



Jumuga Journal of Education,
Oral Studies, and Human Sciences (JJEOSHS)
editor@jumugajournal.org
<http://www.jumugajournal.org>
Volume 7, No. 1, 2024
DOI: <https://doi.org/10.35544/jjeoshs.v7i1.66>

Levirate marriage & theo-doctrinal embargo: A Kenyan experience

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Abstract

African scholars have found themselves in a theo-doctrinal embargo, especially after the nineteenth and twentieth century European missionary explosion that ushered in a vibrant protestant Christianity in Eastern Africa. This version of Christianity was largely dismissive of religio-cultural dialogues with the local Africans. One of the most contested subjects, that went beyond the missionary era and reverberates across the twenty-first century, is the wife inheritance (hereafter levirate marriage). Outside the missionary armpits, African scholars have continued to debate its efficacy to the Christian teachings or the lack of it. In view of this, the theo-doctrinal embargo that has evidently persisted across the mainstream/missionary churches and among the African Instituted churches (AIC) in Kenya is the motivating factor for this research and publication of this article. Indeed, the missionary churches have incessantly maintained that wife inheritance, especially where the male inheritor has another wife, is a sin. Conversely, some AICs have tended to support the levirate marriage even where the male inheritor has another wife. They have done this by quoting some Old Testament texts, as their reference point. The mainstream/missionary churches have insisted that wife inheritance narratives was permitted in the Old Testament especially in cases where the male inheritor was single and the deceased was childless. This article seeks to examine the biblical understanding of levirate marriage and its place in the Kenyan context. Overall, the article analyzes some scriptural texts that deals with the subject of levirate marriages and reflects on it from an African Christian perspective. The materials in this article were gathered through extensive reading of published works, interviews and via general observation of the practices therein.

Keywords: Culture, Inheritance, Levirate, Marriage, Practice, Widow, Widower

Introduction

An African-Initiated Church (AIC) is church founded in Africa by indigenous persons, though there cases where non-Africans are said to have began ecclesiastical outfits that are eventually seen to resonate with AICs; ideally however, AICs are established by Africans themselves and take indigenous cultures as the raw materials for the Gospel. An example is the East African Revival Movement, which began in Rwanda's Gahini area in late 1920s. Although it is not deemed as an AIC, but a church within a church, it was started by a European missionary, Dr. Joe Church and a Ugandan by name Simeoni Nsibambi. Their main idea, like that of AICs, was to revive the spiritual deadwood-ness of the mainline churches. Shortly after, it became a revival movement for the protestant wing of the church - the Methodists, the Anglicans, the Presbyterians and others. With time, it unconsciously embraced some elements of African culture and general traits. Such cultural traits included: oval sitting arrangements during fellowships that did not encourage the Big Man Syndrome as opposed to humility in leadership, the use of proverbs, oral narratives, riddles, African melodies, and African idioms (Gathogo 2017). The emphasis on local languages, which are certainly the vehicles of culture also came in hardy. They however differed sharply with AICs on certain areas, as in

the case of levirate marriages, embraced remarriage in case of the death of a spouse, encouraged polygamists who 'converted' to their school of spiritual thoughts to cut links with second and third wives - and only retain the first one, among other points of departure (Gathogo 2023).

In a nutshell, several terminologies have been used interchangeably to describe AICs. Mwaura (2005) explains that the terms African initiated churches, African independent churches, African indigenous and African instituted churches have been used in reference to AICs. The acronym AIC represents all and the variance in names is relative to what the researcher wishes to point out. For instance, researchers who desires to discuss AICs' manifestation of African cultural traits prefer to call them indigenous churches. Although the term African is used, AICs differ from each other because of their diverse cultural differences across the various regions of the African continent. Lamport (2018) contends that the AICs split out of the missionary (mainstream) churches because of political, historical and cultural differences.

