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Rereading *Burying SM* as a 'Social Reproduction Text'

Ambreena Manji¹

Introduction

The lawyer Silvanus Otieno died in Nairobi in December 1986. His Luo relatives wished to bury him in his rural homeland of Siaya in accordance with what they held to be Luo custom. His wife, Wambui, who was Kikuyu, went to court to ask for permission to bury him at their urban home in Nairobi. The course of events can be briefly summarised as follows. On it becoming apparent, soon after his death, that his family and his clansmen differed as to the appropriate place to bury SM, as he was widely known, his widow sought an injunction in the High Court restraining the clan from removing his body from the Nairobi City Mortuary and a declaration that she was entitled to claim her husband's body for burial at their farm in Ngong, near Nairobi. Her application succeeded. Upon the clan's application, the Court of Appeal set aside the High Court ruling and ordered that the matter be set down for trial. The trial was conducted before Justice Bosire, who rendered his decision on Friday, 14 February 1987. He directed that the deceased's body be handed over to the clan and the widow jointly or to either one separately, for burial in Siaya. The clan's wishes were thus granted. Wambui appealed, the Court of Appeal delivering its judgment on 15 May 1987. It dismissed the appeal and ordered that SM be buried in Siaya in accordance with Luo custom. Commenting on the case, the author of a casebook on Kenyan customary law, Eugene Cotran, described the case as a landmark for customary law and in Kenyan legal history (Cotran 1989; for a discussion of the customary law aspects of the case see Manji 2002). In 1992, David William Cohen and E.S. Atieno Odhiambo published their study of the case under the title *Burying SM: The Politics of Knowledge and the Sociology of Power in Kenya*.

Rereading

An invitation from *African Studies* to reflect on *Burying SM* prompted me to revisit the text for the first time in many years. This year marks 30 years since the book's publication. My analysis of the SM case from a law and literature perspective was written twenty years ago (Manji 2002). Since then, Kenya has inaugurated a new constitution (Constitution of Kenya 2010) and, as I write, has defended it at the Supreme Court from assault by the executive (see Manji 2021). In 1987, the SM Otieno case captured the public imagination as ordinary *raia* (citizens) followed its every turn and conversed in often well-informed terms about what was taking place in the courtroom. Writing in an afterpiece to Cohen and Atieno Odhiambo's text, John Lonsdale suggests that their text offers us insights into 'the sort of daily, plebiscitary, making of a national culture that Ernest Renan a century ago would have thought exemplary' (Lonsdale 1992, 108; and see Renan 1947). During the hearings on the constitutionality of the Constitution of Kenya Amendment Bill 2020 (popularly known as 'the BBI case') before the Kenya High Court, the Court of Appeal, and the Supreme Court, tens of thousands of Kenyans tuned in to watch the livestream. We might thus expand Lonsdale's observation to remark optimistically on the long term 'daily, plebiscitary making' (Lonsdale 1992, 108) of Kenya's *legal* culture.

Thirty years after it was published, I have taken the opportunity to reread Cohen and Atieno Odhiambo not in order to ask again, as Corinne Kratz (1992, 100) does in her afterpiece, 'What was the case really about?' but instead to explore Shula Marks's (2000, 98) suggestion that 'as new questions break the surface' it might be possible to 'suggest new ways of hearing and seeing old stories'. I want to suggest that a productive reconsideration of Cohen and Atieno Odhiambo's text can be offered here by rereading it as a 'social reproduction text'. I draw inspiration in doing this from David McNally (2017, 109) who, in suggesting a way of reading Angela Davis' germinal text *Women, Race and Class* has written:

I want to insist that, largely because of its historical materialist orientation and its overriding emphasis on the interplay of the production of value and the reproduction of human beings [...] *Women, Race and Class* ought to be considered a social reproduction text.

