

**ARE YOU STILL HUSBAND AND WIFE IF YOU FAIL  
TO REGISTER YOUR CUSTOMARY MARRIAGE?  
*LEGAL IMPERATIVES AND THE RISK OF VOIDABILITY***

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Marriage, though born in the tender gardens of love and watered by affection between two consenting adults, does not merely drift like a wandering cloud guided only by emotion. It is a sacred covenant that society clothes with dignity and the law shields with authority.

Without legal recognition, marriage would be beautiful in appearance, yet vulnerable to chaos and dispute. Registration therefore is not a mere formality, but the legal seal that gives marriage recognition, protection, and lawful existence, and for that reason all marriages must be registered in accordance with the law.

The questions I ask myself is, you who has conducted a customary marriage, do you know that you should register the same? Do you know the consequences of not registering your customary marriage?

In Kenya, customary marriages represent a vital blend of rich cultural heritage and formal legal frameworks. Under Article 45 of the Constitution of Kenya, the family is protected as the natural and fundamental unit of society. This constitutional protection is operationalized by the Marriage Act (2014) which formally recognizes customary unions alongside Christian, Civil, Hindu, and Islamic marriages.

However, a critical misconception persists across many Kenyan communities: the belief that fulfilling traditional rites is sufficient to secure a legally binding marriage. In reality, failing to register a customary

marriage strips the union of essential legal protections, exposing both parties to severe vulnerability in matters of inheritance, property rights, and spousal benefits.

### **Statutory Timeline for Customary Registration**

Unlike civil or Christian marriages, which require prior notification to the Registrar and issuance of certificates on the wedding day, customary marriages follow a retroactive registration pipeline. According to The Marriage (Customary Marriage) Rules, 2017, parties must adhere to strict statutory timelines:

**Step 1: Notification of Completion (3 Months):** The parties must formally notify the Registrar of Marriages within three (3) months of completing the necessary traditional rites and cultural steps required to confer marital status within their community.

**Step 2: Registration Application (6 Months):** Following the successful completion of the relevant rituals, the parties must apply to the Registrar within six (6) months of the marriage date to formally register the union and obtain a Marriage Certificate.

### **The Core Danger: When a Customary Marriage Becomes Voidable**

What happens if the mandatory three-month notification period expires without regulatory action? Under the Marriage Act, the marriage becomes legally voidable. As pronounced in the foundational common law precedent, *De Reneville v De Reneville (1948)*, a voidable marriage is treated as valid and subsisting until an annulling decree is pronounced. However, once a court declares the marriage voidable due to non-registration, the union ceases to exist retrospectively under the law. At that precise moment, the legal status of "husband and wife" is entirely extinguished. In other words, a voidable marriage occupies a precarious legal grey zone; it possesses a flaw in its validity but remains recognized by law until a court of competent jurisdiction issues a formal Nullity of Marriage Order.

### **Statutory Penalties for Non-Registration**

Failing to register a customary marriage is not just a procedural omission; it is a statutory offense. Under The Marriage Act, any person who willfully fails to register a recognized marriage commits an offense. Upon conviction by a court, the individual is liable to:

- A financial fine not exceeding five thousand Kenyan shillings (KES 5,000); or,
- A mandatory Community Service Order; or,

- A combination of both penalties above.

### **The Implementation Gap in Kenya**

Despite an unambiguous statutory framework, the operationalization of customary marriage registration remains largely confined to paper. It exists robustly in theory but has failed to fully penetrate Kenya's social fabric.

This implementation deficit is driven by an overwhelming lack of public awareness regarding the compulsory timelines, registration penalties, and the catastrophic legal impact that an unregistered status has on succession, child custody, and matrimonial property division.

### **How Our Family Law Practice Can Help**

Navigating the intersections of traditional custom and statutory compliance requires specialized legal expertise. Our dedicated Family Law Practice Group provides comprehensive assistance with:

- Guiding couples through the late registration of customary marriages.
- Securing legal declarations of marriage validation before the courts.
- Advising on matrimonial property rights and estate planning under customary regimes.

Consult our family law specialists to ensure your union is fully protected under the laws of Kenya.

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