Moreover, Gathogo (2001: 63) opines that African Christians should promote cohesiveness irrespective of their denominational orientations; that is: AICs, Roman Catholics, or Protestants. Before the coming of the Western-clothed version of Christianity, many African communities practiced levirate marriage, primarily to ensure family continuity and protection of the deceased children and the widow. This means, the religio-African worldview eschewed vacuums. The Westernised Christianity and/or European religion was quick to demonize African indigenous practices, which they derogatorily called 'traditional religions' which mean primitive religions, archaic religions, ancient religion or outdated religions. These outdated practices or elements of ancient religion included polygamy, levirate marriage and/or wife inheritance, and female circumcision which they christened Female Genital Mutilation among many others. Subsequently, African theologians have, since the 1960s, protested against imperialistic interpretations of religion and culture in Africa. The imperial understanding of Africa manifested itself through dismissals, as they camouflaged as Gospel apologists; hence the Good News were 'evangelised' as Bad News to the African cultures, as they were devoid of love, care and understanding.

Oshitelu (2002) describes the formation of AICs as a response to the failure of the European missionaries to interpret Christianity in the African context. These missionaries wanted to make Africans to become "Black Europeans" against their will. In contrast, the AICs did not oppose Christianity; but rather they opposed the tendency to usher the Good News in European garments. They would view the European missionary from the perspective of the Johannine Nathaniel. Indeed, it is the latter who asked Philip whether anything useful could come from the underrated Nazareth, after which he was invited (by Philip) to go and see for himself (John 1:46). In other words, the founders of AICs wondered why the missionary approach to African cultural issues was ignorant of Johannine example (John 1:46). Clearly, the European missionaries interpreted Scripture from a western cultural yardstick. In light of this, AIC's were formed to liberate the African populace from dogmatic and blind religiosity from the missionary circles, general oppressive and racist environment, western theology and colonial rule that were generally seen as a comparing notes. In the Third World Theologians conference in Accra, the communique stated that theology in Africa should necessarily remain a liberating theology:

Its our belief that God's demand in Africa is that they not only oppose any form of oppression and suffering also sever any alliances direct or indirect with the forces of oppression.....(such)oppression is not only found in culture but also in political and economic structures and the dominant mass media, African Theology must also be liberating theology (Communique of the Pan African Conference of Third World Theologians, 1977).

The western theology serves to venerate the Bible to be read from a western perspective. From a western context, Scripture may not address real issues within the African content. For instance, the western Christianity demanded an end to practices such as wife inheritance, female genital mutilation, polygamy among many others. For the AICs, it was impossible to read the Scripture in western context and apply it in African world context while dismissing the existing African cultures totally. This went against the expectations of the AICs-inclined Africans who read the Scripture reflectively and kept some practices such as polygamy and wife inheritance to their heart. In general, there is a strong correlation between the reading of the Old Testament by Africans from the mainline churches and the AICs' indigenization strategies and/or explication of Christian practices. The Kimbanguist church in the Democratic Republic of Congo celebrated the Eucharist with African elements of honey and sweet potatoes instead of the white missionary elements of altar wine and wafers. Moreover, some Kenyan AICs baptized with oil instead of the missionary church's use of water baptism. Significantly, the AICs challenges missionary churches to indigenise the churches by balancing the Biblical thought and the African cultural way of life.

Biblical perspective of Levirate Marriage

Deuteronomy 25: 5-6 describes levirate marriage in biblical times as the duty of a man to marry the son-less widow of his deceased brother. Additionally, the child born out of levirate marriage was to be considered as the offspring of the deceased and considered legal descendant of the deceased. Consequently, Levirate marriage can be described as marriage of a widow to a brother-in-law or close family member following the death of her husband.

In Levirate marriage, the Israelites were required to take care for women whose husbands died before they had gotten children. Unmarried brother of the deceased had the responsibility to marry his sister-in-law. God described levirate marriage as the onus of the brother-in-law. God's intention were clear that the first son of the marriage had to carry on the name of the deceased. This was geared towards ensuring that his name would/will not be blotted out from the community (Deut.25:6). The continuity of a family name in Israel was of great importance (Numbers 36:7, 1Kings 21:3).

In view of the foregoing, Levirate marriage was only applicable after the death of the husband. As noted earlier (Deut 25: 7-10), a "brother-in-law" could also refuse to marry the widow. In such circumstances, it was considered as lack of love and respect for his deceased brother. Alternatively, if the brother of the deceased did not wish to inherit the childless widow, she would, in the presence of elders, take off his shoes/sandals as a symbol of mourning, and 'sign' or signal that since the deceased brother had failed to engage in levirate marriage, the brother's lineage would be viewed as dead. This process was called *halitzah*, meaning the widow is free. He was to be publicly disgraced and humiliated by the widow (she was to "spit on his face"), and his reputation amongst the Israelites would be severely damaged. Therefore the widow was free to marry the person of her choice. The Rabbis taught that the brother should marry his sister-in-law or desire to follow the law. However, the widow and the supposed inheritor could find themselves in a limbo of levirate marriage. Several questions can be asked: What if the brother-in-law is under age and therefore unable to fulfil marriage obligations? Should the widow wait for the underage brother-in-law attain maturity? These are the gray areas that the Scripture did not address. Probably, there was no such scenario; and if it was the Rabbis, they would have used their reason and discretion to make a decision.

