

**DIVORCE IN THE NIGERIAN LEGAL SYSTEM: FRAUD IN VIEW**

**BY**

**Amenze Stephanie ASEMOTA**

**LAW1704677**

**FACULTY OF LAW  
UNIVERSITY OF BENIN  
BENIN CITY**

**JULY, 2023**

**DIVORCE IN THE NIGERIAN LEGAL SYSTEM: FRAUD IN VIEW**

**BY**

**Amenze Stephanie ASEMOTA**

**LAW1704677**

**A PROJECT WORK WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,  
UNIVERSITY OF BENIN, IN PARTIAL FULFILMENT OF THE REQUIREMENTS  
FOR THE AWARD OF THE BACHELOR OF LAW (LL.B) OF THE UNIVERSITY OF  
BENIN,BENIN CITY.**

**JULY, 2023**

## **CERTIFICATION**

I, **Amenze Stephanie ASEMOTA** with matriculation number **LAW1704677** hereby certify that apart from reference to other people's work which have been duly acknowledged, the entire work is a product of my personal research and that this project has neither in whole or in part been presented for another degree elsewhere.

.....

**Amenze Stephanie ASEMOTA**

**LAW1704692**

**APPROVAL**

We certify this project was completed by **Amenze Stephanie ASEMOTA** with Matriculation Number **LAW1704677** in partial fulfilment of the requirement for the award of the Bachelor of Law degree (LL. B).

.....  
**Prof. E. Okojie**

**Project Supervisor**

.....  
**Date**

.....  
**D.T Achi Esq.**

**Project Coordinator**

.....  
**Date**

.....  
**Prof. I.O Omoruyi**

**Dean, Faculty of Law**

.....  
**Date**

## **DEDICATION**

This work is wholeheartedly dedicated to my mother, Mrs. Rita Ilawagbon, for her motherly support and for financing my education.

## **ACKNOWLEDGEMENT**

**To God Almighty maker of Heaven and Earth.**

## **TABLE OF CONTENT**

Title page

Certification

Approval

Dedication

Acknowledgement

Table of Contents

Table of Cases

Table of Statutes

Table of Abbreviations and Acronyms

Abstract

### **CHAPTER ONE: MARRIAGE**

1.1 The concept of marriage

1.2 Nature and legal characteristics of marriage

1.3 Types of Marriages in Nigeria

1.3.1 Statutory Marriage

1.3.2 Customary/Islamic Law Marriage

1.4 Forms of Marriage Not Recognised in Nigeria

1.4.1 Same-sex Marriage

1.4.2 Cohabitation

1.4.3 Common Law Marriage

## **CHAPTER TWO: STATUTORY MARRIAGE**

### 2.0 Statutory Marriage

### 2.1 Historical Background of Statutory Marriage in Nigeria

### 2.2 Essentials for the validity of Statutory Marriage

#### 2.2.1 Age

#### 2.2.2 Parties must be of single status

#### 2.2.3 Prohibited degrees of Consanguinity and Affinity

#### 2.2.4 Consent

#### 2.2.5 Sanity

### 2.3 Preliminaries of Statutory Marriage

#### 2.3.1 Notice of Marriage

#### 2.3.2 Special licence

#### 2.3.3 Caveat

### 2.4 Celebration of Statutory Marriage

## **CHAPTER THREE: DISSOLUTION OF MARRIAGE/DIVORCE UNDER STATUTORY LAW**

### 3.1 Definition and Concept of Dissolution of Marriage

#### 3.1.1 THE TWO YEAR'S RULE

#### 3.1.2 Exceptional Hardship

#### 3.1.3 Exceptional Depravity

## 3.2 Basic Approaches to Divorce

### 3.2.1 Uncontested and Contested divorce

### 3.2.2 Fault and No-fault divorce

## 3.3 Social Explanations for causes of Divorce

## 3.4 Problems and Effects of Divorce

### 3.4.1 Problems and Effect on the Couple

### 3.4.2 Problems and Effects on Children

### 3.4.3 Problems and Effects on the Society

## **CHAPTER FOUR: GROUNDS FOR DIVORCE UNDER STATUTORY LAW: FRAUD IN VIEW**

### 4.0 INTRODUCTION

### 4.1 Ground for Divorce under Statutory law

#### 4.1.1 Irretrievable Breakdown of Marriage

#### 4.1.2 Wilful and Persistent Refusal to Consummate Marriage

#### 4.1.3 Adultery and Intolerability

#### 4.1.4 Behaviour by the Respondent

#### 4.1.5 Desertion

#### 4.1.6 Living Apart

4.1.7 Failure to comply with a decree of restitution of conjugal rights

4.1.8 Presumption of death

4.2 FRAUD

4.3 Defences and bars to a petition for divorce

4.3.1 petitioner's adultery

4.3.2 petitioner's desertion

4.3.3 conduct conducing

4.3.4 Exercise of discretion

4.4 The rationale of absolute and discretionary bars

4.5 The Decree

4.5.1 Restriction on the making of a decree of Dissolution of marriage

4.5.2 Decree Nisi

4.5.3 Decree Absolute

4.5.4 Intervention

4.5.5 Intervention by the Attorney-General

4.5.6 Intervention by other persons

4.5.7 Intervention after decree nisi

## 4.6 Recognition of Decrees in Nigeria

### 4.6.1 Recognition in Nigeria of foreign decrees of divorce and annulment

### 4.6.2 Registration of Dissolution of Statutory marriage

## **CHAPTER 5: RECOMMENDATIONS AND CONCLUSION**

### 5.0 Recommendation and Conclusion

### Bibliography

## TABLE OF CASES

*Ajih v Ajih* [1975] 5 ECCLR 6  
*Akere v Akere* [1962] WNLR 328  
*Bellinger v Bellinger* [2003] UKHL21  
*Bowman v Bowman* [1949] P.350  
*Buckland v Buckland* [1972] 2 All ER 300  
*Burns v Burns* [1984] FLR 216  
*Chawere v Aihemu* [1935] 2NWLR 4  
*Corbett v Corbett* [1971] P.83  
*Fitzpatrick v Sterling H.A* [1997] 4 All ER 705  
*Fitzpatrick v. Sterling House Association Ltd* [1999] 4 All ER 411  
*Folohun v Folohun* 17 N.L.R. 108  
*Fusco v Fusco* 200 MiSC 1039,107 N.Y.S 2d 286  
*Ghaidan v Goden -Mendoza* [2004] 3 All ER 411  
*Hyde v Hyde* [1866] LR.I P&D 130,133  
*Ijioma v Ijioma* [2009] 12 NWLR (pt. 1156) 595  
*Majekodunmi v Majekodunmi* [1966] NMLR 191; [1966] 2 ALL NLR 28  
*Meribe v Egwu* [1976] 3SC 23 at 32  
*Militante v Ogumwoju* [1994] 2 FCR 355  
*Nickaf v Nickaf* Unreported Court of Appeal Kaduna Division suit CA/K/79/84  
*Obergefell v Hodges* 576 U.S. 644  
*Oghoyone v Oghoyone* [2010] 3NWLR (pt.1182)564  
*Re Kelvin* [2001] Fam. CA 1070.  
*Shaw v Gould* [1868] LR 3HL55,82  
*The Ampthill Peerage* [1977] AC 547  
*United states v Rubenstein* [1955] 20 QBD 494  
*Williams v Williams* [1979] 1 ALL ER 556; [1979] 2 WLR 95

## TABLE OF STATUTES

Constitution of the Federal Republic of Nigeria 1999 (As amended)

s. 29 (4)

Criminal code Cap C38 LFN 2004

Interpretation Act Cap 123 LFN 2004

Marriage Act Cap M6 LFN 2004.

s. 9

s. 13

s. 14 (1)

s. 21

s 33 (1)

s. 33(2)(d)

Matrimonial Causes Act Cap M7 LFN 2004

s. 4 (2)

s. 3 (1) (d)

s. 3 (1) (d) (iii)

Matrimonial Causes Rule

Order IV, Rule 2.

Marriage Ordinance No. 10 of 1863.

Marriage Ordinance No. 14 of 1884

Marriage Ordinance 1908 (No.9 of 1908)

Marriage Proclamation 1996 (No.10 of 1906)

United States Code, 2006 Supplement 5, Title 1

s. 7

## **ABSTRACT**

This work would entail a detailed analysis of Fraud as a ground for divorce in Nigeria law. In many countries, spouses wishing to file for divorce can choose one of many grounds, or reasons, upon which to base their divorce. The fraudulent conduct of one spouse may provide grounds for divorce, though this is more commonly grounds for annulment -- which voids the marriage as if it never existed, rather than divorce. If a spouse files for divorce based on fault grounds, such as fraud, she must prove these grounds to the court with evidence, typically testimony or documentary proof, especially if the other spouse contests the wrongdoing. This is in contrast to no-fault grounds, which typically require little or no proof.

# CHAPTER ONE

## MARRIAGE

### 1.0 INTRODUCTION

Marriage is one of the oldest of all institutions. It began from when God first made man and provided him with a partner to live with<sup>1</sup>, which officially marked the beginning of marriage which has become an established pattern practiced universally. According to Lord Westbury, marriage is the very foundation of civil society<sup>2</sup> which makes it very important to human existence.

In Nigeria, there are several reasons and grounds for divorce, but regardless of the reason for wanting to end a marriage between parties, the law states that the sole grounds for divorce in Nigeria is that the "marriage has broken down irretrievably".

A Marriage shall only continue only as long as both parties carry out the terms and conditions of the contract and as well as fulfil their marital rights and obligations. If both or either of them should fail, refuse or being unable to carry out the terms and fulfil their duties towards each other, then the contract may be severed. Thus where a marriage becomes an arena of animosity and chaos, when the marriage-ties has been poisoned or the object of the marriage is frustrated and the parties are no longer interested in the marriage, then it can be dissolved.

