

[Awino Okech](#) [1]

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'We must strive every day so that this love of living humanity will be transformed into actual deeds, into acts that serve as examples, as a moving force' – Che Guevara

Death and the event of a funeral are always political moments and it is the politics that reveals the complexity of human interaction. In most settings, funerals become a theatre for the contestations of claims. Whether it is in the order of who speaks or doesn't, where one sits and the potential children and 'other' wives that often appear during the burial of men, in addition to who is perceived to bear the burden of grief. These are some of the politics that surround the death and funeral of an 'ordinary' person in most contexts. They may differ in complexity and this will be informed by the connection to death and family. Where death is considered part of a life ritual that must be celebrated alongside other key milestones – the processes become simply complex. It follows therefore that the 'politics' described above would be magnified when the person is considered 'prominent' and a whole slew of dynamics are thrown into the ring. This I argue is what distinguished the SM Otieno burial case from the others – the theatre of complexity in an 'ordinary' death and burial became magnified.

#### MEMORY IN TIME: 24 YEARS LATER

The burial of SM Otieno as the case is popular known has generated numerous scholarly journal articles, books and theses. Most notable are Stamp, P. 1991. 'Burying Otieno: the politics of gender and ethnicity.' Ojwang J.B. & J.N.K. Mugambi (eds). 1989. 'The S.M. Otieno Case: Death and Burial in Modern Kenya' and my favourite Cohen and Odhiambo (eds). 1992. 'Burying S.M.: The Politics of Knowledge and the Sociology of Power in Africa'. The task of this piece is not to rehash what already exists in the scholarly domain but to examine public memory, 24 years after the SM Otieno case and in the wake of Wambui Otieno's death.

I suggest that despite the complexity of the SM Otieno case, which has been analysed rigorously in the publications mentioned above and others, public memory of the case is coloured by positionality. It is these positions (as women's rights activists, as individuals belonging to a particular ethnic group, as global citizens) that have resulted in our pulling apart the case – picking and choosing, especially upon Wambui's death that which we believe will most vindicate her struggles and/or de-emphasise aspects that would reveal deep seated divides in a country re-constituting itself. While taking away that which we deem critical from the SM case, I argue that such 'choice' posthumously de-contextualises the complexity of the struggle Wambui Otieno waged. In turn, it reproduces discourses about popular struggles for rights that entrench dichotomies, which the SM Otieno case revealed were simply complex.

#### INITIAL CONTEST: 'MODERNITY' VERSUS 'TRADITION'

The SM Otieno case appeared on the surface to deal with two seemingly simple questions; the question of who had the rights over a body and where the said body would be buried. As the case developed over six months in 1987, it evolved into a site on which diverse struggles would be waged.

Below are some reports about the case that were carried in the international media.

'In life, S M Otieno was a classically successful modern African.

One of Kenya's top trial lawyers, he drove a Mercedes Benz, watched Perry Mason on his video-cassette recorder, enjoyed reciting Shakespeare to friends and sent his children to study in Britain and the United States. Mr. Otieno and his wife were reportedly the first Africans here to buy a house in Karen, an exclusive expatriate suburb named after Karen Blixen, the author of "Out of Africa." On Dec. 20 Mr. Otieno even died of a modern disease - hypertension, leading to a fatal heart attack at age 55. But in death he illustrated how thin the veneer of modernity can be over Africa's tribal traditions'. (The New York Times, February 25, 1987)

'NYALGUNGA, Kenya — One of Kenya's most prominent lawyers has been buried at his ancestral homeland, more than five months after his death, in a case that sparked a legal battle between his widow and clansmen. The weekend service was a mixture of Christian rites and traditional beliefs of Silvano Melea Otieno's Luo tribe. Thousands of Luo tribesmen went to the service, but neither Otieno's widow, Virginia Wambui Otieno, nor any of their 15 children attended'. (Los Angeles Times, May 26, 1987)

These reports including those carried in the Kenyan media upon Wambui's death in 2011, rehearse a tension between 'modernity' and 'tradition'. Then, 'modernity' was represented through associations made during the case and picked up by the media about SM's attraction to 'modernity' - Perry Mason, Shakespeare, good whisky and 'modern ailments'. 'Tradition' was and is portrayed as the legal victory by the Umira Kager clan and in turn the subjugation of Wambui as a wife to 'Luo culture' figuratively speaking. Conversely, 'modernity' was and is interpreted as Wambui's rights as a woman enshrined within international norms and conventions.

