# Understanding customary marriages

A customary marriage is one that is concluded in accordance with Customary Law. Customary Law is defined as customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of their culture. According to the Recognition of Customary Marriage Act 120 of 1998, for a customary marriage to be valid, the parties must consent to it; must be above the age of 18 years; and the marriage must be negotiated and entered into or be celebrated in accordance with Customary Law.

The requirement that the marriage must be negotiated and entered into or be celebrated in accordance with Customary Law, creates doubt on whether lobola negotiations alone makes a customary marriage valid or whether a celebration of such marriage is required as well.

The words “into or be celebrated” creates confusion. These words could mean that certain traditions must be performed, after the lobola negotiations. The traditions could be the celebration of the marriage or the handing over of the bride. The ‘or’ in the above sentence means that the marriage can either be celebrated or not, which could mean that a celebration is not a prerequisite for the validity of the marriage.

There are court cases confirming the requirement of handing over of the bride as a key factor of a valid customary marriage. In, one such a case, the court held that, until the bride has formally and officially been handed over to the groom’s people, there is no valid customary marriage. This was irrespective of whether lobola was paid in full or not.

In other cases, it was held that the handing over of the bride is not a requirement for a valid customary marriage. In one such a case, it was held that the purpose of the ceremony of the handing over of a bride is to mark the beginning of a couple’s marriage and to introduce the bride to the groom’s family. It is an important element but cannot be more important than the parties consenting to the customary marriage, the courts found.

A valid customary marriage will, therefore, have been concluded where the

parties are of age, consented to the marriage, and lobola negotiations were concluded. To that end, one will be validly married even though certain customs and traditions were not observed, such as the handing over of the bride.

It is furthermore important to note that couples of a customary marriage should not only informally separate if they decided to part their ways. They would still be married, which creates a problem should they want to get married again. To dissolve a customary marriage, the parties must get a decree of divorce.

Reneilwe Magodielo, Van Velden-Duffey Inc