Marriage is a universally recognized institution. Every society has rules and laws that regulates it. However, these laws vary across societies and regions. For example, the laws that determine the

---

1 Genesis 2:23

2 *Shaw v Gould* [1868] LR 3HL55,82

legality of marriage in Nigeria and in Ghana may be different. Each system has its unique features and requirements. Generally under Nigerian law, the concept of family is closely linked to marriage and doesn't recognize cohabitation.<sup>3</sup> Similarly, the Australian Law Reform Commission in its paper stated inter alia that "traditionally, Marriage was the only socially acceptable way to form a family". There is no full definition to fully encompass what a family is because of the various ways a family could be formed. It can be determined by marriage, blood ties, self-definition or function. The word " family " has been defined as 'a group consisting of a set of parents and children. It can also be seen as a group of people related to one another by blood or by marriage.'<sup>4</sup>

### **1.1 The Concept of Marriage**

The term "marriage" is vague and difficult to define with all certainty. However, marriage, a legally and socially sanctioned union, usually between a man and a woman, that is regulated by laws, rules, customs, beliefs, and attitudes that prescribe the rights and duties of the partners and accords status to their offspring (if any). The universality of marriage within different societies and cultures is attributed to the many basic social and personal functions for which it provides structure, such as sexual gratification and regulation, division of labour between the sexes, economic production and consumption, and satisfaction of personal needs for affection, status, and companionship. Perhaps its strongest function concerns procreation, the care of children and their education and socialization, and regulation of lines of descent.<sup>5</sup>

Marriage can be examined from a number of perspective:

---

3 Nwogugu E.I, *Family law in Nigeria* (3rd edn, HEBN 2014) 3

4 *Chambers 21st Century Dictionary*, 471

5 <<https://www.britannica.com/topic/marriage>> accessed

### **a. Functional Perspective**

From the functionalist perspective, emphasis is based on the purpose of marriage. Hogget suggests that children are heart of marriage, "if nothing else, then marriage is about the licence to bear children."<sup>6</sup> others may emphasize the role of creating an environment of love and comfort.

### **b. Psychological Perspective**

Others may base marriage on the psychol partners are to derive from the union with regards interaction , satisfaction and sustained association.<sup>7</sup>

### **c. Political Perspective**

Mount<sup>8</sup> has suggested that marriage can be regarded as a subversive institution protecting individuals from the powers of the state.

### **d. Religious Perspective**

There is a wide variety of religious understandings of marriage.<sup>9</sup>

The Black's Law Dictionary<sup>10</sup> defines marriage as " a legal union of a couple as husband and wife"

---

6. Hogget B et al, *Family Law and Society* (Butterworths 1996)

7. Berger P and Kellner H, *Marriage and the Construction of Reality* (Routledge)

8. *The Subversive Family*, London.

9. Thatcher M, *Marriage after Modernity* (Sheffield Academic Press 1999)

10. Bryan A Garner, *Black's Law Dictionary* (8th edn, Thomson 2004) 992

The West Encyclopedia of American Law<sup>11</sup> defines marriage on monogamous grounds as:

Marriage is the legal status, condition or relationship that results from a contract by which one man and one woman who have the capacity to enter that agreement mutually promise to leave together in the relationship of husband and wife for life, or until the legal termination of the relationship.

The United States Code<sup>12</sup> defines Marriage and Spouse as:

..... the word marriage means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of opposite sex who is a husband or wife.

Lord Nicholls<sup>13</sup> describes marriage to be "deeply embedded in the religion and social culture of a country and deeply embedded in the relationship between two persons of opposite sex. "

The Supreme court of Nigeria in *Meribe v Egwu*<sup>14</sup> defined marriage as a union of one man and one woman thereby creating the status of husband and wife

Similarly, in *Ijioma v Ijioma*<sup>15</sup> the court described marriage as a civil contract that exist between a man and a woman both whom agree to live and cohabit together as spouses.

Also, Lord Penzance in the English case of *Hyde v Hyde*<sup>16</sup> gave a very important definition of marriage as:

---

11. 2nd edition obtained from legal-dictionary

12 Section 7 United States Code, 2006 Supplement 5, Title 1

13 *Bellinger v Bellinger* [2003] UKHL21

14 (1976) 3SC 23 at 32

15 [2009] 12 NWLR (pt. 1156) 595

16 [1866] LR.I P&D 130,133

A voluntary union for life of one man or one woman to the exclusion of all others

From the above definition, it can be deduced that for a marriage to be valid, it must be a voluntary union which came as a result of consent of both parties. Consequently, consent obtained by fraud or duress,<sup>17</sup> or as to mistake of identity of either parties the marriage is invalid.<sup>18</sup> For example, in *militante v ogumwoju*<sup>19</sup> the Petitioner believing the respondent to be Richard Ogumwoju and married him but he was Anthony Osime. The marriage was declared void.

Secondly, the union must be intended to be for life. i.e, throughout the lifetime of the couples. However, this is subject to death of either of the parties or by dissolution of the marriage. If the marriage was to last for a period of time, it doesn't qualify as a valid marriage under the law. Thus, "marriage for convenience" or "contract marriage" is invalid. So also is a marriage for ulterior motives or purposes with no intention to cohabit as husband and wife is invalid.

The most common form of ulterior purpose is the form of marriage for immigration purpose. In *Fusco v Fusco*,<sup>20</sup> an American medical student who was caught up in Italy after a war broke, married an Italian woman in order to escape internment in a concentrated camp was held to be for ulterior purpose. Thus, it could not qualify as marriage. Similarly, in *United states v Rubenstein*<sup>21</sup> it was held that marriage solely for immigration purpose was no marriage.

---

17 *Buckland v Buckland* [1972] 2 All ER 300 - where the petitioner gave his consent to marry the respondent under the threat of imprisonment, his consent was held to be invalid. The marriage was void.

18 *ibid*

19 [1994] 2FCR 355

20 200 MiSC 1039,107 N.Y.S 2d 286

21 [1955] 20QBD 494

Also, the definition presumes that the parties must be of the opposite sex. The issue is, by what criteria do we distinguish a man from a woman? In *Corbett v Corbett*,<sup>22</sup> the court used the biological factor applying the three criteria of Chromosomal, Gonadal and Genital tests. He refused to recognise the new sex of a person who underwent a sex-change operation. This decision has not been followed in many jurisdictions which now recognize the legal capacity to post-operative to marry a person of the opposite sex to their acquired gender<sup>23</sup>.

The Australian High Court in *Re Kelvin*<sup>24</sup> dealt with the recognition of transsexual person's assigned sex for the purpose of validating their marriage refused to recognise the gender of a person based solely on. In essence, the court was stating that the gender could be determined by the psychology of a person (what he thinks himself to be).

The definition of marriage in *Hyde v Hyde*<sup>25</sup> does not give room for polygamy as well as Same-sex marriage. Thus if a marriage is between one man and two women, it is void if the marriage was conducted under the Marriage Act by virtue of Section 46. A violation of this offence constitutes an offence known as bigamy provided for under Section 370 Criminal Code Act<sup>26</sup> and Section 47 of the Marriage Act<sup>27</sup>.

---

22 [1971] P.83,cited in E.I Nwogugu (n 3) 6

23 Nwogugu E.I (n 3) 7

24 [2001] Fam. CA 1070

25 Supra

26 Cap C38 LFN 2004. A person guilty of the offence of bigamy is liable to imprisonment for seven years

27 Cap M6 LFN 2004. A person guilty shall be liable to imprisonment for five years.

## **1.2 THE NATURE AND LEGAL STATUS OF MARRIAGE**

Marriage is sometimes used to denote three different situations - the agreement to marry, the ceremony by which a man and a woman becomes man and woman, finally the state of being married, i.e, the state of being married or the relationship between husband and wife.<sup>28</sup>

By Marriage, Husband and Wife automatically acquire legal rights. Further, marriage is recognized as a right. Marriage is further recognized as a right to be protected by Article 12 of the European Convention of Human Right which provides that "men and women of marriageable age have a right to marry and to found a family according to national laws governing the exercise of this right." Marriage although originating from the agreement between the parties, creates a status, that is to say, "the condition of belonging to a class in the society to which the law ascribes peculiar rights, duties, capacities and incapacities."<sup>29</sup> The legal status also extends to children, since the marriage of the parents confers on the child the status of legitimacy.

## **1.3 TYPES OF MARRIAGES IN NIGERIA**

There are generally two types of Marriage - Civil and Religious marriage. Thus people who wish to marry choose between civil and religious marriage or both. A Civil Marriage is a legal status created by a state government when a state official such as a judge or justice of peace, performs a ceremony joining two single adults who have met the state's/Statutory qualification in a marital

---

28 Nwogugu E.I (n 3)

29 The Ampthill peerage [1977] AC 547 per Lord Simon of Glaisdale.

union<sup>30</sup> On the other hand, a religious marriage is a religious solemnization of the union of two individuals according to the requirements of a particular faith in question. State statutes allows ministers, priests, imam, and other members of the clergy who perform the religious marriage to execute and file a couple's marriage license, thus satisfying the state's civil marriage requirement by making the marriage legal in the eyes of the law.<sup>31</sup>

There are two types of legally recognized marriages, a monogamous marriage under the Marriage Act and Customary/Islamic law which are potentially polygamous.

### **1.3.1 Statutory Marriage**

Statutory marriage is also referred to also referred to as Marriage under the Act and it is monogamous in nature. Statutory marriage was described by Lord Penzance in *Hyde v Hyde*<sup>32</sup> as:

"Marriage is a voluntary union for life of one man and one woman to the exclusion of all others"

Furthermore, section 8 of the Interpretation Act<sup>33</sup> lucidly defines monogamous marriage as a marriage which is recognized by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage.

