

**THE PROBLEMS OF FAULT FACTS IN DISSOLUTION OF STATUTORY
MARRIAGE IN NIGERIA: DESERTION IN FOCUS**

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BENIN CITY**

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**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW AND THE
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OF BENIN**

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JANUARY, 2026

CERTIFICATION

I, **Isaac Omontamah OFOGIE**, with Matriculation Number **PG/LAW2415399** hereby certify that apart from references made to other people's works as duly acknowledged herein, this entire project is the product of my personal research and has neither in part nor in whole been presented for another degree elsewhere.

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APPROVAL

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DEDICATION

This work is dedicated to the Almighty God.

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LIST OF CASES

Akinola v Akinola (2005) 15 NWLR (Pt 948) 451.

Nanna v Nanna (2006) 3 NWLR (Pt 966) 1 (CA).

Ogunwumi v Ogunwumi (2003) 8 NWLR (Pt 824) 212.

Pulford v Pulford [1923] P 18.

Umeokafor v Umeokafor (2001) 12 NWLR (Pt 719) 301.

Williams v Williams [1987] 2 NWLR 66.

Numerous Nigerian, English, and unreported customary court decisions as cited.

LIST OF ABBREVIATION

MCA	-	Matrimonial Causes Act
CFRN	-	Constitution of the Federal Republic of Nigeria
CRA	-	Child Rights Act
MOA	-	Maintenance Orders Act
CTC	-	Certified True Copy

LIST OF STATUTES

Constitution of the Federal Republic of Nigeria 1999 (as amended).

Divorce, Dissolution and Separation Act 2020 (UK).

Family Law Act 1975 (Cth).

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ABSTRACT

The dissolution of statutory marriage in Nigeria is governed by the Matrimonial Causes Act, which recognises irretrievable breakdown of marriage but still requires proof of fault facts. This requirement has generated significant legal and practical challenges, particularly in relation to desertion, which remains one of the most technical and contentious fault facts. Desertion consists of the willful and unjustified cessation of matrimonial cohabitation by one spouse without consent, reasonable cause, and with the intention of permanently terminating cohabitation.

This study examines the problems of fault facts in the dissolution of statutory marriage in Nigeria, with a specific focus on desertion. The objectives of the study are to examine the conceptual and theoretical foundations of marriage and its dissolution, analyse the legal and institutional framework governing dissolution of statutory marriage in Nigeria, and critically evaluate desertion as a fault fact, including its elements, statutory requirements, and evidential challenges. The study further assesses judicial attitudes and relevant case law on desertion, as well as the broader implications of a fault-based divorce regime.

The study adopts a doctrinal research methodology, relying on statutory provisions, judicial decisions, textbooks, and scholarly literature. The study finds that the technical requirements for proving desertion, particularly *animus deserendi* and the absence of justification, often frustrate genuine claims and prolong irretrievably broken marriages. It concludes by recommending a reconsideration of the continued reliance on fault facts under Nigerian matrimonial law in favour of a more flexible and realistic approach to marital breakdown.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Desertion in the context of Nigerian matrimonial law refers to the unilateral withdrawal from cohabitation by a spouse without the consent of the other spouse, where there is no just cause for the withdrawal and where the deserting spouse intends to permanently end cohabitation. This concept is recognised under the Matrimonial Causes Act,¹ which incorporates desertion as a ground for divorce and a fact that, if proven, can lead the court to hold that the marriage has broken down irretrievably. Section 15(2)(d) of the Matrimonial Causes Act provides that a marriage is deemed to have broken down irretrievably where the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.² This statutory provision highlights the legal significance of desertion as a fault fact and establishes the criteria for the court's recognition of marital breakdown based on desertion.

Under the above provision, the court will evaluate whether the respondent has indeed deserted the petitioner for a continuous period of at least one year prior to the presentation of the petition. This period serves as the statutory threshold for desertion as a ground for divorce. Consequently, desertion is treated not only as a breach of marital obligations but also as a legally actionable ground for dissolution of statutory marriage. This research study, therefore, examines desertion both as a constituent element of fault facts and as a ground for divorce under Nigerian law, with a view to identifying the practical and legal challenges it presents.

Desertion constitutes a grave matrimonial offence and a fundamental breach of marital obligations under Nigerian family law and the broader framework of matrimonial

¹ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2011.

² Ibid, s 15(2)(d).

jurisprudence. It involves the unilateral and unjustified withdrawal of one spouse from cohabitation and consortium without lawful excuse or the consent of the other spouse. The act of desertion tests the resilience, patience, commitment, and endurance of the deserted spouse, as it occurs during critical moments of strain in marital life. The implications of desertion extend beyond the legal sphere, affecting the emotional and psychological well-being of the aggrieved spouse and potentially undermining the integrity of the family unit.

Marriage, as both a legal and social institution, imposes mutual rights and duties on spouses. These include the obligations of cohabitation, consortium, care, support, and fidelity. When one spouse unilaterally and unjustifiably abandons these responsibilities, particularly through physical separation or withdrawal of conjugal association, the law recognises this act as desertion. The courts have consistently held that mere separation is insufficient to establish desertion; it must be accompanied by a clear and demonstrable intention to forsake marital obligations.³ Constructive desertion also forms part of this legal doctrine, occurring where one spouse's intolerable conduct compels the other to leave the matrimonial home. In such circumstances, the legal system still regards the initiating spouse as the deserter, thereby attributing fault appropriately.