There are a number of reasons why this is a compelling way to revisit the text. First, the SM case clearly turned to a large extent on differing interpretations of the idea of 'home', as the authors show. In trying to ascertain Otieno's wishes (arguably the correct customary law question to ask (Cotran 1989), it was hoped that it could read off from where Otieno understood his home to be, his own wishes about where he ought to be buried. In social reproduction theory, the household is a critical unit of analysis. The concerns of social reproduction theory are neatly summed up in Tithi Bhattacharya's articulation of its central question: '[I]f workers' labor produces all the wealth in society, who then produces the worker?' (Bhattacharya 2017, 1). How does familial and communitarian labour reproduce the worker and how do we 'make visible labour and work that are analytically hidden by classical economists and politically denied by policy makers'? (Bhattacharya 2017, 2). Affective relations and the conditions under which reproductive labour is provided are neglected and under-researched. The household ('home') is central to this analysis: they must be understood as political economies (Lynch, Lyons & Baker 2017). In what follows, I build on our existing recognition that the SM case was about ideas of home but extend this analysis to provide a further elaboration of Cohen and Atieno Odhiambo's text as an important source or 'social reproduction text' because of its attention to affective ties and the everyday work of maintaining life, which includes the work of stewardship over death. It is the nature of the everyday labour of maintaining life that is social reproduction theory's most startling insight. Bhattacharya (2017) cites this definition of social reproductive labour provided by Johanna Brenner and Barbara Laslett (1991, 314:

the activities and attitudes, behaviors and emotions, and responsibilities and relationships directly involved in maintaining life, on a daily basis and intergenerationally. It involves various kinds of socially necessary work—mental, physical, and emotional—aimed at providing the historically and socially, as well as biologically, defined means for maintaining and reproducing population. Among other things, social reproduction includes how food, clothing, and shelter are made available for immediate consumption, how the maintenance and socialization of children is accomplished, how care of the elderly and infirm is provided, and how sexuality is socially constructed.

This perhaps accounts for why the SM case was so important in the public imagination in 1987: it provided a powerful glimpse into contested social reproductive work, work that is unique because it engages emotion (Kotiswaran 2020).

The meaning of home

An important motif running through both the SM case itself and Cohen and Atieno Odhiambo's text is the idea – presented in the alternative – of house *or* home. For the clan, it was important to distinguish between Otieno's place in Nairobi, which was simply a house, and his rural home in Siaya. Giving evidence on this matter, Japheth Yahuma and Omolo Siranga both insisted under examination by Wambui's lawyer John Khaminwa that Otieno's Nairobi residence where they sometimes visited him was 'house, not home' (Cohen & Atieno Odhiambo 1992, 41). Thus, 'the meaning of home for a Luo' (Cohen & Atieno Odhiambo 1992, 24) greatly preoccupied the court and the ordinary citizen listening in to the case. While the court heard evidence of the etymology and meaning of 'home' in Dholuo (*dala*) and English (Cohen & Atieno Odhiambo 1992, 40–42), the authors remind us that 'the discourse on home had [...] broad salience for Kenyans [...] one

notes, after the trial, greatly intensified activity across Kenya among members of the middle class [to develop rural homes], in an important sense reaffirming ideologically the notion of “home” contained in the litigation’. In this sense ‘the contest in the court and in the street offered itself as a powerful oration to and among the Kenyan middle class on the importance of establishing a middle class home of quality and meaning’ (Cohen & Atieno Odhiambo 1992, 14). This question spawned an academic literature too; at a conference at Nairobi Law School after the case had ended, Duncan Okoth-Okomo prepared a paper on the semantics of the word home in English and Dholuo (Cohen & Atieno Odhiambo 1992, 42).