The extant laws which govern the celebration and incidence of the statutory marriage in Nigeria are principally the Marriage Act<sup>34</sup> enacted in 1914 and the Matrimonial causes Act which was

---

30 Luppino G.A and Miller F.J, *Family Law and Practice: The Paralegal's Guide* (3rd edn, Pearson)50

31 ibid

32 Supra

33 Cap 123 LFN 2004

34 Cap M6 LFN 2004

passed in 1970 to complement the Marriage Act and it contains provisions relating to matrimonial causes.

### **1.3.2 Customary/Traditional Marriage**

The extant laws which govern the celebration and incidence of the statutory marriage in Nigeria are principally the Marriage Act. enacted in 1914 and the Matrimonial Causes Act which was passed in 1970 to complement the Marriage Act and it contains provisions relating to matrimonial causes.

The customary and Islamic marriages are recognized in Nigeria but they are potentially polygamous as opposed to Statutory marriage which are strictly monogamous. There is no single uniform system of Customary Law prevailing throughout Nigeria because it covers a multitude of systems of Law which differ from one locality to another. Thus, the form a marriage may take may vary from one locality to another. Customary Law marriage can be performed by anyone irrespective of their religion. Under customary law, a man is allowed to marry as many wives as he wishes. Another notable distinction is that a marriage conducted under the Marriage Act can also be valid when a Customary Law marriage is also conducted, provided it is with the same spouse.

### **1.4 FORMS OF MARRIAGE NOT RECOGNIZED IN NIGERIA**

Although the law recognizes only Statutory and Customary Law marriages in Nigeria, there are other prevalent forms of marriage that are yet to be given any legal recognition in Nigeria. These type of marriages are as follows:

### 1.4.1 Same-Sex Marriage

Same-sex marriage is marriage between partners of the same sex and/or gender identity. For example, a marriage between two men or two women.<sup>35</sup> In 2003, Massachusetts became the first state in the U.S. to legalize same-sex marriages, paving the way for many other states to consider legalizing same-sex marriage. Over the course of the next decade, several other states legalized same-sex marriage; and in 2015, the U.S. Supreme Court decision in *Obergefell v. Hodges*<sup>36</sup> legalized same-sex marriage nationwide, including in the remaining 14 states that had not previously allowed same-sex couples to marry. The decision in this case was based on the court's interpretation of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the U.S. Constitution.

Same-sex marriage, also known as gay marriage, is the marriage of two people of the same legal sex. As of 2023, marriage between same-sex couples is legally performed and recognized or at least mandated in 36 countries that have a total population of 1.38 billion people (18% of the world's population), with the most recent being Nepal and Estonia. The first same-sex couple to be married legally in modern times were Michael McConnell and Jack Baker in 1971 in the United States; they were married in the county of Hennepin County, Minnesota.<sup>37</sup>

In *Fitzpatrick v Sterling H.A*<sup>38</sup> a Same-sex partner was recognized as a member of his cohabitant's family. Not long after, in *Ghaidan v Goden -Mendoza*<sup>39</sup> the house of lords further

---

35 <<https://www.lawschool.cornell.edu>> accessed 9th of July 2023

36 576 U.S. 644

37 <[https://en.m.wikipedia.org/wiki/Same-sex\\_marriage](https://en.m.wikipedia.org/wiki/Same-sex_marriage)> accessed on 9th of July 2023

38 [1997] 4 All ER 705

39 [2004] 3 All ER 411

held that it was discriminatory to distinguish between opposite sex couples and same-sex couples in the context of succession to tenancies and held that a Same-sex partner was entitled to the same rights as heterosexual partners.

One cannot entirely deny the existence of homosexual relationships in Nigeria. However, such relationship has not yet assumed the dimensions it has taken in other jurisdictions such as United states, Canada, Britain, and even South Africa because no legislation, custom, and religion has accorded the demonic and unnatural practice any positive flavour. The only attempt made to legalize the subject was in 2006 proposed Federal Executive Bill that prohibits not just same sex marriage but the relationships that arises there from<sup>40</sup> The Federal Executive Council gave approval for a Bill for an Act to prohibit all forms of Same-sex relationship in Nigeria.

#### **1.4.2 Cohabitation**

Cohabitation has been defined as "living together as his husband and wife without having been legally married"<sup>41</sup> cohabitation may be intentional and could be non-intentional.

It is usually as a result of ignorance, end result of an invalid or void marriage especially where the necessary prerequisites and preliminaries of a statutory marriage is not fulfilled and the parties may believe that they are lawfully married, living together as husband and wife. In *Ajih v Ajih*<sup>42</sup>, the parties approached a priest who officiated over church service, inserted their names in a marriage register which was in the custody of the church and proclaimed them man and wife. When the lady petitioned for judicial separation, the Respondent denied ever entering into a

---

40 Olatubosun A, 'Same-sex Rights and the Changing Status of Marriage', *ALJ* [2004] (5) 224

41 Bailey-Harris B, "Law and the Unmarried Couples; Oppression or Liberation" [1996]

42 [1975] 5 ECSR 6

marriage with her. The court dismissed the petition in the absence of proof of proper marriage. In essence, they were merely cohabiting.

Sometimes, Cohabitation is intentional. For instance is *Burns v. Burns*<sup>43</sup>, the parties were unmarried though the plaintiff changed her surname to the defendant's and was known to their friends as his 'wife'. They lived together for nineteen years and had two children. Yet the English Court of Appeal held that the parties were cohabiting and the lady could not at the termination of the union take advantage of the provision of the English Matrimonial Causes Act.

Nowadays, some marriages are preceded with a period of cohabitation. This is most times due to economic reasons. In Nigeria, only few men can afford to pay some exorbitant bride price and other ancillaries that go with customary marriage. As a result, men and women find it convenient to cohabit, with the mutual understanding that whenever their income improves, they would do the needful.<sup>44</sup>

Gradually, in the western world, cohabitation is gradually becoming an alternative for marriage. It has been given judicial recognition in some parts of the world. This only happens where cohabitants register their relationship, then certain rights, duties, and obligations may be conferred on them. Consequently, Waite L.J noted in *Fritzpatrick v. Sterling House Association Ltd*<sup>45</sup> where he noted that:

As (Cohabitation) has become more open, so attitudes towards it become less judgmental that included the attitude to the courts, where notwithstanding that the encouragement of marriage as

---

43 [1984] FLR 216

44 Chianu E, *Law of Landlord and Tenant*, (2nd edn, Law Lords) 31

45 [1999] 4 All ER 411

an institution remains a well-established head of public policy, the respect due to the sincerity of commitment involved in many such relationships is reflected in judicial terminologies - terms like 'partner's now being more generally used than the once preferred references to 'common-law spouse', 'mistress' or even...'living in sin'.<sup>46</sup>

Section 166 of the Evidence Act 2011 provides for the presumption of marriage. It provides thus:

"Where, in any proceeding whether civil or criminal, there is a question as to Whether a man or woman is the husband or wife under Islamic or Customary law, of a party to the proceedings, the court shall, unless contrary proved, presume the existence of a valid and subsisting marriage between the two persons where the evidence is given to the satisfaction of the court, of the cohabitation as husband and wife by such man and woman."

Marriage was presumed to exist and affirmed by the court in the case of *Nickaf v. Nickaf*<sup>47</sup> where the court held inter alia that cohabitation by repute is a valid form of establishing customary marriage in Nigeria. It is quiet interesting that just before the enactment of the *Evidence Act 2011*, the court treated cohabitation as a legally inconsequential social behaviour. In *Oghoyone v Oghoyone*<sup>48</sup> the Court of Appeal drew a legal line between a void marriage and mere cohabitation in a way or manner that relegated cohabitation to a legally unrecognized phenomenon. Also, in *Chawere v Aihemu*<sup>49</sup> it was held that mere living together does not per se constitute Customary marriage.

---

46 Pickford R, *Unmarried fathers and the Law* (1999)

47 Unreported Court of Appeal Kaduna Division suit CA/K/79/84

48 [2010] 3NWLR (pt.1182)564

49 (1935) 2NWLR 4

In conclusion, it is pertinent to state that even though the general law recognizes cohabitation, it does not confer rights and obligations on cohabiting couples. The attitude of the law reflects the strong opposition of moral and religious grounds. Irrespective of this view point, cohabitation has become a fact of life in Nigeria.

### **1.4.3 COMMON LAW MARRIAGE**

The original concept of 'Common Law' marriage is that is a marriage that is considered valid by both parties but has not been formally registered with a state or religious registry or celebrated in a formal religious service. Common Law marriage is also known as *sui juris* marriage, informal marriage, marriage by habit, and repute. This form of marriage is a legal framework in a limited number of jurisdictions where a couple is considered married, without the couples having formally registered their relation as a civil or religious marriage. According to a popular myth, simply living with a member of the opposite gender for a period of time, creates a form of marriage. It's requirement vary from state to state, but creating a common law marriage requires more than living together with someone.

In general, the requirement for a valid common Law marriage is that the parties must have lived together for a significant period of time. Also, there must be "holding out " as husband and wife. This means that they refer to each other as "my wife" and "my husband", hold assets in joint name, file tax returns together, etc<sup>50</sup>

## **CHAPTER TWO**

---

50 "Common Law marriage" and cohabitation , "Commons Library Standard Note" United kingdom parliament 2014

# STATUTORY MARRIAGE AND DIVORCE

## 2.0 STATUTORY MARRIAGE

Statutory marriage is also known as marriage under the Act. It is simply a marriage conducted in line with the provisions of the Marriage Act<sup>51</sup> and the Matrimonial Causes Act<sup>52</sup>. Both the Marriage Act and the Matrimonial Causes Act exist side by side the administer statutory marriage. A Statutory marriage (often called court marriage) in Nigeria is a union of a man and woman as defined by the Marriage Act.