The dissolution of statutory marriage in Nigeria is governed principally by the Matrimonial Causes Act 1970. Divorce, as the legal termination of marriage, is a sensitive and complex process, requiring careful navigation of both statutory and judicial requirements. This study examines the problems and prospects of statutory marriage dissolution, highlighting the challenges posed by fault facts such as desertion. The study also emphasises the need for reform of the Matrimonial Causes Act and the Marriage Act, which govern statutory marriage and its dissolution, to create a more equitable framework that balances the rights of spouses with societal interests. By addressing these legislative gaps and challenges, Nigeria can foster

³ See *Umeokafor v Umeokafor* (2001) 12 NWLR (Pt. 719) 301; *Ogunwumi v Ogunwumi* (2003) 8 NWLR (Pt. 824) 212.

a more supportive and just environment for those seeking divorce, thereby strengthening family cohesion and societal well-being.

The research adopts a doctrinal methodology, analysing statutes, case law, and relevant literature to understand the legal treatment of desertion and other fault facts. The study demonstrates that the current fault-based approach often complicates divorce proceedings, as proving desertion requires strict adherence to statutory elements, including animus deserendi, continuous abandonment, and absence of just cause.⁴ Reforming the fault-based system or integrating more flexible approaches could mitigate these challenges, reduce litigation, and promote a more responsive and just legal regime for the dissolution of statutory marriages in Nigeria.

1.2 Statement of Problem

The dissolution of statutory marriage in Nigeria is governed by the Matrimonial Causes Act 1970, which provides that a marriage can be dissolved where it has broken down irretrievably. While the Act recognises several fault facts as grounds for divorce, desertion remains one of the most problematic and contentious. Desertion, defined as the unilateral and unjustified withdrawal of one spouse from cohabitation without consent or lawful cause, is difficult to prove in practice due to the strict statutory and judicial requirements. The petitioner is required to demonstrate that the desertion was continuous, without justification, and with the intention of permanently ending cohabitation, often creating evidential and procedural challenges.

These requirements have led to prolonged litigation, emotional distress, and inconsistent judicial decisions. Moreover, the current fault-based approach prioritises technical proof over substantive marital breakdown, which may result in unfair outcomes for the deserted spouse.

⁴ Ibid; *Akinola v Akinola* (2005) 15 NWLR (Pt. 948) 451.

The problem is further compounded by the lack of clarity in the legal framework regarding constructive desertion, the duration of absence required, and the assessment of spousal consent and justification. Consequently, there is a critical need to examine how desertion as a fault fact impacts the effectiveness, fairness, and practicality of marital dissolution in Nigeria.

1.3 Research Questions

This are the following research question the study should answer

1. What is divorce philosophy of the Matrimonial Causes Act 1970
2. What is the legal meaning and scope of desertion and its constituent element.
3. What challenges do petitioners face in proving desertion as a ground for divorce under the Matrimonial Causes Act.
4. What does desertion impact on the no fault philosophy of the MCA 1970: substance and procedure.

1.4 Aim and Objectives Of The Study

The primary aim of this study is to examine the problems of fault facts in the dissolution of statutory marriage in Nigeria, with particular focus on desertion, in order to evaluate its legal, practical, and societal implications and to propose reforms that enhance fairness and effectiveness in marital dissolution.

Objectives

To achieve this aim, the study sets out the following specific objectives:

1. Appraise the divorce philosophy of the MCA 1970.
2. Analyse the legal meaning and scope of desertion as a fault fact under Nigeria Matrimonial Law.
3. Examine the constituent elements and statutory requirement necessary to established desertion in divorce proceedings.

4. To identify the challenges faced by petitioners in proving desertion as a ground for divorce under the Matrimonial Causes Act.
5. Evaluate the impact of desertion, on the no fault dispensation of the M.C.A 1970.

1.5 Research Methodology

This work was mostly conducted utilizing a doctrinal approach. Various statutes, cases, books and journals will be consulted and the authors appropriately acknowledged. The success of this research will also in large part be attributed to materials obtained from the internet.

1.6 Significance of the Study

This study is significant because it examines the practical problems associated with the use of fault facts in the dissolution of statutory marriages in Nigeria, with particular emphasis on desertion under the Matrimonial Causes Act 1970. By focusing on who is affected and who stands to benefit, the study contributes to a better understanding of divorce law and its application in Nigeria.

The study will be beneficial to legal practitioners, especially those engaged in family and matrimonial law practice. It provides clearer insight into the legal meaning, scope, and constituent elements of desertion, as well as the challenges faced by petitioners in proving it as a ground for divorce. This will assist practitioners in properly advising clients, preparing petitions, and navigating the evidential and procedural requirements of desertion cases.

Judges and other judicial officers will also benefit from this study, as it offers a critical examination of how desertion operates within the supposed no-fault philosophy of the Matrimonial Causes Act 1970. By highlighting the tension between fault-based facts and the no-fault approach, the study may contribute to more consistent and equitable judicial decisions in divorce proceedings.

In addition, the study is relevant to lawmakers and law reform bodies, as it exposes areas of inconsistency and difficulty within the current legal framework governing desertion as a ground for divorce. The findings may serve as a useful basis for reviewing and reforming the Matrimonial Causes Act, particularly in determining whether the continued reliance on fault facts aligns with the original objectives of the Act.

