. (1970). *People and Cultures of Kenya*. Nairobi: Transafrica.
- Holhis, A. C. (1969). *The Nandi: Their Language and Folklore*. Oxford: The Clarendon Press.
- Langley, M.S. (1979). *The Nandi of Kenya: Life Crisis Rituals in a Period of Change*. London: Hurst and Company.
- Molnos, S. (1973). *Cultural Source of Materials for Population Planning in East Africa*. East Africa Publishing House for Institute of African Studies, University of Nairobi.

Moore, H. L. (1986). *Space, Text and Gender: An Anthropological Study of the Marakwet of Kenya*. Cambridge University Press: Great Britain.

Radcliffe, A. R. and Daryll, F. (1989). *African Systems of Kinship and Marriage*. Kagan Paul Ltd: London.

Snell, G. S. (1986). *Nandi Customary Laws*. Kenya Literature Bureau: Nairobi.

Thierry, V. G. (1990). *No Life without Roots*. Zedbooks Ltd: London.