A Statutory marriage also called the registry marriage in Nigeria is actually a voluntary union for life of one male and one female to the exclusion of all others in line with statutes. Put simply, a statutory marriage in Nigeria is monogamous marriage.<sup>53</sup>

## 2.1 HISTORICAL BACKGROUND OF STATUTORY MARRIAGE IN NIGERIA

Lagos was the first part of modern Nigeria to be made a British colony in 1862 and the first Marriage Ordinance came into existence in 1863. According to Mann, the creation of the colony encouraged repatriated slaves from Sierra Leone and the Brazil to settle and saw them take up missionary work. According to her, they introduced Christian marriage into Lagos and by extension Yorubaland. These returnees formed the nucleus of the Lagos elite in the mid and late 19th century. Their strong Christian morals saw them marry in church. Under the 1863

---

51 Cap M6 Laws of the Federation of Nigeria, 2004

52 Cap M7 Laws of the Federation of Nigeria, 2004

53 <<https://www.chamanlawfirm.com/an-overview-of-statutory-marriage-in-nigeria>> accessed on 15th July 2023

ordinance<sup>54</sup> Church marriages were recognized as a legal alternative to court marriages. (Ime N. George\*, David E. Ukpong, Eme E. Imah 2014) This created the so called Ordinance marriage, predecessor of today's statutory marriage, as a new marriage category and one which had the full weight of the law behind it.<sup>55</sup>

In 1884 a new marriage ordinance<sup>56</sup> was enacted for Lagos and the Gold Coast with the support of the church and replaced the 1863 version. The Ordinance provided penalties for anyone flouting the monogamy rules. These Ordinances did not apply to the Protectorate of Nigeria so outside Lagos it was possible to contract either a customary-law marriage or a Christian marriage in accordance with the rites of the church.

In 1900, the Marriage Proclamation for the Protectorate of Southern Nigeria was made. When the Lagos Colony and the Protectorate of Southern Nigeria were merged in 1906, the Marriage Proclamation was repealed and the 1884 Ordinance applied to the whole.<sup>57</sup>

region.<sup>58</sup> Then in 1907 a Marriage Proclamation was made for the Northern Protectorate. The Marriage Ordinance 1914 stream lined the marriage laws when the two protectorates were merged<sup>59</sup>

---

54 No. 10 of 1863.

55 <https://mzagams.wordpress.com/2022/08/24/brief-history-of-marriage-in-nigeria/> accessed on 15th July 2023

56 No. 14 of 1884

57 Marriage Proclamation 1906 (No.10 of 1906) and Marriage Ordinance 1908 (No.9 of 1908)

58 No.1 of 1907 (Laws of the protectorate of Northern Nigeria.1910)

59 Marriage Act Cap M6 LFN 2004

The Marriage Act 1914 is substantially similar to the 1884 Ordinance and based on the same principles of monogamy as the English law of marriage.<sup>60</sup> The new statute made the celebration of marriage a purely civil function, leaving the parties to observe any religious ceremony they chose.<sup>61</sup> Whereas a Christian and an ordinance marriage used to be one and the same thing, a new category of marriage known as Christian marriage, was now created. There were now four categories of marriage in Nigeria; a customary marriage, a Christian marriage, an Islamic marriage (although it is treated as a customary marriage) and an Ordinance marriage, what today we call a statutory marriage.

## **2.2 ESSENTIALS FOR THE VALIDITY OF STATUTORY MARRIAGE**

For a Statutory marriage to be valid, parties to a marriage under the act must possess some necessary essential capacities. Optimum consideration needs to be made to the age, single status of both parties, prohibited degrees of consanguinity or affinity, the consent and sanity of both parties.

### **2.2.1 Age of Parties**

The marriage Act does not lay down any mandatory minimum age of marriage. However, section 3(1)(e) of the Marriage Act declares a marriage void where either of the parties is not of 'marriageable age'. Section 21 of the Child's Right Act<sup>62</sup> stipulates the age of eighteen years as

---

60 Zabel, "The Legislative History of the Gold Coast and Nigerian Marriage Ordinance" *JAL* [1969] (3) 64-79

61 Cap C50 LFN 2004

62 Section 23 Cf. Section 29 (4) CFRN 1999 as amended.

the minimum age of marriage applicable in the marriage Act. Any person who marries or promotes the marriage of a child may be punished on conviction with a fine or imprisonment.<sup>63</sup>

### **2.2.2 Parties must be of Single status**

Marriage under the Act is monogamous in nature, being a union of one man and one woman to the exclusion of all others during the continuance of the marriage. Consequently, a party to a subsisting statutory marriage has no capacity to enter into another marriage whether Statutory or otherwise with another person. Non-observance of the rule makes the subsequent marriage void, and is an offence punishable by imprisonment. A person may validly marry his sole partner from a customary law marriage under the Marriage Act. If there are any third parties before the Statutory marriage is contracted, the latter will be void.<sup>64</sup>

### **2.2.3 Prohibited Degrees of Consanguinity and Affinity**

Certain marriages are prohibited under the Act. These prohibited relationships may arise from Consanguinity (relationship by blood) or Affinity (relationship by marriage). The general rule is that parties to a statutory marriage must not be within the prohibited degrees of consanguinity or Affinity. e.g Father marrying his daughter or brother and sister. The more closely the parties are related, the greater risk it will be of their children inheriting undesirable genetic characteristics.<sup>65</sup> But in the case of affinity, prohibition was originally based on theological aspect that the husband and wife were one flesh, thus marriage of the close family circle was frowned at. Today,

---

63 Section 33 (1) of the Marriage Act

64 Lowe N and Douglas G, *Bromley's Family Law* (9th edn, Butterworth 1998)

65 section 4 (2) of the Matrimonial Causes Act

the justification must be sought available and social grounds. For instance, a Man getting married to his step child would in most cases lead to sexual exploitation.

The prohibited degrees of consanguinity and affinity are listed in the First Schedule of the Matrimonial Causes Act 2004. It prescribes that the marriage of a man is prohibited if the woman is, or has been related by consanguinity as -ancestress, descendants, sister, father's sister, mother's sister, brother's daughter and sister's daughter. Or by affinity, husband's father, husband's grandfather, husband's son, husband's daughter's son, mother's husband, grandmother's husband, daughter's husband's, son's daughter's husband, and daughter's husband. it is immaterial whether the relationship is of the whole blood or half-blood or traceable to any person of illegitimate birth.

However, section 4 of the Matrimonial Causes Act 2004 enables two persons within the prohibited degree of affinity who wish to marry each other to apply, in writing to a High Court Judge for permission to do so. The judge may by order, grant permission to the applicants to marry each other if He is satisfied that the circumstances of the particular case are so exceptional as to justify the granting the permission sought. The statute does not define the phrase 'exceptional circumstances'.<sup>66</sup> The essence of Section 4 of the MCA is reflected in the accepted social practice in several communities in Nigeria where the customary law permits marriage between persons related by affinity.

#### **2.2.4 Consent**

The voluntary consent of the parties is a prerequisite for the celebration of a Statutory marriage. Absence of such consent or the granting of it under duress or misapprehension vitiates the

---

<sup>66</sup> section 3 (1) (d) of the Matrimonial Causes Act

agreement.<sup>67</sup> Thus, where one of the parties alleges that the consent he/she gave was not 'real' by reason of it having being obtained by fraud or duress, the court will decide on the evidence before it whether a case for a void marriage has been made out. Parental consent of both parents is required where either or both of the parties is under the age of twenty-one and not being a widow or widower.

### **2.2.5 Sanity**

Parties to a Statutory marriage must be sane. If one of the parties is insane and therefore mentally incapable of understanding the nature of the marriage contract, the marriage would be void ab initio.

## **2.3 PRELIMINARIES OF STATUTORY MARRIAGE**

The Marriage Act lays down certain preliminaries or formalities which are to be fulfilled before the solemnization of the marriage under the statute. The preliminaries of a statutory marriage are legally essential; non-compliance would invalidate the marriage. They are;

### **a. Notice of Marriage**

Persons who desire to be marriage under the Act must firstly make their intentions known to the registry by completing and assigning a notice of marriage in the prescribed form. The form is to be lodged with the registrar of the district in which the marriage is intended to take place. Once the Registrar receives the notice, he enters its details in the marriage notice book. The Notice

---

<sup>67</sup> Section 3 (1) (d) (iii) of the Matrimonial Causes Act 2004.

itself is then displayed on the public notice board of the registrar's office and should remain so until the registrar's certificate is granted or after the expiration of three months.<sup>68</sup>

### **b. Special License**

The Federal Ministry of Internal Affairs may, at its discretion, dispense with the giving of the notice and the issue of the registrar's certificate. However, before that discretion may be exercised, it has to be proved by the affidavit to the Minister's satisfaction that there is no lawful impediment to the proposed marriage and that is the necessary consent if any, to the proposed marriage has been obtained. The minister may grant his license which , shall be according to Form D in the schedule authorizing the celebration of marriage between the parties named in such license by the registrar or a minister of some religious denomination or body.<sup>69</sup>

### **c. Caveat**

A caveat may be entered against the issue of the registrar's certificate by any person whose consent to the marriage is required by law or by anyone who knows of any just cause why the marriage should not be celebrated. The caveat is entered by writing the word 'forbidden' opposite the entry of the notice in the Marriage Notice Book and appending the writer's name and address and the grounds on which he claims to forbid the issue of the certificate. Once this is done, the registrar may not issue the certificate until the caveat is removed.<sup>70</sup>

---

68 Section 9 of the Marriage Act 1970

69 Section 13 of the Marriage Act 1970. Though the power of the minister to grant license to marry in Section 13 can be delegated.

70 Section 14 (1) Marriage Act 1970.

## 2.4 CELEBRATION OF STATUTORY MARRIAGE

Where the parties to an intended marriage has obtained either a registrar's certificate or a Special license, may celebrate their marriage in a licensed place of worship by any organized minister of the church, denomination body to which such place of worship. The marriage must be celebrated with open doors between 8am to 6pm in the presence of at least 2 witnesses beside the officiating priest. Such celebration must be in accordance with the rights and usage observed in such church<sup>71</sup>. A marriage conducted by a person who is not a recognized minister of some religious denomination or body is void.<sup>72</sup>

Similarly, parties who have obtained the registrar's license or a special license. *Section 13* may as an alternative to marriage in a licensed place of worship, marry before a registrar of marriages in his office. Such marriages must be celebrated in the presence of two witnesses in a place with open doors between 10am to 4pm following the procedure prescribed by the Act.<sup>73</sup> Also, a special licence granted by the Minister of Internal Affairs pursuant to Section may authorize the celebration of marriage in a place other than a licensed place of worship or the registrar's office.