The study will also be useful to academics, researchers, and law students by adding to existing literature on Nigerian matrimonial law. It provides a focused analysis of divorce philosophy, desertion, and procedural challenges, thereby serving as a reference point for further research and scholarly discussion.

Finally, the study is significant to married couples and the general public, as it enhances understanding of the legal implications of desertion and divorce under statutory marriage in Nigeria. Increased awareness may help individuals make informed decisions, reduce misconceptions about divorce law, and promote a clearer appreciation of marital rights and obligations.

1.7 Scope of the Study

The scope of this study is limited to the examination of fault facts in the dissolution of statutory marriage in Nigeria, with particular emphasis on desertion as a ground for divorce under the Matrimonial Causes Act. While the study acknowledges other grounds for divorce such as adultery and cruelty, the research focuses specifically on desertion due to its unique legal and practical challenges, and the frequent difficulty petitioners encounter in establishing it before the courts.

Geographically, the study considers the legal framework and judicial practice within Nigeria, drawing on statutes, case law, and scholarly commentary relevant to the Nigerian legal system. The research primarily examines statutory marriages governed by the Matrimonial

Causes Act 1970, rather than customary or religious marriages, although comparative references are made where relevant to illustrate broader trends in marital dissolution.

Temporally, the study focuses on contemporary developments in Nigerian matrimonial law, particularly judicial decisions and legislative provisions from the enactment of the Matrimonial Causes Act to the present, in order to provide an up-to-date analysis of desertion as a fault fact.

The study also considers the practical implications of desertion for spouses and the courts, including evidential challenges, procedural requirements, and the socio-cultural dimensions that influence the application of this fault fact. This scope allows the research to provide a thorough and focused examination of desertion, its legal treatment, and its impact on the dissolution of statutory marriage in Nigeria.

1.8 Limitations of the Study

While this study provides a comprehensive analysis of desertion as a fault fact in the dissolution of statutory marriage in Nigeria, several limitations are acknowledged. First, the research is primarily doctrinal in nature, relying on the analysis of statutes, judicial decisions, and scholarly literature. As such, it does not incorporate empirical data from interviews or surveys of affected spouses, which may limit the understanding of the personal and socio-psychological experiences of individuals involved in desertion cases.

Second, the study focuses exclusively on statutory marriages governed by the Matrimonial Causes Act 1970. Customary and religious marriages are only considered tangentially for comparative purposes, which may restrict the applicability of the findings to these other forms of marriage.

Third, the research is limited to the Nigerian legal system, and although references to foreign jurisdictions are included to provide comparative insights, these are not examined in exhaustive detail.

Finally, some judicial decisions and interpretations may not be readily accessible due to limited reporting or publication, which could affect the comprehensiveness of the legal analysis. Despite these limitations, the study provides valuable insights into the problems, challenges, and prospects of desertion as a ground for divorce under Nigerian statutory law.

CHAPTER TWO

CONCEPTUAL, THEORETICAL FRAMEWORK AND LITERATURE REVIEW

This chapter provides the conceptual and theoretical foundation for the study, focusing on the legal and social understanding of marriage, divorce, and specifically, desertion as a fault ground under Nigerian law. It examines the evolution of matrimonial causes law in Nigeria, the philosophical underpinnings of divorce legislation, and the key concepts that inform judicial and scholarly approaches to dissolution of marriage.

The chapter begins by exploring the concept of marriage and dissolution of marriage, establishing the legal and social significance of matrimonial relationships in Nigeria. It then delves into the legal meaning and scope of desertion as a fault fact, situating it within the broader framework of the Matrimonial Causes Act and identifying the constituent elements that define desertion in the context of Nigerian matrimonial law.

Next, the chapter traces the historical development of the Matrimonial Causes Law in Nigeria, highlighting legislative milestones and the evolution of divorce jurisprudence. It also examines the grounds for dissolution, including the principles underlying fault-based divorce and the role of irretrievable breakdown of marriage as the sole ground for no-fault divorce. The discussion further addresses the philosophy of the Matrimonial Causes Act of 1970, offering insights into the intent and objectives of the legislation.

Finally, the chapter presents the theoretical framework, drawing on the Matrimonial Offence (Fault) Theory and the Breakdown Theory to provide analytical lenses for understanding divorce and desertion. This framework guides the subsequent analysis of legal provisions, judicial interpretations, and the practical challenges faced in dissolution proceedings in Nigeria.

2.1 Concept of Marriage

Marriage, sometimes known as marriage or wedlock, is a legally binding relationship between spouses that creates rights and obligations for the couple, their offspring, and their in-laws. It is a socially accepted union.⁵ Since marriage is a fundamental aspect of our societal existence and comes in a variety of forms that are legal, it is crucial to take this into account.

According to the Black's Law dictionary⁶, Marriage is defined as "the legal status, condition, or relation of one man with one or more women united for life, until divorced, for the discharge to each other and the community of the legal duties incumbent upon them." Marriage is distinguished from the agreement to marry and the act of becoming married. Therefore, while operating under various legal frameworks, both monogamy and polygamy are possible in Nigeria.