If home as a place was a central theme of the SM case and a central concern of Cohen and Atieno Odhiambo’s book, I want to suggest that what was obscured in both readings was any conception of home as a site of labour. Home in the SM case was a place, a location, but not a site of work. Shirin Rai, Catherine Hoskyns and Dania Thomas (2014, 3) define this work as ‘the unaccounted work’ that involves ‘the provision of the sexual, emotional and affective services that are required to maintain family and intimate relationships’. We can see the nature of this work most clearly in the way that the intimacies of funerary work are described. Throughout the case, funeral practices are read as rites not as reproductive work. They are described in ethnographic detail in the testimony Johannes Mayamba speaking on Luo funeral practices. On this reading, Wambui’s wish to bury her husband arose not out of her understanding of ethnography and customary law (although the court heard that ‘women could and did, even in a Luo setting, command arrangements of funerals’ (Cohen & Atieno Odhiambo 1992, 38)), which engaged his status as husband, lawyer, Luo but because it was an extension of the quotidian labour she had done during his lifetime. Evidence of Wambui’s reproductive labour can be found, for example, in the work she had done to learn and maintain a knowledge of Otieno’s genealogy. In court, she was able to provide a ‘detailed and annotated map of the social world’ (Cohen & Atieno Odhiambo 1992, 55) of the kin into whom she had married. This is reproductive labour: the maintenance of affective ties, the transmission of generational knowledge. But Cohen and Atieno Odhiambo read it is

decidedly public terms, describing Wambui's ability to do this as follows: 'in exercising her expertise on this issue she substantially constituted herself as a Luo citizen' (Cohen & Atieno Odhiambo 1992, 55). By reading Wambui from within 'the valorized and masculine public world' (Mwangi 2013) where notions of clan and citizenship are operative, the authors entirely miss 'the comparatively undervalued private female world' in which Wambui provided her labour as *pim* (Cohen & Atieno Odhiambo 1992, 55–57). This role, Cohen and Atieno Odhiambo write (1992, 56), is that of:

the woman who imparted history, wisdom, knowledge to the children of the *dala*. *Pim* is recalled as the woman who came into the household from a social and sometimes geographical distance. Often an outsider [...] in time *pim* learned the lore of her new household.

The rare glimpses we get into the everyday world of the Otieno household are richly suggestive. Central to these are the role of Mama Koko. If the case was about 'streets, clubs, bars, law chambers, and courtrooms', (1992, 53) Mama Koko's testimony offered a powerful counterpoint. Mama Koko, whose proper name was Mariamu Murikira, worked as an occasional cook in the Nairobi home of the Otienos. She owned a kiosk in which she sold food and she travelled from time to time with the couple. She was manifestly a close confidante of Wambui, perhaps even 'pseudo-kin' in Janet Bujra's (1975, 226) formulation. Cohen and Atieno Odhiambo write that her ordinary status gave 'unique authority to her evidence' (1992, 47). It was she who testified that SM had told her he did not build a house in Siaya because he wanted to build one in Nairobi, evidence that he wished to be buried not with his clan in Luoland but in the city. Mama Koko, the authors write, 'possessed the intelligence of urban Nairobi':

she was urban and urbane, struggling to comprehend, survive and succeed through struggle in the spaces left open, disdained, or created inadvertently by the prominent, privileged, and wealthy.

(Cohen & Atieno Odhiambo 1992, 46)

Mama Koko straddled the worlds of waged productive and unwaged reproductive labour, providing her services in the Otieno household and at the same time becoming an interlocuter and confidante of the couple, and especially Wambui. The Otieno home in Nairobi was not a bounded space. Mama Koko was in the house to overhear arguments between visitors, she was present when burial was discussed, and she had a sufficiently intimate relationship with Wambui and Otieno to converse with the latter about why he had not built a home in Siaya.