---

71 Section 21 Marriage Act 1970

72 Section 33(2)(d)

73 Cap M7 LFN 2004

## **CHAPTER THREE**

### **DISSOLUTION OF MARRIAGE:**

#### **3.0 DEFINITION AND CONCEPT**

Marriage has been said to be something more than a contract, either religious or civil - to be an institution. It creates mutual rights and obligation as all contracts do, but beyond that, it confers a status. A marriage shall continue only as long as both partners continue to carry out the term and conditions of the contract as well as fulfil their marital rights and obligations. But if both or either of them fails, refuse, or being unable to carry out the terms or fulfil their duties towards each other, then the contact may be severed. When a relationship has been formalized as marriage, the legal task of severance is never pleasant.<sup>74</sup>

Dissolution of Marriage and Divorce are mostly used interchangeably. It is a complete legal severance of a marital relationship. Divorce ends the legal status of marriage previously existing between the parties and thereafter, neither party has the legal right or owes the legal duty of a spouse<sup>75</sup>. Similarly, dissolution of marriage has been described as a modern or more temperate sounding term for the word divorce and it has been defined as the ending of marriage through

---

<sup>74</sup> Luppino G.A, Miller F.J, *Family Law and Practice, The Paralegal's Guide* (3rd edn, Pearson 2012) 82.

<sup>75</sup> Cretney S.M et al, *Principles of Family Law* (Sweet & Maxwell 2003) 30

legal proceedings or to end a marriage contract between oneself and one's spouse.<sup>76</sup> Divorce does not necessarily bring the parties personal relationship to an end.

Matrimonial Causes Act 1970 and the Matrimonial Causes Rules 1983 are the primary laws that govern matrimonial causes such as divorce, annulment, legal separation, etc. of marriage in Nigeria. The Act by virtue of, section 2(1) of the Matrimonial Causes Act provides that the court with jurisdiction to hear and determine matrimonial causes is the High Court of any State of the Federation. For a marriage to undergo divorce proceedings in court, such marriage must be a statutory marriage legally conducted and evidenced by a valid Marriage Certificate.

## **STATUTORY MARRIAGE**

A statutory marriage is one celebrated under the Act and it confers jurisdiction on the State High Court to determine the petition for dissolution of marriage. However, the law stipulates that a marriage under two (2) years cannot be dissolved; this is called the **two-year rule**.

### **3.1 THE TWO YEAR'S RULE**

This is provided for under *Section 30 of the MCA* which states that:

"subject to this section proceedings for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by the leave of court".

*Section 30 (1)* <sup>77</sup>prescribes that proceedings for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by leave of court. However, an exception is made to this general rule in respect of the institution of proceedings based on any of

---

<sup>76</sup> Nwogugu E.I, *Family law in Nigeria* (3rd edn, HEBN 2014).3

<sup>77</sup> Chambers 21st Century Dictionary, 471

the following matters; willful and persistent refusal to consummate the marriage: or adultery and the petitioner finds it intolerable to live with the respondent or the respondent has committed rape, sodomy or bestiality: or the institution of proceedings for a decree.

The rationale for this rule is “not only to deter others people from rushing into ill-advised marriages, but also to prevent them from rushing out of marriage as soon as they discovered that their marriage was not what they expected”.<sup>78</sup>Such marriage can only be dissolved where the petitioner instituting the divorce petition by leave of the Judge can prove that exceptional hardship or that the case is one that involves exceptional depravity which will be caused if the marriage is not dissolved, as provided in Section 30 (3) of the Act, which provides that;

The court shall not grant leave under the section to institute proceedings except on the grounds that to refuse to grant the leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage.

The term “exceptional hardship” and “exceptional depravity” are not defined in the legislation. However, guidance may be obtained from the interpretation of a similar provision of English law by the House of Lords in *Fay v Fay*<sup>79</sup>. Lord Scarman who delivered the unanimous opinion of the House observed:

It is not possible to define with any precision what is meant by ‘exceptional hardship or depravity’. The imprecision of these concepts with the resultant impossibility of the definition must have been deliberately accepted as appropriate by the legislature and is in itself an indication that the determination of what is exceptional is essentially a matter for the judge. All that can be said with certainty is, to borrow the words

---

<sup>78</sup> <https://www.britannica.com/topic/marriage>

<sup>79</sup> Hogget B et al, Family Law and *Society*, (Butterworths 1996)

of O'Connor L.J., that the hardship suffered by the applicant (or the respondent's depravity) must be shown to be something out of the ordinary.<sup>80</sup>

The lawyer is the one to obtain this leave for the petitioner by filing the necessary application in court. The law places the primary responsibility for determining what is exceptional and the exercise of the discretion on the judge of first instance who is to access the evidence adduced in the applicant's affidavit. An appeal court ought not intervene in such assessment unless it could be shown that the judge was clearly wrong.<sup>81</sup>

In divorce proceedings, the party filing the case is referred to as the Petitioner while the other spouse sued is the Respondent. In order to enable the judge to exercise his functions appropriately in this regard, there is need for full evidence as to the nature and extent of the applicant's suffering or the respondent's depravity. Thus "in particular evidence should be given of the circumstances relied on as constituting the exceptional character of the hardship suffered."<sup>82</sup>

The leave of the court under section 30(3) may be granted on both arms of the sub-section or on the basis of one of the two factors-exceptional hardship imposed on the applicant or exceptional depravity on the part of the respondent.

It has been suggested that what amounts to exceptional hardship or depravity should be a matter of value judgment based on "prevailing standards of acceptable behaviour between spouses".

---

<sup>80</sup> Berger P and Kellner H, *Marriage and the Construction of Reality* (Routledge)

<sup>81</sup> The Subversive Family, London.

<sup>82</sup> Thatcher M, *Marriage after Modernity* (Sheffield Academic Press 1999)

However, Hudson L.J. in *Hillier v Hillier*<sup>83</sup> considered the right test to be that each case must be approached subjectively and not by the standards of an ordinary man. The court should not merely “confine itself to an objective as to how the ordinary man might be expected to react in given circumstances. Each case must stand on its merits.”

### 3.1.1 Exceptional Hardship

exceptional hardship refers to exceptional inconvenience or suffering beyond what is deemed appropriate in a marriage. The courts have applied the test of exceptional hardship in a number of decided cases. In *Majekodunmi v Majekodunmi*<sup>84</sup>, the applicant alleged that she was in a state of pregnancy for the respondent before marriage, and that since they were married, they had never lived together. Her request for a Matrimonial home was put off by the Respondent on several occasions. Since she delivered her child, the Respondent had not supported her and the child. She also claimed that the Respondent had lived in adultery with a lady who as a result, had given birth to a child. The Respondent had sexual intercourse with the Petitioner only on one occasion since the celebration of the marriage, and the Respondent had always driven her away each time she made attempt to approach him. It was held that the respondent's conduct amounted to exceptional hardship. In *Williams v Williams*<sup>85</sup>, it was held that the following facts could constitute exceptional hardship - burning applicant's certificates, engineering books and wearing

---

<sup>83</sup> Bryan A Garner, *Black's Law Dictionary* (8th edn, Thomson 2004) 992

<sup>84</sup> (1966) NMLR 191; (1966) 2 ALL NLR 28

<sup>85</sup> (1979) 1 ALL ER 556; (1979) 2 WLR 95

apparels, threats to kill him, failure to cook for him and to perfume other widely duties, starving him of sex and desertion.

However in *Folohum v Folohum*<sup>86</sup> where the applicant alleged that the respondent lied about his salary, and failed to provide adequate allowance for food and health, it was held that the facts did not constitute exceptional hardship.

### **3.1.2 EXCEPTIONAL DEPRAVITY**

a problem in marriage that is out of the ordinary and reasonably no ordinary person should be asked to bear such a problem. In *Akere v Akere*<sup>87</sup> leave was sought on the grounds of exceptional depravity on the part of the husband, and of of exceptional hardship to the applicant. The intended petition a copy of which was attached to the application alleged inordinate sexual demands when the applicant was in poor health and had just returned from hospital; physical violence and constant neglect and quarrelling, and that the Respondent infected her with venereal disease and further, that he in effect turned her out of his house. Adultery was also alleged to have taken place with a woman whom the applicant understood to be the respondent's cousin and with two other women. Duffus J. granted the application.

Also in *Bowman v. Bowman*<sup>88</sup>, the court held that the adultery during the two years accompanied with desertion, cruelty or violence will constitute exceptional depravity. An application under Section 30 of the MCD for leave to institute proceedings may be made ex parte. This must be supported by affidavit which, inter alia shall:

---

<sup>86</sup> 17 N.L.R. 108

<sup>87</sup> (1962) WNLR 328

<sup>88</sup> (1949) p.350

- a. Include particulars of the exceptional hardship that would be imposed on the applicant by the refusal to grant the leave or particulars of the exceptional depravity on the part of the other party to the marriage that is alleged, as the case may be;
- b. State the grounds upon which, if leave is granted, the applicant intends to petition for the decree;
- c. state whether or not the applicant has made a previous application for the leave under Section 30 or 40 of this Act, to institute proceedings for such a decree, and, if he has made a previous application, also state the date and ground on which, and the court to which, the previous application was made and whether that application was granted;
- d. State whether or not a child of the marriage is living, and if a child of the marriage is living, also state
  - i. The name of the child;
  - ii. The date of birth of the child; and
  - iii. The place at which, and persons with whom, the child is residing;
- e. State whether an attempt has been made to effect a reconciliation between the parties to the marriage, and If such an attempt has been made, state the particulars of the attempt; and
- f. State the particulars of any other circumstances that may assist the court in determining whether there is a reasonable probability of reconciliation between the parties before the expiration of the period of two years after the date of the marriage.<sup>89</sup>

---

<sup>89</sup> Order IV, Rule 2.