Same-Sex Prohibition Act⁷ defines marriage as a legal union entered into between persons of the opposite sex in accordance with the Marriage Act, Islamic law or customary law. In *Meribe v. Egwu*⁸, The Supreme Court declared that the traditional idea of woman-to-woman marriage is abhorrent. Also in *Corbett v. Corbett*,⁹ The respondent was a man at the time of the wedding, hence the petitioner asked for a declaration that the marriage ceremony was invalid and had no legal force. The respondent had changed his or her gender. The court determined that because a marriage is fundamentally a relationship between a man and a woman, the respondent's status as a man or woman

⁵ Wikipedia, 'The Free Dictionary' https://en.wikipedia.org/wiki/The_Free_Dictionary accessed 16 December 2025.

⁶ BA Garner, *Black's Law Dictionary* (8th edn, West Group 2004).

⁷ Same-Sex Marriage (Prohibition) Act 2013, s 7.

⁸ [1976] 1 ALL NLR 266 at 275.

⁹ [1970] 2 ALL E.R 33.

determined whether the marriage was lawful. Because the respondent was born a biological man, the court determined that the marriage was null and void.

According to Lord Penzance in *Hyde v. Hyde*¹⁰, the traditional concept of a statutory marriage is the exclusive, consensual union for life between one man and one woman. A monogamous marriage is one that is recognized by the law of the location where it is contracted as a consensual union of one man and one woman to the exclusion of all others during the course of the marriage. This definition is found in Section 18 of the Interpretation Act. The Marriage Act of 1914 and the Matrimonial Causes Act of 1970 provide for and celebrate statutory marriage, which is in contrast to both customary and Islamic marriages.¹¹

2.1.2 Concept of Dissolution

The Matrimonial Causes Act of 1970 significantly altered Nigeria's pre-existing divorce law by replacing the former matrimonial offence theory with the irretrievable breakdown factor (i.e. adultery, cruelty and desertion). Therefore, Section 15(1) of the M.C.A. 1970 specifies the following reasons for divorce as opposed to the numerous ones allowed under the previous marriage law:

A petition under this Decree by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably". Thus a petition for divorce which fails to ask for dissolution of marriage on the specific ground that the marriage has broken down irretrievably will not succeed.

Therefore, the word "dissolution of marriage" simply refers to the end of a marriage. The whole of the judicial proceedings is what dissolves the holy union. The marital partners are

¹⁰ [1866] L.R PandD 130 at 133

¹¹ Marriage Act 1914; Matrimonial Causes Act 1970.

released from the partnership, and as a result, they go their separate ways. A marriage may be dissolved under statutory law, common law, or Islamic law¹².

2.2 Legal Meaning and Scope of Desertion as a Fault Fact under the Nigerian Matrimonial Law

The conceptualization of desertion under Nigerian matrimonial law is predicated upon the "Breakdown Principle" introduced by the *Matrimonial Causes Act 1970*. While Section 15(1) establishes the irretrievable breakdown of marriage as the sole ground for dissolution, Section 15(2)(c) preserves desertion as a "fault fact" through which this breakdown is proved. Legally, desertion is defined as the voluntary and unjustified withdrawal from cohabitation by one spouse without the consent of the other, accompanied by an intention to terminate the marital relationship permanently.¹³ As established in *Omoregie v Omoregie*, the court must be stated that the abandonment was a deliberate act aimed at ending the consortium.¹⁴

The scope of desertion extends beyond the mere "simple desertion" characterized by a physical departure from the matrimonial home.¹ Nigerian jurisprudence recognizes "constructive desertion," where the respondent, through expulsive conduct or intolerable behavior, effectively forces the petitioner to leave. In such instances, the law deems the spouse who remains in the home as the deserter in legal contemplation, provided their conduct was intended to bring cohabitation to an end.¹⁵ This principle ensures that the law protects a spouse who is driven away by the other's misconduct, as illustrated in the landmark case of *Phoebe v Phoebe*.¹⁶

¹² ES Scott, 'Rational Decision-Making about Marriage and Divorce' <https://scholarship.law.columbia.edu/faculty> accessed 4 December 2025

¹³ *Matrimonial Causes Act 1970*, s 15(2)(c).

¹⁴ [1970] 2 ALR Comm 235.

¹⁵ Nwogugu EI, *Family Law in Nigeria* (3rd edn, Heinemann Educational Books 2014) 219.

¹⁶ [1970] 2 ALR Comm 401.

For desertion to be legally cognizable, there must be a concurrence of two fundamental elements: the *factum* of separation and the *animus deserendi* (the intention to desert). The *factum* requires a physical cessation of cohabitation, while the *animus* requires a settled state of mind to abandon marital duties.² As observed in *Hope v Hope*, desertion is not a withdrawal from a place, but a withdrawal from a "state of things" the marital union itself.¹⁷ Consequently, spouses may live under the same roof yet be in a state of desertion if there is an absolute cessation of all marital obligations, a concept known as "desertion in the same house."

The statutory temporal requirement acts as a rigorous filter for judicial intervention. Under Section 15(2)(c) of the MCA, the desertion must have persisted for a continuous period of at least two years immediately preceding the presentation of the petition.¹⁸ This mandatory period serves a dual purpose: it acts as a cooling-off period to prevent impulsive litigation and functions as a high evidentiary bar, ensuring that the abandonment is not merely a temporary marital hiatus but a definitive rupture of the union. In *Nana v Nana*, the court emphasized that any voluntary resumption of cohabitation during this window resets the statutory clock.¹⁹

From an evidentiary perspective, the burden of proof rests squarely on the petitioner to establish the absence of "just cause" and the lack of "consent."³ If the respondent can demonstrate that their departure was necessitated by the petitioner's own cruelty or was based on a mutual separation agreement, the plea of desertion fails. As noted by Nwogugu, this creates a complex "negative proof" dynamic, where the petitioner must convince the court that no valid legal justification exists for the respondent's continued absence.²⁰ This was

¹⁷ [1948] 2 All ER 92.