Legitimizing Wambui's claims to her husband's body and burial site was constructed as only possible by leveraging 'modernity' especially in a mixed ethnic marriage. Indeed, the transcripts of the case showed that Wambui's lawyers emphasised her fear for 'backward' Luo 'practices' such as 'widow inheritance' and 'head shaving' as the reason for SM's choice of a different burial site. One could therefore read her reluctance to acquiesce to a burial in Nyamila as a means to dissociate from burial rites that would involve her and her children.

However, the SM Otieno case was never about the 'threat' of Wambui's 'inheritance' as it has been popularly reproduced. The very nature of who Wambui was - liberation icon, powerful force, ties to the political class - and the nature of their marriage - by most accounts was not approved of by the Umira Kager clan and involved joint registration of property points to the 'impossibility' of these claims. Based on power, physical and in some quarters emotional distance as well as legal absolutes, the only legitimate claims Otieno's clansmen[1] could make was to Otieno and his children not necessarily to his spouse. However, the route taken by her defense team left an indelible mark in Kenya's psyche about what it meant to be a 'Luo wife' - real or imagined.

As an exogamous and patrilocal community[2] a woman is married into the clan and therefore always considered an outsider whether she is of Luo descent or not. She only becomes an insider by forging ties with her husband and his extended family. A wife's 'insider' status reaches its height due to age and accompanying seniority. In fact, it is argued (see Cohen & Odhiambo, 1992) that by virtue of Wambui's age (51 at the time) and extensive knowledge of her father-in-law's lineage and home as demonstrated through her testimony in court - Wambui had moved from simply being the wife of Otieno and had become the wife of the clan (in effect a Pim[3]), thereby giving her a legitimate say in decisions in that home. However, her legal counsel positioned this as a struggle between 'modernity' and 'tradition' thereby limiting the opportunities to counter the claims made by the Umira Kager counsel about 'Luo culture' - using their tools - 'Luo culture'.

A number of 'cultural' experts were called in to give extensive testimony about Luo burial rituals. Her counsel did not seize the 'cultural' route to re-affirm her legitimacy as a decision maker by virtue of her age and seniority as a wife of the home - Pim. I am not suggesting that this would have shifted the course of the case but it would definitely have dealt a blow to the construction of 'Luo culture' as unchanging and where men reign supreme.

OF HOUSES, HOMES AND ANCESTRAL LAND

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Central to this case was the assertion of a burial site named as ancestral land. Nyamila in Alego was argued to represent home, the land of his ancestors and Upper Matasia – the place where he had verbally indicated as his desired burial place – was a house, an urban residence.

The importance placed on the ‘ownership’ of the corpse by Otieno’s clan and the site of burial reflected the gendered dynamics that positioned Wambui as a custodian of those rites and not one to contest them. As a wife, her role determined that in reproducing the Otieno clan and by extension that of Umira Kager through five children, she would remain a custodian that would secure both the clan boundary (through land and children) and ascertain its propagation (through children).

Shifting the site of burial of necessity contested a physical boundary. The presence of a body in a home presented the most tangible evidence that would indicate Otieno had been here and belonged. The burial site, children and Wambui’s role as a wife in securing these boundaries were the sites from which the legitimacy of the Umira Kager clan would be propagated and claimed. These contestations revealed the importance of both metaphoric and actual boundaries in the creation of nation-hood, which I delve into later.

While claims and rights to ancestral land were interpreted as harkening to tradition in 1987, they were considered a legitimate basis for an all out ‘war’ at the height of the post-election crisis in 2008, when Kenyans who were born and settled in places other than those constructed by ethnic boundaries were forced to return to their ‘ancestral land’. This was land they had no connection to except by virtue of the geographical boundaries ‘assigned’ to ‘their kind’ through a pre-colonial history of migration and entrenched through an administrative colonial and post-colonial imperative. Divisive – yes, a powerful tangible force for reinforcing nationhood – yes.

### ‘SHE KNEW SHE WAS MARRYING A LUO’ – JUDGE SAMUEL BOSIRE

Wambui’s ethnicity begun as an undercurrent and later became the basis for the case. While there had been resistance to this marriage from the onset (See Cohen & Odhiambo, 1992), the couple had been left to their own devices and had even contributed to raising SM’s brother’s children. Upon his death, it was expected that Wambui should know better. Implicit in that is the assumption that a wife of Luo descent would have known better.