Based on the application and affidavit in support thereof, the court makes a provisional finding, that is, to come to a conclusion that the allegations made in the affidavit filed by the applicant are such that, if true, would amount to exceptional hardship or depravity. In reaching a conclusion, the judge may take into consideration any affidavit filed in opposition.

### **3.2 BASIC APPROACHES TO DIVORCE**

Though Divorce laws vary from country to country, there are three basic approach to divorce;

a. Uncontested and Contested Divorce

b. Fault and No Fault divorce

#### **3.2.1 UNCONTESTED AND CONTESTED DIVORCE** <sup>90</sup>

An uncontested divorce is one in which both parties agree to all issues with or without divorce mediation or lawyers becoming involved. After the parties agree as to how the marital property and debts will be divided and how the children will be parented and supported as well as other issues that arise in separating their lives, they may present a written agreement to the divorce court judge for approval. Most divorce in the united states is uncontested.

Contested divorce are those in which parties cannot agree to the terms and conditions of a divorce. In this circumstance, it is necessary for a judge to hear and decide the issue in trial. A contested divorce is often very expensive as it entails a mountain of attorney's fee and additional expenses, as the parties engage in discovery, attempt to prove their position and engage in a

---

<sup>90</sup> [Legal-dictionary.net/divorce/visited](http://Legal-dictionary.net/divorce/visited) on 09/08/23

custody battle. Contested divorce entails a great deal of preparations for trial and more than one court date. The process takes months and sometimes years to complete and the court usually issue a divorce decree and custody based on what is in the children's best interest.

### **3.2.2 FAULT AND NO FAULT DIVORCE** <sup>91</sup>

The "no-fault" divorce is a divorce in which neither spouse is required to prove that the other spouse was wrong that led to the breakdown of the relationships. In many states, couples may file a "no-fault" divorce or dissolution of marriage in which they state they have separated by agreement and neither is claiming that the other is at fault for the breakdown of the marriage. The filling party simply has to choose one of the reasons for divorce honored by their state, which generally listed on the Complaint for Divorce form. For instance, in California individuals are only able to choose between "irreconcilable differences" or "incurable insanity" as the reason for the dissolution. The most commonly cited reason for no-fault divorce is "irreconcilable differences" which is an elegant way of saying the couples cannot get along and the marriage cannot be salvaged.

### **3.3 SOCIAL EXPLANATION FOR CAUSES OF DIVORCE**

There are some proposed non-lethal reasons for the cause of divorce. One reason is that society's attitude towards marriage has changed. Some have argued that a higher degree of satisfaction is now expected from marriage.<sup>92</sup> It has also been stated that in modern times people stay in intimate relationships only for as long as the relationships meets their own goals and fulfillment. As Day Sclater puts it, "we no longer look for Mr. or Mrs. Right but rather we search for the

---

91 <Legal-dictionary.thefreedictionary.com> accessed on 10 August 2023

92 Gibson C, *Dissolving Wedlock* (Routledge, 1994) 214

perfect relationship, when one fails to satisfy the individual in late Modernity increasingly feel free to move on to try another ".<sup>93</sup>

The increased individualism and increased expectations of marriage may therefore help explain the increase in divorce rates. Notably, the majority of divorce petitions are presented by women. It may be that women are increasingly less willing to accept a traditional subservient role in marriage. Other reasons for divorce which includes: increased work pressure for couples provides less time for family and divorce is economically a possibility for women as a wife can leave her husband without falling into poverty.

### **3.4 PROBLEMS AND EFFECTS OF DIVORCE**

#### **3.4.1 Problems and Effects on the Couple**

Couples facing a marriage breakdown would have to cope with either of the following; Anxiety, Anger, Sadness, Guilt, Low self-esteem, Worry, Frustration, Disappointment, Loneliness and Distrust. These feelings are unavoidably present among estranged partners, before, during and after the divorce and if not checked could lead to; hatred, Commission of crime, psychological disorders and some other complications. Sometimes, in a bid to suppress these feelings or to spite, a spouse may rush into another marriage which may suffer similar fate as the previous one.<sup>94</sup>

---

93 Scatter D, families, London, Hooder & Stoughton, 2000.

94 <<http://abtdivorceEffectsofdivorce>> accessed on 13 August 2023

Divorced couples may also suffer stigma which may be inevitable. For example, it is not unusual for divorcees to be derided by community, friends or relatives. A divorced husband or wife maybe be saddled with added responsibilities and roles particularly with regards to the children; he or she had to be both father and mother to the children. Some mothers.

### **3.4.2 Problems and Effects on the Children**

In every divorce, the children are likely to be most affected psychologically. They are the victims of the differences between their parents. Divorce creates a massive change in the life of a child regardless of the age of the child. Witnessing parents break their marital commitments, adjusting to going back and forth between two different households , and the daily absence of one parent while living with the other, all create a challenging new circumstance for the family to live in.<sup>95</sup>

The effect of divorce in anti-social behaviours may manifest in the children, which may include misbehaving to the parents, disrespecting them, hating them, not listening to them and taking their advice, disliking and having distrust for the opposite sex. Disregard for the parents will not allow for proper training of the children but will lead to development of poor Perspective of life.

### **3.4.3 Problems and Effects on the Society**

#### **a. Violence**

Divorce encourages violence. This is because upon divorce, the relationship between the families of the divorced couple may turn sour, leading to hatred and mistrust between them and thus they tend to be aggressive towards each other.<sup>96</sup>

---

95 ibid

96 Olayinka I B, "An Examination of the Effect of Divorce," *NILJ(CIVIL)* [2013] 304

### **b. Sexual Assault and Child Abuse**

Where either of the spouse after divorce fails to shoulder his or her responsibility, the children might not be catered for therefore exposing them to abuses while trying to make a living.

### **c. Crime**

Where divorce leads to lack for proper moral upbringing, there could be an increase in children with anti-social behaviours which thus increases the crime rate, since such children are likely to treat laws and morals with impunity and take crimes such as stealing, robbery, prostitution, financial crimes etc. as life style.<sup>97</sup>

## **CHAPTER FOUR GROUNDS FOR DIVORCE**

### **4.0 INTRODUCTION**

Up to 1970, Nigerian law on divorce was based on matrimonial offences theory which required that a marriage may only be dissolved when a spouse has committed a matrimonial offence like

---

97 Ibid

adultery, cruelty, or desertion. This was as a result of the application of English divorce laws in Nigeria.<sup>98</sup>

Nigeria benefited immensely from the reforms which took place in England and other commonwealth countries. In 1970 the Matrimonial Causes Act was promulgated. It was modeled on the English Divorce Reform Act 1969 though with some significant differences.

Unfortunately, unlike in England, Nigerians did not have the opportunity to openly discuss the changes.<sup>99</sup>

#### **4.1 IRRETRIEVABLE BREAKDOWN OF MARRIAGE**

Section 15(1) of the Act provides that “either party to a marriage my petition for divorce upon the grounds that the marriage has broken down irretrievably” Consequently, the section established a single ground for divorce - irretrievable breakdown in place of several which existed under the old law. Thus sole ground for instituting an action for divorce in Nigeria is that the marriage has broken down irretrievably. This means that the reason for wanting to dissolve the marriage is so critical that the marriage can no longer be repaired.

#### **4.2 FACTS WHICH WILL ENABLE A COURT CONCLUDE THAT THE MARRIAGE HAS BROKEN DOWN**

The Act under Section 15 (2) (a-h) and Section 16 of the Matrimonial causes Act<sup>100</sup> provides for valid grounds that must be proved by the Petitioner to successfully establish a claim for

---

<sup>98</sup> For example, the English Matrimonial Causes Act, 1965 which applied to Nigeria

<sup>99</sup> E.I Nwogugu, *Family law in Nigeria* (3rd edn, HEBN 2014) 175

<sup>100</sup> Matrimonial causes Act, 1970

dissolution of marriage. These eight paragraphs are main reasons for the divorce, and a party seeking to divorce in Nigeria only require to establish just one of them in court. These eight facts are as follows;

a) "That the respondent has willingly and persistently refused to consummate the marriage".

The petitioner must prove that the respondent has failed to have sexual intercourse. But where it is proved that sex occurred even once, the marriage will be deemed consummated and therefore the petitioner cannot rely on this reason as a ground for divorce.

b) "That since the marriage the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent."

This particular reason is often the most difficult one to prove out of all the eight reasons because two important factors. First proving adultery can only be done by involving another third party, the person the Respondent committed adultery with. Second, adultery or sexual intercourse are often done in private, so it may be difficult to prove in real sense. In practice, it is the petitioner often relies on another reason or fact if such is available due to difficulties often encounter in proving adultery.

c) "That since the marriage the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the respondent."

The facts that can be relied on by proving any of this fact are provided under Section 16 of the Act, although not exhausted. A large percentage of divorce proceedings filed in Nigeria are based on this fact, because it provides room for many situations that may be considered cruelty or intolerable for any reasonable spouse to endure.

d) "That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition."

The desertion means that the Respondent has abandoned the matrimonial home without justification or without the consent of the Petitioner. This reason will fail if the petitioner actually approved of the desertion.

e) "That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Respondent does not object to the decree of dissolution being granted". Where the Respondent objects, this petition may collapse.

f) "That the parties to the marriage has lived apart for a continuous period of at least three years immediately preceding the presentation of the petition".

This is known as no-fault basis in divorce proceedings. Where a divorce petition has been filed based on this reason, the presiding judge has no other discretion than to dissolve the marriage.

g) "That the other party to the marriage has for a period not less than one year failed to comply with a decree of restitution of conjugal right made under the Marriage Causes Act". Filing a divorce based on this reason is not often common in Nigeria.

h) "That the other party to the marriage has been absent from the petitioner for such time and in such circumstances has to provide reasonable grounds for presuming that he/ she is dead".