¹⁸ [2006] 3 NWLR (Pt 966) 1.

¹⁹ EI Nwogugu, *Family Law in Nigeria* (3rd edn, Heinemann Educational Books 2014) 219.

²⁰ [1971] 1 NMLR 321.

further underscored in *Bello v Bello*, where the court held that a justified departure does not constitute desertion.²¹

Ultimately, desertion serves as a vital bridge between the historical fault-based system and the modern breakdown philosophy. While it is classified as a fault fact, its successful proof under Section 15(2)(c) offers the court an objective measure of the subjective failure of a marriage. It reinforces the legal reality that marriage is a status that carries enforceable obligations of consortium, and the unilateral, unjustified abandonment of those obligations remains a primary indicator that the marriage has, in fact and in law, ceased to exist.²²

2.2 Historical Development of Matrimonial Causes Law in Nigeria

The historical trajectory of matrimonial causes law in Nigeria is a complex narrative of legal dualism, reflecting the tension between indigenous norms and the imposition of English law. Prior to the colonial encounter, matrimonial matters were governed exclusively by the diverse customary laws of the various ethnic nationalities. These indigenous systems emphasized the communal and procreative nature of marriage, where dissolution was often a non-judicial process involving family arbitration.²³ The introduction of the Marriage Ordinance of 1863 marked the genesis of statutory marriage in Nigeria, creating a bifurcated legal system that remains a defining characteristic of Nigerian family law today.

During the colonial era, the administration of matrimonial causes for statutory marriages was inextricably linked to the laws and practice in England. By virtue of various "Reception Clauses" in colonial legislation, Nigerian courts were mandated to apply the jurisdiction and law of the High Court of Justice in England in matrimonial proceedings.²⁴ This meant that

²¹ IT Sagay, *Nigerian Family Law* (Malthouse Press 2006) 145.

²² Ibid.

²³ Ibid.

²⁴ See Supreme Court Ordinance 1876; see also AO Obilade, *The Nigerian Legal System* (Sweet and Maxwell 1979) 17.

Nigerian couples married under the statute were subject to the English *Matrimonial Causes Act 1857* and its subsequent amendments. This wholesale importation of English law often ignored the socio-cultural realities of the Nigerian people, leading to a legal regime that many scholars viewed as an alien graft onto the Nigerian social fabric.

The most significant turning point in this historical development occurred with the enactment of the *Matrimonial Causes Act 1970*. Before this, Nigerian courts were still applying the English *Matrimonial Causes Act 1965*, as the legal "umbilical cord" to England had not been fully severed despite the attainment of independence in 1960.²⁵ The 1970 Act was a milestone in legal nationalism, as it provided, for the first time, a comprehensive and homegrown statutory framework for matrimonial causes. It effectively terminated the automatic application of English law in this field and established a distinct Nigerian jurisprudence for the dissolution of marriages.

A pivotal feature of the 1970 Act was the adoption of the "Irretrievable Breakdown" principle as the sole ground for divorce. This reflected a global shift in divorce philosophy, moving away from the rigid "Matrimonial Offence" doctrine that required proving a specific wrong like adultery or cruelty.²⁶ This shift was heavily influenced by the English *Reform Act 1969*, yet the Nigerian 1970 Act incorporated specific "fault facts" (such as desertion and adultery) as the evidentiary vehicles through which irretrievable breakdown could be proved. This created a hybrid system that sought to modernize divorce proceedings while maintaining moral guardrails within the marital institution.

In the contemporary era, the historical development of matrimonial causes continues to be shaped by judicial activism and the persistent challenge of harmonizing statutory law with

²⁵ Sagay (n 17) 120

²⁶ *Matrimonial Causes Act 1970*, s 15(1).

customary and Islamic laws. While the *Matrimonial Causes Act*²⁷ governs statutory marriages, the vast majority of Nigerians continue to marry under customary and Sharia systems, which are largely exempt from the Act's provisions.²⁸ The current historical phase is characterized by a push for holistic reform that addresses these jurisdictional overlaps and the need for a truly unified family law code that reflects the pluralistic identity of the Nigerian state.²⁹

2.3 Grounds for Dissolution of Marriage under the Matrimonial Causes Act

By the provisions of the Matrimonial Causes Act, a party to a statutory marriage can bring up a petition in court for the dissolution of his or her marriage upon the ground that the marriage has broken down irretrievably.³⁰ Irretrievable breakdown is a legal term used to describe the fact that a marriage has collapsed beyond repair. In this sense, the parties to the marriage are no longer living like husband and wife and there is no prospect of reconciling them.³¹ The marriage is dead and what is left of the empty legal shell must be given a decent funeral.³² As a legal term, it means that a marriage has become totally unworkable. Parties to such marriage are emotionally dead, thus the marriage cannot be salvaged.³³ However, the court hearing the petition for the dissolution of marriage shall hold that the marriage

²⁷ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2011.

²⁸ Ibid, s 114(1).

²⁹ LB Akande, 'The Need for Reform of the Matrimonial Causes Act' (2018) 9 *Journal of Law and Social Sciences* 44.

³⁰ MCA 2004, s 15(1).