Rereading the text in 2022, we recognise Mama Koko as Wanjiku, the everywoman of Kenya's coming constitutional struggle. Wambui Mwangi describes Wanjiku thus:

In the 1990s, President Daniel arap Moi dismissed popular pressure for constitutional reform by demanding, "What does Wanjiku want with a constitution?" Unwittingly, he created the defiant symbol: Wanjiku was enthusiastically adopted by proponents of constitutional reform as the "anti-Moi." They demanded social justice and a new constitution on her behalf. Wanjiku became ubiquitous in the Kenyan public imagination, a way of gesturing to "public opinion," the "common person," or the "ordinary *mwananchi*." (Mwangi 2013)

Like Mama Koko in the SM case, and in Cohen and Atieno Odhiambo's text:

She was the voice of those who are subject to the actions of the powerful but never powerful themselves. She was alert to the rising costs of living and the quotidian preoccupations of daily life. Wanjiku was thus the private citizen with a view of public actors, the powerful and famous. By commenting on social trends, Wanjiku was a private critic of the public, of the generalized “society out there.” In this sense, she manifested as the unacknowledged instability between “public” and “private” concerns. (Mwangi 2013)

It is perhaps because of the power that Mama Koko commanded as she straddled public and private, productive and social reproductive spheres, that the lawyer for the clan Richard Kwach, felt the need to reassert the dominance of the public, male sphere – so central to the legal profession’s self-understanding – in his treatment of her. Responding to Mama Koko’s comment that she ran a kiosk business, Kwach suggested that she should concentrate on that work rather than seeking to testify in the affairs of the powerful, remarking acerbically in his closing remarks: ‘I would like to go on record that I have never eaten in a kiosk’ (Cohen & Atieno Odhiambo 1992, 47).

In the book, Cohen and Atieno Odhiambo urge us to pay attention to ‘the ways in which assertions and arguments are naturalized, knowledge combed, and silences constructed’ in the court testimony (1992, 42). I want to suggest that reading Cohen and Atieno Odhiambo’s *Burying SM* as a social reproduction text allows us to refine how the case was about home, about the labour that goes on in it and about the rights to which that gives rise: in short, it allows us to challenge the silences constructed about the affective ties that sustain a home.

After life

In 2022 many of the text's concerns resonate in new ways. These resonances can be understood by reference to Kenya's own history, most importantly her constitutional history since the publication of Cohen and Atieno Odhiambo's book. We read *Burying SM* differently now because The Bomas of Kenya – where SM spent such considerable time socialising that a section of the bar was known as 'SM corner' (Cohen & Atieno Odhiambo 1992, 2) – means something different since it became a venue for the process of constitution making to which it has given its name and where the BBI initiative was also launched (Ghai & Cottrell 2020). Or we encounter John Khaminwa representing Wambui Otieno (Cohen & Atieno Odhiambo 1992, 59) and see him again before the courts, this time in 2021, defending the Constitution in the BBI case. The *dramatis personae* and the book's themes, far from dating, continue to provide us with powerful insights. In light of Kenya's legal history then new questions have indeed 'broken the surface' (Marks 2000) on rereading this text in 2022.

Having reread *Burying SM* as a social reproduction text, I am prompted by the 'afterpieces' provided in the book to give some thought to what I am calling its 'afterlife', that is, to think about the text's likely resonances beyond 2022. In *Burying SM*, six scholars (Corinne Kratz, Peter Amuka, Martin Chanock, Sally Falk Moore, John Lonsdale, and Michael Fischer) present afterpieces in which they provide 'interpretations and representation' (1992, 100) of the text. These pieces were arranged by Cohen and Atieno Odhiambo 'out of a recognition that the present account of the case is but one of a number of "productions of history" and that commentaries, interpretations, and histories of the case and its surrounding contexts will continue to be spoken and inscribed' (Cohen & Atieno Odhiambo 1992, 100) We can similarly think from today's vantage point of what the text will offer us as student of Kenyan history in years to come. Speculatively we can ask: how might we continue to read this text in future, to speak about it and understand its place in the production of Kenyan history? The continued relevance of Cohen and Atieno Odhiambo's text is beyond doubt: students of Kenya, of the sociology of power, of the struggle over history and the production of knowledge, will all find important insights in the text.

I therefore follow Lonsdale in saying, 'This is terrific stuff, read it if you want to feel what it is like to be on the way to becoming a Kenyan' (Lonsdale 1992, 108). I do so knowing that we are still on the way to becoming Kenyan.

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