Latter burial contestations in Kenya such as those of Wangila Napunyi, Samuel Wanjiru and Joshua Okuthe amongst others show that ethnicity could not be the only factor here that distinguishes ‘outsider wives’ as notorious to laying counter-claims to corpses. In most of these cases, where contestation arose between families about burial, there was shared ethnic heritage. In my view, ethnicity was mobilised and usurped as a factor as the case progressed and this was evident on a number of levels.

The first was in exposing a dual legislative regime where customary law triumphed over common law. The triumph of customary law cannot simply be argued to be an ambiguity in the constitution but can be summed up in a 2011 assertion by the then presiding Judge Samuel Bosire who when asked if his views on the case would change today said; ‘culture is very important to some communities’. His statement 24 years later bears semblance to his concluding remarks at the end of the SM Otieno case in 1987 when he said; ‘Wambui knew she was marrying a Luo’.

Bosire’s comments raise two important points for me. The first is the implicit recognition that the institution of marriage is bound to render a wife inferior to her husband, whether it is ‘explained away’ within a cultural framework, a religious or a legal one. Secondly, Bosire’s comments on both occasions lifted the ethnic dynamic by constructing this struggle as one between ‘Luo tradition’ and ‘modern’ common law.

The judge that initially granted Wambui the right to bury SM was white (Frank Shields) while the court of appeal bench was Kenyan. Two major assumptions and/or conclusions can be drawn from the differences in judgment. The first is the ability of a caucasian man to comprehend the ‘ridiculous’ claims of ‘tribal’ burial as contradiction to ‘modernity’ while the African judge would be more persuaded by the need for ‘tradition’ given that they are after all inherently ‘traditional’.

The corollary, which remains unquestioned in blanket assertions about a patriarchal bench failing Wambui, is too scary to consider. This would be to argue that as a white judge, Shields was a lesser patriarch than his African counterparts (Samuel Bosire et al) owing to advanced 'civilisation'. In effect, the colonial project had failed women. Would the case have gone differently if the ethnicity did not come to the table or had other factors influenced the process?

### NATIONS WITHIN A STATE

I suggest therefore that a third final layer to this case was political. In 1987, a nascent multi-party movement was forming and it crystallised in earnest in the early 1990s. The case provided an opportunity for a convergence between a localised struggle for rights and an environment that had historically seen political plurality negotiated against ethnicity.

SM's burial therefore came to represent an iconic struggle for political might between two historically 'divided' ethnic groups. The ethnic factor in the case ceased to be a question of differences in interpretations of the meaning of death of burial and these differences were instead constructed and produced as an indication of historical political disrespect and arrogance against the Luo community[4]. A 'clan struggle' was catapulted into national 'struggle' that saw the effective mobilisation of gender, ethnicity and class interests. This provided fodder for the rehearsal of old political tensions and re-assert the strength of the Luo nation definitively against the Kikuyu but also in the larger Kenyan context.

The assertion of Luo norms and cultural practices as time tested affirmed was not simply a means to reinforce the importance of 'culture' but served as a means to re-produce Luo personhood. The distinction between houses and homes served to reinforce the notion of bonds and ties to geographical spaces and their symbolism – ancestral ties, production, reproduction, uncontested boundaries.

### THE RIGHTS OF WOMEN

In 1985, Nairobi had hosted the United Nation's Women's meeting, from which the 'Nairobi Forward looking strategies' emerged. Given Wambui's history in women's organising in post-colonial Kenya through Maendeleo ya Wanawake (MYWO) and the National Council of Women Kenya, the legal defeat was interpreted as an assault on women's rights, particularly their rights within the institution of marriage. The Umira Kager win was interpreted as 'tradition's' triumph through over 'modernity', which is argued would have yielded to Wambui's indication of her husband's verbal wishes and given primacy to her as a wife. I think the SM case was more complex than this.