Several examples of levirate marriage are highlighted in Scripture. In Genesis 38, Tamar had been married to Er, a son of Judah. Er died, leaving Tamar childless (Genesis 38: 6-7). Judah's solution was to follow the standard procedure of levirate marriage. He told Er's brother Onan, "Sleep with your brother's wife and fulfill your duty to her as a brother-in-law to raise up offspring for your brother" (verse 8). Onan was more than willing to sleep with Tamar, but, unfortunately, he had no desire to have a child with her: "Onan knew that the child would not be his; so whenever he slept with his brother's wife, he spilled his semen on the ground to keep from providing offspring for his brother" (verse 9). Onan was taking selfish advantage of levirate marriage. The point is, God wanted sex with his sister-in-law, but he purposefully avoided impregnating her. God called Onan's actions "wicked" and killed him (verse 10). God striking Onan dead reveals the divine intention on levirate marriage. God is for family continuity. If God was not for levirate marriage, and would not have struck Onan dead. God is the author of marriage and therefore levirate marriage is part of the rest of creation that was divinely crafted.

In the story of Ruth, his deceased husband had no surviving brothers and died without leaving a child behind (Ruth 1:1-5). Close relative of Ruth, Boaz fulfilled the duty to family continuity and preserve the land the deceased owned. The widow was not allowed to marry an outsider. She was to marry within the family. From this, Boaz and Ruth's marriage, Obed, the first born is in the lineage of Jesus. Though Ruth's husband's name is not mentioned, it's Obed who continued the family name of the deceased.

In Matthew 22, Jesus is faced by the Sadducee whose camouflage saw them ask a question based on the Law's requirement of levirate marriage: "Moses told us that if a man dies without having children, his brother must marry the widow and raise up offspring for him. Now there were seven brothers among us. The first one married and died, and since he had no children, he left his wife to his brother. The same thing happened to the second and third brother, right on down to the seventh. Finally, the woman died. Now then, at the resurrection, whose wife will she be of the seven, since all of them were married to her?" (Matthew 22:24-28). Though the Sadducee intention was to get Jesus view on resurrection, the levirate marriage was prevalent within the Jewish communities.

Traditional African Perspective of Levirate Marriage

Levirate marriage in African culture was for the sole purpose of bringing up the deceased's children. Male children born in levirate marriages qualified to be allocated land. Inheriting land was sign of recognition and acceptance by the respective clan and indeed an affirmation of the right of ownership. Additionally, levirate marriage was/is to provide protection for the widow. Furthermore, in some African contexts, it was meant to protect the widow from any illicit sexual activities. After the burial of the deceased, the kinsmen would appoint a man to take care of the widow. Notably, they choose the deceased brother. If the brothers were dead or young another member of the immediate of the family or clan would be the inheritor.

Several African communities have practiced wife inheritance for a long time. For instance, among the Luo of Kenya, the practice is known as '*tero*' - a practice where the brother-in-law (*Jalako*, among the Luo) takes the widow. After the deceased burial, relatives of the deceased family would meet and make decision on who will take care of the widow and children. Once decision had been made the inheritor-chosen would place his shirt on the widows door an indication that he is the new man. The widow did not have right to choose the inheritor since she was the property of the community because of the dowry paid. If the widow refused to be inherited she would be chased from her home and loose land owned by the deceased. As noted thus, the Luo care for the widows is called *Lako* or *Ter* - a phenomenon where the brother-in-law inherited the widow (*Jalako*). As Oriare Nyarwath (1994: 91) has noted,

Custom is still the best alternative available to the Luo widow and for the care of the *home* of one's deceased brother, especially in the context of Luo culture. However, it recommends a number of adjustments to the practice to discourage some of the abuses that are becoming prevalent in it, with a view to making it more amenable to some of the challenges of our time.