For someone to be presumed dead under the law, such a person must have been missing for up to seven years in accordance with the provision of the law. This fact is another reason not often common in Nigerian divorce proceedings.

To successfully institute an action for divorce and for a judgment to be granted in favour of the Petitioner, he/she must successfully satisfy the court of any one or more of the facts stated above before the court can make a decree for the dissolution of marriage.

When any of the reasons above have been successfully proved by the Petitioner, the court can make an order for a decree nisi, which is often contained in the judgement of the court. The order often automatically become absolute within a period of three months in the absence of any appeal from the affected party. The three-months window gives the other party an opportunity to appeal the decision of the court. The decree nisi shall become absolute three months after its grant as provided under section 58 of the Act. When the decree nisi has become absolute after three months, there is no right to appeal the decision of the court again. Where any of the parties died before three months after the grant of the decree nisi, it shall not become absolute. In the case of *Nkiru Amobi v. Grace O. Nzegwu*<sup>101</sup>, the Supreme Court held that despite the grant of decree nisi, the Petitioner and Respondent are still considered married until the decree has become absolute in accordance with the Act.

The marriage is completely dissolved where the Order of Decree Absolute is made by the Court. The effect of dissolving a statutory marriage is that a party to the marriage can marry again as if the marriage had been resolved by death.

### **4.3 FRAUD**

---

101 [2013] LLJR-SC

The definition of fraud in the context of divorce law varies between states. Generally, it means that one spouse grossly misrepresented issues so important that the other spouse would not have married him had she known the truth. For example, when a husband tells his wife before they married that he had never been married before and she discovers after the marriage that he was lying. His lie about his previous marriage may be considered fraud, especially if the wife can show that she would not have married him had she known this was his second marriage. Little white lies usually do not constitute fraud.

#### **4.4 CONDUCTS OF THE RESPONDENT THAT CAN BE CONSIDERED FRAUDULENT**

These are conducts or behaviours exhibited by the Respondent spouse which the court can classify as fraudulent against the Petitioner and their marriage. They are;

##### **A. Desertion**

Desertion is the cessation, repudiation, or withdrawal of all marital obligations or responsibility with intention of bringing cohabitation permanently to an end without just cause, or without the consent of the other party. It is the separation of one spouse from the other with an intention on the part of the deserting spouse to bring cohabitation permanently to an end without the consent of the other party/spouse.

The respondent's desertion works against the interest of the petitioner who is the deserted spouse. It is the deserting spouse which is the Respondent, that is said to be in desertion. This is because he is the one who leaves the Matrimonial home, leaving the petitioning spouse deserted. Section

15 (2) (d) of the MCA provides that: "That the Respondent has deserted the Petitioner for a continuous period of at least one year immediately preceding the presentation of the petition". The desertion means that the Respondent has abandoned the matrimonial home without justification or without the consent of the Petitioner. This reason will fail if the petitioner actually approved of the desertion. In the case of *Walker v. Walker*<sup>102</sup>, the parties lived in the same house but the wife withdrew to a separate bedroom, which she kept locked. She refused to perform any domestic duties for her husband. The court held that the parties were living separately and the wife was therefore in desertion.

### **b. Living Apart**

Section 15(2) (e) & (f) of the MCA provides for the fact of living apart of the spouse as a basis for the court to conclude that a marriage has broken down irretrievably. Section 15(3) of the MCA further provides that for the purpose of subsection (2) (e) and (f) of this section, the parties to a marriage shall be treated as living apart unless they are living with each other in the same house. However, the circumstances differ. Section 18 of the MCA provides for constructive desertion which states that ordinarily, it is the party who leaves the Matrimonial home, that would be in desertion. Thus, the deserting party would then prove why he or she had to desert the deserted party. Several reasons could lead to desertion which includes; education, work or business. However, if in the course of the mutually agreed reason for desertion, the deserting party develops the intention to desert the other party and not return home, the court would examine from when the intention was developed.

### **c. Animus deserendi**

---

102 [1952] 2 All ER 138 (CA)

The Law says that the separation must be for a continuous period of 1 year. Section 17(2) of the MCA provides that any period for which parties to a marriage have lived separately or have been deserted would not be accounted for once they resume cohabitation as long as such period is less than 6months. Thus, there must be animus deserendi, which is the intention to withdrawal from cohabitation permanently. This implies that, where a spouse is temporarily absent, from the other, for instance, on holiday or business or for mutual consent, animus deserendi will not apply. In *Agu v Agu*<sup>103</sup>, The parties a Nigerian and a German lady were married in England in July 1952. The husband/Petitioner returned to Nigeria in August 1958 on the mutual agreement that he would first settle down and later send for his wife and children. In 1960, the Petitioner booked passages for the Respondent and their children to join him in Nigeria. The Respondent cancelled the booking on the ground that she was nervous to make the journey, and later made it clear that she would not make the journey. In May 1963, the Petitioner made an unsuccessful journey to Germany to persuade her to return. It was held that the Respondent was in desertion from 1960 when the animus deserendi supervened. Similarly, if separation is involuntary, for example owing to imprisonment, it may be turned into desertion by the subsequent animus deserendi of a spouse.

#### **d. Lack of just cause**

Section 19 of the MCA went on to state that where the spouses are parties to a separation agreement, the refusal of one of them without reasonable cause to comply with the other's bona fide request to resume cohabitation puts that party in desertion. In *Sode v. Sode*<sup>104</sup>, the wife Respondent left the Matrimonial home without the husband's consent in Zaria in 1946. Her

---

103 [1972] 2 ECCLR 492, 452

104 Suit no. HD/35/1966 (unreported) Lagos HC 1967

reason was because of the dullness of social life in Zaria and the discomfort she suffered as a result of the harmattan. It was held that her reasons were not appropriate or adequate for deserting her husband. The law is that any conduct that will make the continuance of Matrimonial cohabitation virtually impossible will provide a good excuse for a spouse to desert.

#### **e. Sham Marriage**

A sham marriage or fake marriage is a marriage of convenience entered into without intending to create a real marital relationship. This is usually for the purpose of gaining an advantage from the marriage.<sup>105</sup> the UK Home Office in 2015 defined Sham marriage as; "A sham marriage or civil partnership is one where the relationship is not genuine but one party hopes to gain an immigration advantage from it. There is no subsisting relationship, dependency, or intent to live as husband and wife or civil partners." While referred to as a "sham" or "fake" because of its motivation, the union itself is legally valid if it conforms to the formal legal requirements for marriage in the jurisdiction. Arranging or entering into such a marriage to deceive public officials is in itself a violation of the law of some countries, for example the US. After a period, couples often divorce if there is no purpose in remaining married. The reverse situation, in which a couple gets a divorce while continuing to live together, is called paper divorce.

#### **f. Marriage Fraud**

Marriage fraud, or the act of getting married for financial or personal gain, is a federal crime resulting in significant charges against the accused. It is seen as an attempt to defraud the government and potentially exploit vulnerable populations. Sham marriages are sometimes considered distinct from a marriage fraud, which is a type of romance scam, in which one spouse

---

<sup>105</sup> <[https://en.m.wikipedia.org/wiki/Sham\\_marriage](https://en.m.wikipedia.org/wiki/Sham_marriage)> accessed on 24 September 2023

is unwittingly taken advantage of by the foreign spouse who feigns romantic interest, typically in order to obtain a residence permit or for money

#### **4.5 Why Is Marriage Fraud Illegal from the Government's Perspective**

Marriage fraud is illegal because it involves the intentional misuse of marriage for personal gain. Marriage fraud not only undermines the integrity of a legitimate marriage but it can also be used to exploit vulnerable people, such as those who have recently immigrated and are more easily taken advantage of due to language barriers.<sup>106</sup>

Additionally, marriage fraud is often used as a tool to skirt immigration laws. As a result, it places both immigrants and citizens at risk and threatens the safety of entire communities.

#### **4.6 FRAUD'S IMPACT**

If the filing spouse is able to prove fraud, the divorce court may be more sympathetic to the filing spouse and give her a larger share of property if state law allows him to consider the misconduct as part of property division. Financial fraud is particularly relevant to decisions about property division and spousal support. However, some states do not allow judges to consider misconduct or fault when making property decisions.

#### **4.7 REOPENING A DIVORCE**

If the fraud occurred during the divorce itself, it may be grounds to reopen the divorce proceedings or change a divorce judgment or decree. For example, if one spouse discovers after

---

<sup>106</sup> <<https://www.teakelllaw.com/why-is-marriage-fraud-illegal-and-what-to-do-if-you-are-accused/>> accessed on 24 September 2023

the divorce that the other spouse lied to the court about his income, the victim spouse could ask the court to reopen the case and reconsider its decisions in light of the new information.

## **CHAPTER FIVE**

### **RECOMMENDATIONS AND CONCLUSIONS**

At this point, it is imperative to outline all salient circumstance that would amount to fraud for a valid ground for Divorce and distinguishing it from other likely cause of Divorce before making my recommendation. It is pertinent to state that there is no statutory provision for "fraud" as an exception to the 2yr rule for a petition for dissolution of marriage. However, the court can draw inference from surrounding circumstances in the course of the marriage which would amount to fraud, deceptive and unfair treatment to the other party. These circumstances as mentioned earlier in Chapter four include: Desertion, Living Apart, Animus Deserendi, and Lack of Just Cause for desertion.

For there to be consideration for Fraud in a petition for divorce, there must be an existing marriage. Thus it is pertinent for the court to examine the validity of a marriage before

dissolution proceedings should commence. This is because where the marriage of the parties is invalid, there would be no marriage to dissolve. Lord Penzance in *Hyde v Hyde*<sup>107</sup> defines Marriage as; "a voluntary union for life of one Man and one Woman to the exclusion of all others ". Section 21 of the Marriage Act<sup>108</sup> provides that marriage should be celebrated at a licensed place of worship and in accordance with the rites of marriage observed that place of worship or religion.