The complexity and contradictions, within the institution of marriage in general notwithstanding, the construction of a simplistic binary between 'modernity' and 'tradition' raises multiple tensions that cannot be effectively dealt with here. However, an important point to take forward is the understanding that the subjugation so to speak of gender through – a retreat to 'culture' and ethnicity was not simply designed to teach Wambui and women in general a lesson. The mobilisation of gender was geared towards the reconstitution of the meaning of a nation – gender became subsumed in that process mobilised as a resource towards this 'larger' goal. As a result, re-positioning the case as contest between the rights of women and the role of culture therein became tenuous since the case had been usurped by other interests. Analysis (see Stamp, 1991) that has pointed to silence of the women's movement shows that this was not simply the result of an 'un-sophisticated' movement but instead alerts us to the complex ways in which identities in general operate.

The then chair of MYWO Wangari Maathai initiated a national campaign that involved a petition as well as mobilising the support of well-known women leaders towards re-asserting a conversation about the rights of women as the basis of this case. The petition did not go very far and may have been in part dealt a blow by the public retraction of a then leading woman politician of Luo descent – Grace Ogot who argued that her name had been erroneously linked to the campaign. She requested that posters that had her picture be pulled down

While I can only hazard an explanation for Grace Ogot's actions, the most important point to retain here is that the notion that women (and men) would simply shed off other constitutive identities and give primacy to gender belies an understanding of human relations, existence, negotiation, 'trade offs' and most importantly power. Women (and men) do not simply act on the basis of their gender alone. Of course, the fact that patriarchy as a system is designed to reward masculinities in general (and hegemonic ones more so) perhaps leads to the belief that men are not 'their own enemies' due to the seeming coalition when it comes to re-aligning the resources (gender, ethnicity and class) towards sustaining the division of power and labour.

### SIMPLY REVELATORY

Twenty-four years later I am struck by the salience of the SM Otieno case in revealing how gender and sexuality are manipulated towards the goals of the nation-state project. This is in addition to the questions it raises around the meaning of organising for equity and transformation. In re-remembering the case, I am in awe of the tenacity of Wambui Otieno who stayed the course, irrespective of the public surveillance that this brought on her and her children. The numerous 'silences' whether named as culture, ethnicity or tradition during her court case revealed the complexities attendant in claiming rights, building solidarity and sustaining change.

In 2011, despite a new constitutional dispensation in Kenya that has dealt with the ambiguity between customary and common law, as well as enshrined a whole range of rights for women – I am alert to what the SM case tells us about what it means to claim and sustain rights in a patriarchal society. Wambui's struggle within the SM case reveals the multiple routes and resources that are mobilised by patriarchy towards sustaining attendant privileges and rewards. The ongoing debates in Kenya about the 'impossibility' of ascertaining gender parity in government and the ease with which gender is negotiated away in our latter day revolutions in Northern Africa in order to balance 'other' political interests, brings this home profoundly for me.

I have always been drawn to the 'truth' in Audre Lorde's; 'a master's tools will never dismantle the master's house'. However, in looking back at the SM case and its relevance to Kenya two decades later, I question whether using what looks like the master's tools to dismantle the master's house might just be the way to deal with shrewdness of patriarchy.

In the words of a student of military history: 'women have had the capacity for a first strike'. This has been evident through the deployment of 'conventional weapons' whether in form of precedent setting cases like SM's or in pushing for legal and normative standards within laws and constitutions. Do we or have we exercised second-strike capacity? To do this, I believe we must first be ready for the diversity of counter responses from patriarchy and deploy 'unconventional weaponry'.

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### WORK CITED

Cohen, D.W. & E.S. Odhiambo. 1989. Siaya: The Historical Anthropology of an African Landscape. Nairobi: Heinemann Kenya.

### NOTES

[1] Subsequent misguided attempts by the Umira Kager clan to lay claim to what they perceived as Otieno's property failed because it was jointly registered.

[2] This is not unique to the Luo ethnic group

[3] Pim is recalled as a woman who came into the household from a social and sometimes geographical distance. Often an outsider, Pim's entry into the household as a widow or new bride offered protection, food, friendship and a renewed position in life. As the respected older woman of the household graduated to the status of dayo (grandmother), Pim assumed the role of teacher,

## Burying SM: Simply complex

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passing on to the children a broad section of knowledge through folklore (Cohen, 1992:56).

[4] The most notable political evidence of this was the “battle” between Jaramogi Oginga Odinga and Jomo Kenyatta.

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### Article-Summary:

Awino Okech examines Kenyan public memory, 24 years after the SM Otieno case and in the wake of Wambui Otieno’s death.

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