³¹ I Majumber, 'Irretrievable Breakdown of the Marriage as a Ground for Divorce' <https://lawctopus.com/clatalogue/clat.pg/irretrivablebreakdownofmarriage-as-aground-for-divorce/> accessed 12 December 2025.

³² IP Enemo, *Family Law* (Chenglo Publishers 2002) 155.

³³ N Beri, 'Analyzing Irretrievable Breakdown of Marriage as a Separate Ground for Divorce under Hindu Law' (2020) 6(6) *International Journal of Legal Developments and Applied Issues* 240.

has broken down irretrievably if, and only if, the petitioner proved any of those facts as provided in the Matrimonial Causes Act.³⁴ The facts are discussed below;

i. Willful and Persistent Refusal to Consummate the Marriage

Consummation of marriage is to make a marriage complete by an act of sexual intercourse.³⁵ Consequently in this context, consummation is 'the actualization of marriage. It is the first act of sexual intercourse after marriage between a husband and wife'" The law is not interested in the act of sexual intercourse before the marriage. The sexual intercourse that has legal significance for the purposes of consummation is the one that occurred after the marriage.³⁶ Refusal is willful when it is a conscious and voluntary act not to comply with a request for sexual intercourse to consummate the marriage.³⁷ Persistent refusal implies that there have been persistent requests and the other party has persistently refused to consummate.³⁸ Such refusal must continue until the date of the hearing of the petition.³⁹

In other words, willful and persistent refusal implies that there have been direct or indirect requests, which the respondent has always refused as a free agent, when there was opportunity to comply with the requests.⁴⁰ Hence the refusal is without justifications.

ii. Adultery and Intolerability

The court shall hold that a marriage has broken down irretrievably, if the petitioner is able to prove that since the marriage, the respondent has committed adultery and the petitioner finds

³⁴ MCA 2004, s 15(2).

³⁵ C Soanes and A Stevenson (eds), *Oxford Dictionary of English* (2nd edn, OUP 2003) 307.

³⁶ *Enemo* (n 28) 163.

³⁷ [1965] 2 All NLR 200; IT Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Malthouse Press Ltd 1999) 149

³⁸ *Enemo* (n 28) 161.

³⁹ Sagay (n 33) 149.

⁴⁰ AC Osondu, *Modern Nigerian Family Law and Practice* (Printable Publishing 2012) 166.

it intolerable to live with him or her.⁴¹ In the case of *Dennis v Dennis*,⁴² adultery is defined as the act of sexual intercourse between two persons of whom one or both are married, but they are not married to one another. It is sexual intercourse between a married person and another individual of the opposite sex who is not his or her spouse. However, such sexual intercourse must be voluntarily and consensual.⁴³ It is difficult to prove adultery by direct evidence and so recourse is made to circumstantial evidence.⁴⁴ The provisions of section 82(1) of the Matrimonial Causes Act require that adultery must be proved to the reasonable satisfaction of the court. Some of the ways in which adultery may be proved through circumstantial evidence include;

- a. Evidence of disposition and opportunity.⁴⁵ The petitioner must prove that the relationship between the respondent and correspondent was not only intimate but there was opportunity to commit adultery.
- b. When a married woman visits a brothel with a man, there is conclusive evidence of adultery. But in the case of a man, there is a presumption of adultery.⁴⁶
- c. Where a child is born to a woman and the child cannot possibly be that of the husband, there is a presumption of adultery.⁴⁷
- d. Confession and admission of adultery.⁴⁸
- e. Cohabitation between the respondent and correspondent.
- f. Venereal disease from third party upon proof.

⁴¹ MCA 2004, s 15(2)(b).

⁴² (1955) 2 All ER 51

⁴³ MZ Agams, 'Adultery as Grounds for Divorce in Nigeria' <https://mzagams.wordpress.com/2022/12/12/adultery-as-grounds-for-divorce-in-nigeria/> accessed 13 December 2025.

⁴⁴ Ibid

⁴⁵ Sagay (n 33) 157.

⁴⁶ Enemo (n 28) 168.

⁴⁷ Ibid

⁴⁸ Nwogugu (n 11) 162.

- g. Conviction for sexual related offences between a married person and someone who is not his or her spouse.

It must be noted that, proof of adultery *simpliciter* is not enough; the petitioner must prove that he or she finds it unbearable to live with the respondent.⁴⁹ Thus, the criterion of intolerability is subjective as what matters is the feeling of the petitioner.⁵⁰

iii. The Intolerable behavior of the Respondent

The court shall hold that the marriage has broken down irretrievably, if the petitioner is able to prove that since the marriage, the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.⁵¹ Accordingly, where a spouse puts up a conduct that the other spouse cannot be expected to bear, then such a spouse can petition for divorce.⁵² Instances of such conduct include; rape, sodomy, bestiality, frequent conviction, neglect of the petitioner and insanity.⁵³ Thus, section 16(1) of the Matrimonial Causes Act amplifies and sets out instances of unreasonable behavior as provided under section 15(2)(c). Unlike adultery and intolerability where the test is subjective, the test of behavior in section 15(2) (c) of the Matrimonial Causes Act is objective.⁵⁴ This is distilled from the provisions of section 15(2) (c) which provides that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live him or her.

iv. Desertion

Desertion is a fact to prove the irretrievable breakdown of marriage under the Act.⁵⁵ Desertion has been defined as 'the withdrawal of support and cessation from cohabitation

⁴⁹ MCA 2004, s 15(2)(b); see also *Agams* (n 39).