Further, as Nyarwath (1994: 91) has noted,

Lako has in the recent past, particularly in Kenya, come under heavy criticism especially from some feminist activists, government administrators and academics. It has been accused of, among other things, being anachronistic, a violation of the widow's right to freedom of choice to marry or not, treating a widow as property to be *inherited* by a brother-in-law, and partly being responsible for the spread of HIV and AIDS. Many in Kenya believe that HIV and AIDS cases are some of the highest among the Luo. This belief is reinforced by the numerous TV and radio programmes that highlight the effects of the epidemic in Luoland. Interestingly, when funding is available for HIV and AIDS intervention, the figures for the high prevalence of the disease in Luoland are disputed. The criticisms listed above call for a re-examination of the practice of *lako*.

Additionally, Kirwen (1987: 64-65) has noted that,

The custom for widows must be seen as a temporary adjustment in the marriage of a deceased brother to ensure that his family achieves its goals as if he were alive.... Moreover, if one refuses to care for a brother's wife, it shows that you do not love your brother. Such a breach of trust could cause the deceased to put the evil eye on you and bewitch you, seeing how you have treated his wife and family unjustly.

Furaha Charo, widow from Kilifi, Kenya was evicted from her matrimonial home by the in-laws after the death of her husband and they took her land and house. If she was inherited by the deceased brother, there would be a man figure to protect her. The in-laws could not have evicted her. Many women go through similar incidences at the hands of their in-laws and walk away after refusing to sleep with their dead husbands so as to qualify to be inherited (Kirwen 1987). Majority African cultures dictate that women own property through their husbands. Therefore, when the husband dies and the wife is childless or has only daughters, the widows are most likely to lose rights to their husband's ancestral land. African patriarchal societies give men control over land with the notion that women are weak vessels and are incapable of handling property. Women obstacle to land ownership in parts of Africa is pushed by factors such as wife inheritance.

Milazzo and Van de Walle (2018) reveals that the African patriarchal culture leaves woman at the mercy of the husband. Most African cultures men are the provider and women are housewives. At the demise of the husband, the woman is exposed to selfish relatives whose desire is to disinherit the widow of land or any property owned by the deceased. Therefore, the widow becomes desperate and cannot reject any forceful inheritance by the deceased family. Additionally, Olanisebe & Oladosu (2014) States that the death of husband exposes women to tough living conditions such as sexual harassment, rejection among many others. The Kenya Human rights group documented several cases of widows in the rural areas who suffered forced inheritance or consequences of refusing to be inherited. In comparison with urban widows, rural widows are forced to undergo wife inheritance cleansing rituals. Those who underwent the cleansing rituals were allowed to keep their husbands property and those who did not were chased away. In some parts of Kenya, the kinsmen would hire

local person to have sex with the widow against her will and without protection (Human Rights). Widows have lost property because the deceased husbands family don't regard the widow as their every own unless inherited. Some women would rather be inherited against their wishes so that they are not thrown out of their husband's home. They become slave to the husband's family and the inheritor might even have three or four wives. In most African communities when a woman was married she became the member of the community. Even at the death of the husband she remained member of the community with limited rights.

The levirate marriage becomes more complicated if the widow is from western context. For instance, Kenyan member of parliament, late Ken Okoth had married a white woman. Upon his death his Luo community elders demanded that the widow should be inherited. This drew mixed reactions among Kenyans with others terming wife inheritance uncouth and immoral, while others felt that African culture should be adhered to. This incidence revealed a section of Kenyans who will go at any length to practice wife inheritance and on the other hand those who seem to be getting away from the practice.

Mbiti (1992) states that Africans had their own religion which like any other religion had beliefs, practices, values, morals and religious official leaders who gave religious directions. Significantly, Gathogo (2020) affirms that African cultural and religious heritage and contribute to Christian growth in Africa. The African cultural leader gave direction so how wife inheritance could be undertaken. Wife inheritance became accepted within African communities because the intentions were good. Widows and the deceased children were taken care of and the family tree was not lost. However, like any other practices worldwide, wife inheritance and other African cultures have been overtaken by fulfillment of sexual urges and thirst to grab the deceased property if he was wealthy. To protect women in Africa, the African Charter on Human and Peoples' Rights (ACHPR) was adopted in June 1981 by the organization of African Unity (OAU), African Union (AU) gives prominence to women rights in Article 2,

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. Traditional African societies practice levirate marriage which comes with its emotional, health, religious and economic implications. The health implications of levirate marriage are evident in a report from Tanzania which indicates that, "the practice of inheriting widows may cause a surge in the number of HIV cases involving the inheritor and his co-wives..., and there is also the risk of infecting widows who have earlier tested negative to the virus.

