THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

CIVIL REVISION NO. 0004-2012
(Arising from Sironko Civil Suit No. 44 of 2011)

WONAKU PATRICK…..………………….……………APPLICANT

VERSUS

MAKOBA JUSTINE...……………..….…………………….RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

REVISION ORDER

This file has been placed before me for a possible revision order.

The background to this matter is that the plaintiff **Wonaku Patrick** filed civil suit 44 of 2011 in Sironko Magistrates Court against **Makoba Justine** for recovery of dowry and costs of the suit. According to the plaint the facts constituting the cause of action are that sometime in 1996, the defendant took the plaintiff's daughter one **Neumbe Topista** as wife. They begot 5 children. The defendant promised to pay 3 heads of cattle, 3 goats, a table, a cock, a jerrycan of paraffin, gomesi, saucepan and other small items which the defendant failed to pay. That as per the Kigisu customary norms, the defendant still owed the plaintiff 3 heads of cattle, 3 goats and other small items but has refused or neglected to pay the same hence this suit.

The defendant was served with summons to file a defence on 5 September 2011 but did not file a defence as required. The plaintiff went ahead and asked court to enter judgment and fix the suit for formal proof.

The learned trial Magistrate Grade I entered judgment against the defendant with costs.

The suit was never set down for formal proof as prayed for by the plaintiff.

A decree in original suit was extracted ordering for recovery of dowry and costs of the suit.

The file was referred to the learned Chief Magistrate by another Magistrate Grade I for revision on ground that judgment was given without formal proof and that refund of bride price is unconstitutional.

From the above background it is apparent that the suit before the Magistrate Grade I was not for refund of dowry but was for "recovery of dowry" which had never been fully paid by the defendant to the plaintiff in accordance with the "Kigisu Custom."

In my view, and considering the Constitutional Court decision in ***Constitutional Petition No.12 of 2007 MIFUMI (U) LTD & 12 ORS V. (1) ATTORNEY GENERAL (2) KENETH KARURU*** payment of bride price was not outlawed or declared unconstitutional. It is the refund of it which is unconstitutional for contravening Articles 33 (6) and 31(1) of the Constitution. In a claim for dowry the requirement is that the existence of such custom must be proved where it is not judicially noticed in accordance with S.55 of the Evidence Act and proof that the undertaking to pay the dowry was voluntary.

In the instant case therefore it was incumbent upon the plaintiff to establish the existence of this custom in Gisu culture. This was not done because formal proof hearing was not conducted.

In many communities, the cultural practice of bride price, the payment of a sum of money or property by the prospective son-in-law to the parents of the prospective bride as a condition precedent to a lawful customary marriage, is not barred by the Constitution. It is not *perse* unconstitutional. The Constitution does not prohibit a voluntary, mutual agreement between a bride and a groom to enter into the bride price arrangement. A man and a woman have the Constitutional right to choose the way they wish to get married. It is unconstitutional if the parties are not left free to choose how they want to get married.

In the circumstances therefore, it was erroneous for the learned trial Magistrate not to have set down the suit for hearing under O.9 r.10 CPR and to have entered a final judgment and Decree without a hearing. The claim in the suit was not a liquidate demand or a claim for pecuniary damages etc since the Custom relied upon had to be proved as well as the existence of an agreement to pay bride price/dowry.

I will set aside the judgment and decree entered by the learned trial Magistrate. The file is remitted back to the trial court for handling in accordance with the law.

Stephen Musota
JUDGE
10.05.2012