Despite this, marriage under the Act cannot be referred to be same as a religious marriage because even if both parties do not belong to any religion practiced in Nigeria, they can also contract a valid statutory marriage under the Law provide the conditions laid out by Lord Penzance are met.

A Statutory marriage is strictly monogamous, as it can only accommodate one man and one woman to the exclusion of all others, as non-observance is criminalized and punishable by imprisonment. Under Statutory marriage, parental consent is not a requirement for the validity of the marriage. But an exception contained in section 18 of the Marriage Act<sup>109</sup> , is that when either party to the intended marriage are below twenty-one years of age, then the written consent of their parent(s) is required. The preliminary formalities to be carried out before a Statutory marriage can be valid is such as notice of marriage, entry of marriage in the marriage notice book, marriage to take place within 3months before the date of notice, the minister to grant licence etc. When the conditions are met and there is express offer from the groom and acceptance from the

---

107 [1866] L.R.I P&D 130, 133

108 Cap M6 Laws of the Federation 2004

109 Cap M6 Laws of the Federation 2004

bride, the marriage contract is concluded. Such offer and acceptance must be clear and unequivocal.

Fraud could be discovered in this marriage as it progresses as most people tend to reveal their true colours or intentions in marriage and this might not sit well with the other spouse. Hence, there could arise a need for divorce due to causes such as desertion, lack of just cause, living apart, animus deserendi etc.

Desertion as earlier stated entails the cessation, repudiation, or withdrawal of all marital obligations or responsibility with intention of bringing cohabitation permanently to an end without just cause, or without the consent of the other party. It is the separation of one spouse from the other with an intention on the part of the deserting spouse to bring cohabitation permanently to an end without the consent of the other party/spouse. This usually occurs when the intentions of both parties are not channeled in each other's best interest as one or both of them went into the marriage for their own selfish interest. At the end of the day, the unsuspecting party is left out. However, desertion can also be as a result of the unbearable changed behaviour of the other party which is new to and have become unbearable for the party in desertion to live with.

Desertion is usually as a result of the selfishness of one spouse without considering the interest of the other party and the essence of the marriage. Section 19 of the MCA<sup>110</sup> went on to state that where the spouses are parties to a separation agreement, the refusal of one of them without reasonable cause to comply with the other's bona fide request to resume cohabitation puts that

---

<sup>110</sup> Cap M6 Laws of the Federation 2004

party in desertion. In *Sode v. Sode*<sup>111</sup>, It was held that her reasons were not appropriate or adequate for deserting her husband. The law is that any conduct that will make the continuance of Matrimonial cohabitation virtually impossible will provide a good excuse for a spouse to desert. Same was the holding of the court in the case of *Sowande v Sowande*<sup>112</sup>.

Animus Deserendi on the other hand, The Law says that the separation must be for a continuous period of 1 year. Section 17(2)of the MCA<sup>113</sup> provides that any period for which parties to a marriage have lived separately or have been deserted would not be accounted for once they resume cohabitation as long as such period is less than 6months. Thus, there must be animus deserendi, which is the intention to withdrawal from cohabitation permanently. This implies that, where a spouse is temporarily absent, from the other, for instance, on holiday or business or for mutual consent, animus deserendi will not apply.

For living apart, desertion leads to living apart. However, parties to a marriage can be separated mutually i.e agreed by both parties due to factors such as work, imprisonment etc. But the law checks from the moment an intention from one party not to resume cohabitation with the other party was developed. Section 15(2) (e) & (f) of the MCA provides for the fact of living apart of the spouse as a basis for the court to conclude that a marriage has broken down irretrievably. Section 15(3) of the MCA further provides that for the purpose of subsection (2) (e) and (f) of this section, the parties to a marriage shall be treated as living apart unless they are living with

---

<sup>111</sup> Suit no. HD/35/1966 (unreported) Lagos HC 1967

112 [1960] LLR 58; (1969) 1 ALL NLR 482

113 Cap M7 Laws of the Federation 2004

each other in the same house. However, the circumstances differ. Section 18 of the MCA provides for constructive desertion which states that ordinarily, it is the party who leaves the Matrimonial home, that would be in desertion. Thus, the deserting party would then prove why he or she had to desert the deserted party.

Sham Marriage on the other hand as earlier defined is usually to gain immigration, residency, work, or citizenship rights for one of the spouses. There have been cases of people entering into a sham marriage to avoid suspicion of homosexuality, bisexuality, etc. For example, Hollywood studios had allegedly requested homosexual/homoromantic actors, such as Rock Hudson, to conceal their homosexuality in a so-called lavender marriage. Sham marriages have also been used to avoid military conscription in the US and Israel.

Lastly, Fraud marriage became rampant since the intersection of citizenship-by-marriage laws and affordable international travel in the latter half of the 20th century, sham marriages have become a common method to allow a foreigner to reside, and possibly gain citizenship, in the perceived more desirable country of the spouse. The couple marries with knowledge that the marriage is solely for the purpose of obtaining the favorable immigration status, and without intending to live as a couple. This is frequently arranged as a business transaction with payment of a sum of money, and occurs more commonly with foreigners already in the country. Usually it is getting married across borders just to get a green card or permanent residence without considering the feelings of the defrauded party. However, this could be mutually agreed by the parties to be in form of a contract marriage

The following are suggested steps the court or marriage registry can take to curb this menace of fraudulent conducts by married parties;

**a. Get married to a Compatible partner;** Getting married to a Compatible partner is one step towards achieving one's life goal and reduces the chances of divorce occurring. Marrying the right partner whose personality complements yours, is the most logical technique to get what you want out of marriage. This is the most logical technique as marrying the right spouse from the onset, whose personality is complementary is what everyone wants out of marriage.

**b. Discuss Individual Preference;** Parties to get married should endeavor to discuss their individual preferences before commencing preparation. Parties to marriage should discuss and mutually agree to a favourable decision for their marriage. This may involve both parties making compromise on their personal lives and activities to make their marriage work and living together possible.

**c. Religion;** There should be religious considerations before entering into marriage. This should be discussed and accepted by both parties before marriage. Parties of same religion are most advised to get married to avoid unnecessary disagreements over individual beliefs and religious sentiments. However, not compulsory.

**d. Underage Marriage;** there is need for the Marriage Act to make clear provision for a reasonable and generally acceptable age of marriage. This is because a specifically stipulated date would prevent some adults from taking unsuspecting advantage of minors whom they ought to protect. Underage marriage should be completely prohibited under the Marriage Act.

In conclusion, the institution of marriage is one of the major pillars of the society and thus should be the business of the Law. The Law should ensure to put regulations in place to check mate the excess and restrict the activities of individuals in the name of marriage or guise of marriage. Thus the rights and legal consequences of Statutory marriage should be upheld. Also, except in

cases of fraud, divorce should be the last resort by which spouses can free themselves from the bondage of intolerance. Divorce should be discouraged in order to promote family relationships and harmony which in effect will lead to the existence of peace, love, harmony and tranquility in the nation.

I have come to the conclusion that Marriage is a sacred institution and the foundation of the society and as such, dubious and selfish individuals should not be allowed to fraudulently ruin the essence and secrecy of marriage institution.

I have come to further conclusion that where majority of families are peaceful and responsibly carry out their civil obligations, there would exist and nation with moral values, healthy, responsible and accountable in which where the contrary is obtained will be chaotic and uninhabitable.

## **BIBLIOGRAPHY**

### **Books**

B Hogget et al, *Family Law and Society* (Butterworths 1996)

B, Hogget et al, *Family Law and Society* (Butterworths 1996)

Berger and Kellner H, *Marriage and the Construction of Reality* (Routledge)

C Gibson, *Dissolving Wedlock* (Routledge 1994)

E Chianu, *Law of Landlord and Tenant* (2nd edn, Law Lords)

G.A Luppino and Miller F.J, *Family Law and Practice: The Paralegal's Guide* (3rd edn, Pearlson 2012)

M S Cretney et al, *Principles of Family Law* (Sweet & Maxwell 2003)

N Lowe and Douglas G, *Bromley's Family Law* (9th edn, Butterworth 1998)  
Nwogugu E.I, *Family law in Nigeria* (3rd edn, HEBN 2014)  
P Berger and Kellner H, *Marriage and the Construction of Reality* (Routledge)  
Thatcher M, *Marriage after Modernity* (Sheffield Academic Press 1999)  
Thatcher M, *Marriage after Modernity* (Sheffield Academic Press, 1999)

### **Articles in Journals**

A Olatubosun, 'Same-Sex Rights and the Changing Status of Marriage' *ALJ* [2004] (5)  
Bailey-Harris B, "Law and the Unmarried Couples; Oppression or Liberation" [1996]  
I B Olayinka, 'An Examination of the Effect of Divorce' *NILJ(CIVIL)* [2013]  
Pickford R, Unmarried fathers and the Law [1999]  
Zabel, "The Legislative History of the Gold Coast and Nigerian Marriage Ordinance" *JAL* [1969]  
(3) 64-79

### **Internet Sources**

<<https://www.britannica.com/topic/marriage>>  
<<https://www.chamanlawfirm.com/an-overview-of-statutory-marriage-in-nigeria>> accessed July 15 2023  
<[https://en.m.wikipedia.org/wiki/Same-sex\\_marriage](https://en.m.wikipedia.org/wiki/Same-sex_marriage)> accessed July 9 2023  
<<https://www.britannica.com/topic/marriage>>  
<<https://mzagams.wordpress.com/2022/08/24/brief-history-of-marriage-in-nigeria/>> assessed on 15/07/23  
<<http://abtdivorceEffectsofdivorce>> accessed July 8 2023  
<<https://www.lawschool.cornell.edu>> accessed July 9 2023