Churches' Response to levirate marriage

Various African Christian denominations are theologically divided on wife inheritance subject. Some African church groupings give varied reasons against wife inheritance. They claim that wife inheritance might lead to increase in HIV and AIDS, psychological and emotional problems. Possible explanation is the inheritor might have many wives and this increases the risks of HIV and AIDS infections. Though not proven, those with multiple partners stand a high chance of getting infected with HIV and AIDS. Agot (2005) indicates a strong correlation between wife inheritance and male inheritor with several wives for fulfilling sexual relations increases risks of infection. Furthermore, widows who were inherited by non-relatives for sexual rituals stood high risk to be infected than widows who were not inherited. Results from several reports show HIV prevalence among inherited widows depended on why and by whom they were inherited. In some African countries such as Ethiopia and Zimbabwe it was reported that widows may have contracted HIV and AIDS from their deceased husbands thus increasing infections rate to the male inheritor and his wives. In particular, Okeyo (1994) states that among the Luo of Kenya, widows would engage in sex ritual for reasons such as to celebrate establishment of homestead for cleansing the widow to be accepted in the community. It was common belief that widow was impure after the husband's death and therefore cleansing was needed to allow her be integrated in the community. Furthermore, Mboya (1997) reveals that sexual intercourse was to free the widow from serious consequences that might harm her. Other reasons for widow inheritance was child bearing and sexual companionship for young widows for fulfillment of sexual desires. Ige & Quinlan (2012) opines that among the Abaluhya community of Kenya, the cleansing rites for widow inheritance were observed after 40 days of the deceased burial. The rite involved the inheritor having sex with the widow. Thereafter the widow shaved her pubic area an indication of end of relations with the deceased husband and start of new marriage.

Most mainstream churches believe in monogamous marriage as stated in the Scripture (Mark 10:16). The argument is that the levirate marriage demeans the widow by not giving her chance to marry person of her choice. Because of negative treatment of the widow who has refused inheritance, there's stigma. The widow is called names by members of the society. While the church educates the members of the negative side of wife inheritance, some still support the practice. The church believes that the widow entering the levirate union might encounter hostility from the inheritors other wives. Moreover, the widow joining the inheritors family amounts to polygamy and its retrogressing by demeaning the women's rights. The deceased children are under pressure to be under another man's control. In case of mixed marriage where the widow is from different cultures it brings disunity such as Kenyan political leader who had married a white lady. After the death of the political leader, the local community elders demanded that the widow be inherited. Coming from a different culture the widow refused to be inherited.

Some AICs strongly believe that levirate marriage was practiced in the Old Testament and it's God sanctioned. It's common knowledge that sections of Old testament scripture have been preferred by some AICS because they resonate well with African culture. Some of the Scriptures favored by AICS are on polygamy such as Jacob marrying sisters which is also a common practice in African societies.

Bediako (1998) believed that African religions are not demonic and should be embraced for betterment of understanding African Christianity. Therefore, wife inheritance should be understood in the light of family continuity and protection of the widow. If wife inheritance is practiced for the above reason then it falls within acceptable christian virtues. Subsequently, the missionary Christianity champions for single man inheriting a widow and the marriage celebrated in church. Similarly, Bishop Kodia of the Anglican church of Kenya, Bondo (ACK) is of the opinion that the validity of wife inheritance is if the male inheritor is single and marriage is celebrated in church. Genesis 39 further explains that God intention in wife inheritance was family continuity not selfish sexual desires as committed by Onan. Onan was single and he was to continue his brother's family and he chose not to. God stroked him dead not because of the wife inheritance but having sex with the sister in law with bad intention.

Magesa (2002: 138) reveals that the church should be a liberating agenda Therefore if some wife inheritance practices are women oppressive, the church should speak against it. Jesus mission mandate as captured in Luke 4:14 was to free the oppressed and sexual rituals by many partners to cleanse the widow is total oppression. The church should transform the African society to allow people have liberties. Smith (2009), however takes different approach that the church should completely not allow wife inheritance because it demeans women to become the clans property.