⁵⁰ [1971] 2 All ER 1340; *Sagay* (n 33) 160.

⁵¹ MCA 2004, s 15(2)(c).

⁵² *Osondu* (n 36) 169.

⁵³ MCA 2004, s 16(1).

⁵⁴ *Sagay* (n 33) 249.

⁵⁵ MCA 2004, s 15(2)(d).

without the consent of the other spouse and with the avowed intention of abandoning allegiance, fidelity or responsibility and remarrying separated in perpetuity".⁵⁶ In others words, it is the voluntary cessation of consortium by a married person without justification.⁵⁷ Desertion is consummated once a spouse ceases to cohabit with the other spouse without his or her consent and with the requisite intention of remaining separated forever. In desertion, four essential elements could be distilled namely; physical separation, the settled intention to remain separated for ever, absence of consent from the other spouse, and withdrawal from cohabitation without justification.⁵⁸ Nevertheless, the law has given recognition to two types of desertion. They are simple or willful desertion and constructive desertion.⁵⁹ In willful desertion, the person who leaves the matrimonial home is in desertion, while in constructive desertion, it is the party in the house that is in desertion. By his or her conduct, the other party is compelled to leave the matrimonial home.⁶⁰ The relevant time for the purposes of proving desertion is that the deserter must be in desertion for a continuous period of at least one year immediately preceding the presentation of the petition.⁶¹

v. Living Apart Provisions

The Living apart provisions are sections 15(2) (e) and (f) of the Matrimonial Causes Act. These two sections are similar in the sense that once it is proven by the petitioner that parties to the marriage have lived apart for the stated periods immediately preceding the petition, then the court shall hold that the marriage has broken down irretrievably. However, there are

⁵⁶ SO Akingbola, 'Living Apart as a Ground for Dissolution of Marriage' <https://www.linkedin.com/pulse/liing-apart-rounddissolution-marriage-simileoluwa-owotomo> accessed 10 December 2025.

⁵⁷ Sagay (n 33).

⁵⁸ Akingbola (n 52).

⁵⁹ PO Asa, 'Legal and Recognizable Grounds for Divorce in Nigeria' <<https://medium.com/@peteroluwushola/legal-and-recognizableground-for-divorce-in-nigeria>> accessed 9 December 2025.

⁶⁰ Ibid.

⁶¹ MCA 2004, s 15(2)(d).

some differences. Under Section 15(2)(e), the required period of living apart is a continuous period of at least two years and the respondent is not objecting to the decree being granted. But in Section 15 (2) (f) the statutory period is at least three years immediately preceding the petition. The requirement of no objection is dispensed with. Living apart means that parties to a marriage are no longer living as one household.⁶² Thus, they are living separately and apart. The implication of this is that, spouses who are living under one roof may be said to be living separately and apart.⁶³ In this sense, they are living as two households. Once there is cessation of consortium which are those lovely services spouses enjoy from each other, then living apart is consummated.⁶⁴ Physical separation is not conclusive of living apart, so far as there is no intention by one or both parties to put an end to the marriage.⁶⁵ Therefore, as long as the husband and wife see their marriage as subsisting, they cannot be seen as living apart just because of physical separation caused by employment, business and so forth.⁶⁶ The provision of section 15(2)(e and (f) typifies the non-fault theory as regards divorce proceedings in Nigeria.⁶⁷ Accordingly, it is seen as an honest application of the irretrievable breakdown principle in the dissolution of marriages in Nigeria.⁶⁸

vi. Failure to comply with Degree of Resolution of Conjugal Rights

Another fact in proof of irretrievable breakdown is stated under section 15(2)(g). Thus, where a petitioner proves that the respondent has not complied with an order of court to restore the conjugal rights of the petitioner for a period not less than one year, the court is bound to hold

⁶² MCA 2004, s 15(3).

⁶³ *Enemo* (n 28) 201.

⁶⁴ (1973) IWL 730

⁶⁵ *Akingbola* (n 52).

⁶⁶ *Ibid*

⁶⁷ *Ibid*.

⁶⁸ *Sagay* (n 33) 331.

that the marriage has broken down irretrievably. This provision confirms the fact that conjugal rights are fundamental and are regarded as vital incidences of consortium.

vii. Presumption of Death

Once a party becomes absent from his spouse for a continuous period of seven years, immediately preceding the presentation of the petition, the court allows the other spouse to presume death. Thus, presumption of death in such circumstance is a fact in proof of irretrievable break down of marriage⁶⁹ and an instance of non-fault theory. Naturally, death brings marriage to an end and so one wonders why a spouse is expected to bring a petition under this heading. This conundrum may be addressed when one considers that, what is involved is not natural death but death by presumption. What happens if the person presumed death surfaces? Is this a case of irrefutable presumption? Ordinarily, no serious legal issue arises if the living spouse has not remarried. But where he or she has remarried, there could be some challenges for further judicial determination.

2.4 Divorce Philosophy of the Matrimonial Causes Act of 1970

Section 15 (1) MCA provides that either party to a marriage may petition for divorce “upon the ground that the marriage has broken down irretrievably”.⁷⁰ In this way only a single ground of divorce was established, i.e. irretrievable breakdown of marriage as against the several grounds hitherto applicable under our law.

