

Dissolution of Marriage in Nigeria

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DISSOLUTION OF MARRIAGE IN NIGERIA

1. Applicable Laws and Jurisdiction

1.1. What is the applicable law governing dissolution of marriage in Nigeria?

The applicable laws are the Matrimonial Causes Act Cap. M7 Laws of the Federation of Nigeria, 2004 and the Matrimonial Causes Rules 1983.

1.2. Which Court has Jurisdiction over matrimonial causes?

The High Court of each State of the Federation (Section 2(1)(a) of the Matrimonial Causes Act). It is important to bear in mind that, in order to invoke the Court's jurisdiction, the petitioner must be domiciled in Nigeria.

1.3. Does the High Court have Jurisdiction over all types of marriage?

No, the jurisdiction of the High Court relates strictly to statutory marriages.

1.4. How does Divisional Jurisdiction apply in matrimonial Causes?

A person domiciled in any state of the Federation may institute proceedings in the High Court of any of the states of the Federation, irrespective of whether the person is domiciled in the particular state or not.

2. Grounds for Divorce

2.1. On what ground can a party seek to dissolve a marriage contracted under the Act?

Section 15(1) of the Matrimonial Causes Act provides the sole grounds for the dissolution of marriage as being “*the marriage has broken down irretrievably*”. However, Section 15(2)(a-h) provides the circumstances in which a petitioner may prove that the marriage has broken down irretrievably and they include non- consummation of marriage, adultery, irresponsible behaviour, desertion, living apart for two years, living apart for three years, failure to comply with Decree of restitution of conjugal rights and presumption of death.

2.2. Can a marriage below two years be dissolved?

Generally, by Section 30(1) of the Matrimonial Causes Act, a petition for the dissolution of marriage shall not be instituted within two (2) years after the celebration of the marriage. However, a petitioner can seek the leave of Court on the ground that refusal shall impose exceptional hardship or exceptional depravity.

Furthermore, Section 30(3) of the Matrimonial Causes Act provides for exceptions. It states that the provisions as contained in Section 30 of the Act shall not apply where the institution of proceedings is based on matters relating to wilful failure to consummate the marriage, adultery, commission of rape, sodomy or bestiality; or if the procedure is by way of cross proceedings.

2.3. What decision can the Court make in cases of dissolution of marriage?

After the conclusion of trial, provided the Court is satisfied that the marriage has broken down irretrievably it will grant a Decree Nisi which is usually for a period of three (3)

months after which it may be made absolute.

2.4. What is the effect of a Decree Absolute?

By Section 33 of the Matrimonial Causes Act, where a Decree of Dissolution becomes absolute, a party to the marriage is free to re-marry. However, during the three (3) month waiting period parties are forbidden from re-marrying.

2.5. What is the difference between Dissolution and Nullity of marriage?

An order of Dissolution determines the marriage based on the intolerable behaviour of one of the parties, whilst nullity is based on fundamental illegalities, such as failure to comply with formal requirements, affinity, etc.

3. Reliefs

3.1. Asides from the Decree of Dissolution, what other pronouncements can the Court can make?

The Court is restricted to granting the reliefs sought by the petitioner. Apart from seeking the dissolution of marriage the parties are at liberty to seek ancillary reliefs such as custody, maintenance, financial and proprietary settlements. (See Section 70(1), 71(1), 72 of the Matrimonial Causes Act).

4. Types of Marriages in Nigeria

4.1. Asides from statutory marriages, what other type of Marriage can be contracted in Nigeria?

Apart from statutory marriages the parties may marry under native law and custom or Islamic law.

4.2. How can a customary marriage be dissolved?

There are 3 ways of dissolving customary marriages namely: Extra-Judicial (return of dowry based on the particular tradition), Judicial dissolution (through the pronouncement of a Customary Court), and by death.

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