Feminist proponents believe that AIC's that advocate for wife inheritance are male centered than Christ centered (Messer 2006). The perceived male dominate churches only spearhead cultures that oppression women. For instance, widows have to undergone sexual purification to be allowed in the society after the death of their husbands. On the contrary widowers, can remarry as soon as the deceased wife is buried without purification. Oduyoye (1995) attributes to wife inheritance as male chauvinism that has existed in traditional African set up even before coming of Islam and Christianity. Todate, Nthamburi (1991) suggests women feel more oppressed by political ,economic and emerging cultures that have continuously evolved. Consequently, some churches too have allowed male chauvinism to influence decisions.

Is African culture primitive or inferior? Depending on one's world view it's unfair to term any culture inferior. Therefore the church should not term wife inheritance inferior, but rather the practice is not consistent with the Christian faith but more of Jewish culture which resonates well with the African setup. The western missionary were and have become the source of African cultural validation. Philips (1970) states that those who dismiss their native culture are a cultural cringe which is a collective inferiority complex that makes the natives of a country dismiss their culture as inferior to other cultures. As a result, those who are against wife inheritance are basing their arguments from western cultural perspective. In the pretext of cultivating their western superiority values, the western missionary disrupted the African thought system which demonized several cultural practices.

The main reason for wife inheritance was to preserve the name of the deceased whether he had children or not and take care of the children and the widow. Unfortunately, today wife inheritance has been reduced to men gaining status of having several wives and sexual gratification. Some men have become serial inheritors owing to ignorance and weakened

communal leadership. Traditional African societies value mutual respect to all in the society. However, the desire for property and other selfish gains has reduced wife inheritance to male inheritors and the deceased fighting for land. Subsequently forcing widows to look for means of taking care of the children if they refused to be inherited. Consequently, if the church bases her arguments on the above, the contemporary levirate marriage ought to top be revised.

Conclusion

Throughout historical times, God has never spoken in a socio-cultural vacuum, but has always spoken within a particular situation and context. Boaz and Ruth, Jacob's marriage to Rachel and Leah, and Abraham's marriage to Hagar were some of the examples of the existing cultures that God utilised, a phenomenon that demonstrates the value of underlining the cultural contexts and prevailing situations of the people being evangelised, as Good News can only be good when it is not meant to harm others. When the Good News dialogues with the prevailing cultural realities of the respective peoples, it becomes authentically Good News. In this understanding, there is no Bible culture except communities' lifestyles that must be well understood. This implies that "Levirate Marriage" does not appear to be a "law" from God. It was simply a practice of the Israelite people in the Old Testament times. There are two instances of Levirate Marriage being practiced in the Old Testament, and one occurred in Genesis, hence showing that it preceded the "law." This kind of levirate marriage had benefits because a brother who agreed to marry his sister-in-law would be the sole benefactor of his brother's estate. This would address the challenge of splitting it with the family. On the contrary, if the levirate union was caused by the need for a boy-child, the child would be named after the deceased's brother and was considered as his offspring. If the African communities allowed wife inheritance to be celebrated in church, it will not be in conflict with the Scripture. Thus, the key achievement in this article is triggering the debate regarding levirate marriage. In other words, should be treated as an ancient, archaic, traditional or a primitive practise in a western-christianised Africa and global trajectories? To what extent should it be accommodated in the twenty-first century church in Africa; and how should God's love (John 3:16) be demonstrated in this matter? Such thought-provoking questions inform the importance of addressing the subject of levirate marriage and the resultant theo-doctrinal embargo, from a Kenyan experience.

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Acknowledgement:

The Author acknowledges the librarians who enabled him to access crucial information that shaped this research article.

Conflict of interest:

The author has declared he has no conflict of interest as he researched on this article, as the agenda was the quest for knowledge.

Ethical pledge:

The researcher's wish to confirm that he followed full ethical considerations and acknowledged his sources appropriately without plagiarizing or duplicating other people's works unprofessionally.

Competing Interests:

The author has also declared that he had no financial or personal relationships or undue interests that may have inappropriately influenced him in writing this research article.

Author(s) contributions:

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