

Register customary marriages to safeguard your rights, legal experts tell women

By Ruth Omukhango

Florence Ngangi enjoyed a blissful marriage until two years ago when she painfully discovered that her husband had another family. Since then, she has been emotionally unstable, with feelings of betrayal shaping how she looks at life.

So bad is her situation that she slipped into depression; unable to deal the findings of her husband's infidelity.

Having been married for over 25 years under customary marriage, Ngangi's main focus was to maintain the wellbeing of her family.

This mother of three, spend her entire youthful years using her hard-earned income and loans from women development groups to invest in land and built beautiful home in her husband's ancestral land.

Like many loyal wives, Ngangi ensured that all the property she acquired was registered in her husband's name, including the two parcels of land.

"My pursuit was driven by my desire to support my husband as a Christian woman," says 53-years old Ngangi,

"I trusted my husband, who was working as a County Clerk Officer, to the extent that I gave him most of the money to purchase construction materials, meaning that all documents are under his name," says Ngangi.

But lawyers warn that Ngangi's decision to register all the property she bought or assets she invested in, in her husband's name is likely to be detrimental to her and her children in case of divorce or if the husband marries and has children with another wife.

According to Senior Counsel Leah Kagwatha, countless women like Ngangi have lost property they have worked hard to acquire simply because of ignorance of their legal rights. She says this underscores the urgent need to educate the public on family law to promote access to justice, protect property rights, and foster peaceful families.

Like Ngangi, many women married under customary law have never formalised their marriages, yet the law has been amended to allow the registration of customary marriages as monogamous unions.

According to the Marriage Act: "The parties to a customary marriage shall notify the Registrar of such marriage within three months of completion of the relevant ceremonies or steps required to confer the status of marriage to the parties in the community concerned."

Kagwatha warns that customary marriages that have not been registered are potentially polygamous. This is the kind of information millions of Kenyan women are unaware of.

The key family laws that the public, especially women need to know include: The Marriage Act of 2014, Matrimonial Property Act of 2013, and Law of Succession Act. All these legislations have to be broken down for the public to understand and make informed decisions especially for the most vulnerable.

“The Marriage Act recognises five types of marriages; Civil, Christian, Islamic, Hindu, and Customary. But there is need to educate the public on the importance of legalising these marriages in order to avoid family disputes,” says Kagwatha.

The major disputes commonly reported under family law include; inheritance, matrimonial property, child custody, burial disputes, and maintenance claims. These cases are easily avoided if marriages are registered properly.

These laws protect the parties to a marriage and the children, regardless the marriage status under which they were born.

A good example is the Succession Act that ensures that children, whether born in or out of wedlock, have equal rights when it comes to inheritance.

Similarly, Brenda Yambo, Legal Counsel at the Federation Women Lawyers in Kenya (FIDA-Kenya) notes, matrimonial property acquired by the man after the man marries another wife shall be regarded as owned by the man and the wives taking into account any contributions made by the man and each of the wives.

Legal experts like Yambo are afraid that while Family Law plays an important role in safeguarding the rights of people and ensuring fairness in marriage, divorce, child custody and property division, there is a huge gap between the law and knowledge about its existence, particularly by women and children, who are the main victims of dysfunctional marriages.

Yambo is calling for urgent and deliberate interventions by key stakeholders such as the legal fraternity and the media, to inform and educate the vulnerable groups, particularly women and children, about the family laws that protect and advance their rights.

