

POLYGAMY: A LEGAL AND GENDER PERSPECTIVE

By Sylvia Chirawu

At the recently held ZIMA awards, Cde Chinx brought his two wives to the stage to share with him the joy of receiving a house in Mabelreign. According to reports, the house will have two Master bedrooms to accommodate the two wives. The jailed Gumbura also had many wives and according to reports, the wives took turns to enjoy conjugal rights. In Swaziland, King Mswati has 14 wives and over twenty children. Closer to home, President Jacob Zuma of South Africa has been married five times and he currently has three wives. The law in Zimbabwe has an interest in polygamy (note that the correct term of a man having more than one wife is polygyny but for purposes of this article I will use the word polygamy) under both civil and criminal law. In terms of the Customary Marriages Act Chapter 5:07 (it used to be known as Chapter 238), a man may marry more than one wife legally. Each marriage will have its own certificate. A man may also pay *lobola* for more than one wife. On the other hand, if a man marries in terms of the Marriage Act Chapter 5:11 (it used to be called Chapter 37); he may **NOT** whilst that marriage is still in existence marry another wife. Criminal law has created an offence called bigamy. This occurs in the following circumstances – A whilst married to B under Chapter 5:11 and the marriage has not been legally dissolved purports to enter into another marriage with C whether under Chapter 5:07 or through paying *lobola* or by entering into another Chapter 5:11 marriage. Bigamy can also occur when A being married to B and C either by way of Chapter 5:07 or payment of *lobola* and whilst still be so married purports to marry D in terms of a Chapter 5:11 marriage. The other situation is where A is married to a wife either through payment of *lobola* or by way of the Customary Marriages Act. This means that if A wants to marry another woman, he can only do so by paying *lobola* or by entering into a customary law marriage. If A then marries some other woman under Chapter 5:11 that constitutes bigamy. The crime of bigamy according to the Criminal Law (Codification and Reform) Act Section 104(1) (i) attracts a fine or imprisonment for a period not exceeding one year or both. To the best of the writer's knowledge, although cases of bigamy have come before the courts, no one has been put in prison for bigamy. The law also realises that despite all good intentions, cases of bigamy do occur and the dilemma is often experienced in cases of inheritance. Some men were marrying under customary law and without dissolving the customary law marriage; they would also marry under Chapter 5:11. More often than not, the customary law wife would be in the rural areas. At death, the "Chapter 5:11" wife would then claim that she is the legal wife on the strength of the marriage certificate. Some women also even went to the extent of suing the customary law wife merely because they have the golden Chapter 5:11 marriage certificate. The Administration of Estates Act was amended in 1997 to cover all persons who die on or after the 1st of November 1997 and their estates are subject to customary law. If it is a man who dies and who was married bigamously to a wife under the Customary Marriages Act or through payment of *lobola* and

at the same time he was married to another woman under Chapter 5:11, both marriages will be recognised but will all be treated as customary law marriages. This was done so as to not disadvantage women whose husbands would have committed bigamy clandestinely. It was realised that non-recognition of the customary law marriage or union would prejudice the innocent woman. From a moral and social point of view, polygamy has got supporters and opponents. Supporters argue that it is part of Zimbabwean culture and that it is better to practice it openly rather than resort to small houses. They believe that the agenda to outlaw polygamy is driven by the western societies and yet ironically even in the west, there are some communities that practice polygamy openly. Others use the Bible as justification for having more than one wife. In a research conducted by Women and Law In Southern Africa, some women indicated that they want polygamy to stay. They 'blamed' women in towns and NGOs for speaking on their behalf without getting their views. They also expressed the view that a co-wife whom you know is better than one who stays in the shadows. As co-wives they can discuss the welfare of the family and make sure that their husband will not go "hunting" again. Resources are kept within the family. Other women even take their nieces to also join them as co-wives believing that it is better to have a co-wife that one is related to than a stranger. They believe that as long as the man involved is able to support all of them financially and also if he is able to treat all of them equally especially in relation to conjugal rights, all is well. Some older women even encourage their polygamous husband to take younger wives as they will no longer be too sexually active. Opponents argue that polygamy demeans women and that it also places them at risk of diseases such as HIV/AIDS. They argue that some men will never be satisfied regardless of the number of the wives that they have. Such men will still take on new women either as wives or as girlfriends. Women hence are treated as commodities. In any event they also argue that it is not possible for a man to love more than one wife. There is always co-wife rivalry and in a polygamous set up, there will never be peace. Children are also affected as they are forced to side with their mothers if issues arise in families. Due to their numbers, they will never get the attention, love and affection they deserve from their father. Cases of gender based violence are prevalent in polygamous set ups. In Canada, the court upheld the prohibition of polygamy after it had been asked to decide whether the prohibition was consistent with the Canadian Charter of Rights and Freedoms. The Convention on the Elimination of All Forms of Discrimination against women (CEDAW) committee in its general recommendation number 21 stated that polygamy can have devastating consequences on a woman and infringes her rights. It has serious financial and emotional consequences on women and it should be prohibited. As a lawyer and gender expert and activist, I always struggle with the issue of polygamy. In my mind I am very clear that monogamy should be the preferred marital framework. I struggle however when I constantly hear the voices of women in polygamous situations. I ask myself – how did they get there, how are they treated, how do they feel? Is it perhaps as they say better to know the other wife or wives rather than playing a guessing game? Is the solution as simple as outlawing polygamy

especially when I realise that there are so many women in Zimbabwe who are in polygamous marriages and to outlaw them would also infringe their rights as well. What will happen to those who are already in such situations? Will a law banning polygamy work? How will it be enforced? Will not such a law be by-passed by men just having relationships with women and not necessarily marriage? Is it patriarchy again justifying the oppression of women through justification of polygamy on the basis of culture and religion? Tanzania in 2011 rejected a recommendation by the UN Human Rights Council to ban polygamy especially on the basis that almost 50% of its population belongs to a religion that allows polygamy. Renowned human rights experts have spoken openly in favour of polygamy arguing that human beings by nature are polygamous. I also realise that often times debates on polygamy miss the point by portraying a monogamous marriage as picture perfect. Women in monogamous and polygamous relationships face the same challenges- multiple sexual partners on the part of their spouses and domestic violence in all its forms. Debates are also mostly based on emotions depending on which side of the fence one is sitting at. I believe that polygamy should be an issue that Zimbabwean society constantly engages on since it is highly likely that it will be in existence for a very long time. Within SADC, there is no consensus on polygamy and even within mainstream human rights and gender spaces there is no consensus. At least from the perspective of Zimbabwe, there is need to interrogate and understand the reasons behind polygamy, the advantages and disadvantages so that any interventions can be done from an informed basis. In the meantime, whether one is married monogamously or polygamously, the same expectations of a marriage should be followed- love, affection, fidelity, good communication and respect.

Slyvia Chirawu is a lawyer by training. She is a gender expert and activist. She also teaches family law and the law of succession. She is also a Hubert Humphrey Fellowship alumnus. She can be contacted via email at schirawu@yahoo.com. Chirawu writes in her personal capacity.