Critics have tried to argue that section 15 (1) has not changed the old “grounds” of divorce. The basis of this argument appear to be the fact that the marginal note to the section reads “grounds for dissolution of marriage”.⁷¹ However, the clear words of the statute which states “ground” for dissolution of marriage and the several decisions of our courts sustain the point

⁶⁹ Ibid.

⁷⁰ Archbishop of Canterbury Group, *Putting Asunder: A Divorce Law for Contemporary Society* (SPCK 1966).

⁷¹ SA Adesanya, *Laws of Matrimonial Causes* (Ibadan University Press 1973) 39.

that section 15(1) has established only one ground of divorce to wit: “that the marriage has broken down irretrievably.”

The almighty question is, „When has a marriage broken down irretrievably?“ Section 15(2) of MCA provides for eight instances when a marriage can be said to have broken down irretrievably. Notice that the enumeration of the facts is exclusive in the sense that a court cannot conclude that a marriage has broken down and grant a decree of divorce unless one of the facts at least has been established.

From the evaluation of sundry scholars, the breakdown theory satisfies the requirements of a good divorce law to wit:

- (i) To buttress rather than to undermine, the stability of marriage; and
- (ii) When regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness and humiliation.⁷²

What is more, the break down theory positively excludes all the weak points associated with the fault theory of divorce, which weak points include:

- (i) That the commission of a matrimonial offence follows the breakdown of marriage and not the case of it.
- (ii) That in an adversarial system, the matrimonial offence must be proved in what turns out to be hostile litigation which leads to unnecessary bitterness.

Indeed, the introduction of the breakdown principle is a welcome development in the Nigerian Divorce Law.

2.5 Irretrievable Breakdown of Marriage as the Sole Ground for Divorce

⁷² Law Commission, *Reform of the Ground of Divorce: The Field of Choice* (Law Com No 6, 1966) para 15.

Irretrievable breakdown of marriage as the sole ground for divorce reflects an advanced and empathetic evolution in contemporary family law, acknowledging that marriages may collapse not merely because one spouse has committed a matrimonial offence, but because the fundamental emotional, relational and social elements that sustain the union have disintegrated beyond recovery. Rather than compelling parties to rely on blame oriented grounds, which often breed acrimony, humiliation and prolonged litigation, this doctrine prioritises truthfulness, dignity and human experience, aligning with international reform trends aimed at reducing conflict, safeguarding children, and protecting privacy. Jurisdictions such as Australia, which formally entrenched no fault divorce in the Family Law Act 1975,⁷³ and the United Kingdom, under the Divorce, Dissolution and Separation Act 2020,⁷⁴ have fully embraced this principle, transforming divorce proceedings into less adversarial and more rehabilitative processes. Nigeria, however, adopts a cautious yet progressive stance. Although Section 15(1) of the Matrimonial Causes Act recognises irretrievable breakdown as the overarching ground for divorce⁷⁵, Section 15(2) still requires the petitioner to establish one of the prescribed statutory facts before dissolution may be granted. Scholars such as Herring emphasise that the move towards irretrievable breakdown reflects a humanitarian reconceptualisation of matrimonial justice⁷⁶, while Nigerian commentators like Uzodike acknowledge both the promise and challenges of adopting it as a truly independent sole ground⁷⁷. Ultimately, the doctrine underscores the understanding that marriage is not merely a legal construct but a deeply human relationship, and when such a relationship has genuinely

⁷³ Family Law Act 1975 (Cth) s 48.

⁷⁴ Divorce, Dissolution and Separation Act 2020.

⁷⁵ Matrimonial Causes Act, Cap M7, LFN 2004, s 15(1) and (2).

⁷⁶ J Herring, *Family Law* (OUP 2021).

⁷⁷ ENU Uzodike, 'The Reform of Nigerian Family Law' (1990) 2 *African Journal of International and Comparative Law* 301.

and irreversibly failed, the law should respond with sensitivity, justice and respect for human dignity.

2.6 Fault Divorce: Concept and Meaning

This principle of divorce is based on the establishment of some wrongful acts by the respondent/defendant warranting the petition for dissolution by the applicant. Under this principle of divorce, the law demands that the petitioner establishes the wrongful acts of the spouse such as adultery, abandonment, cruelty and other forms of intolerable behaviour before the marriage can be legally dissolved. Under this principle the law requires the applicant to establish fault of the respondent which entitles him to the relief of divorce. The respondent on the other hand is allowed in law to present a defence to the accusations of the applicant to ensure that the divorce sought is not granted. Divorce based on the fault principle is usually messy and acrimonious and this may possibly be the reason in addition to the possible collusion of couples to fabricate evidence of bad conduct of each other that many western countries have jettisoned the fault based divorce for the non-fault principle especially where the parties have agreed to end the marriage. Parties who seek divorce under the fault principle but cannot give evidence of fault are thus constrained to for instance fabricate evidence of adultery to satisfy the demands of the law for setting aside such marriages. This collusion was of course an abuse of court process.

A major advantage of the fault divorce principle is that it makes the dissolution of marriage between a couple difficult thereby giving them more time within which they may resolve their problems. Also the advantage of the fault based divorce system include the fact that establishing fault provides the spouse who establishes guilt of the other spouse a greater opportunity of being granted a larger portion of the marital property or the maintenance support. It also avails a spouse against whom a petition is brought an opportunity to present a

defence to the fault complained about. For instance, he can claim that the petitioner connived to and participated in the act (possibly infidelity) complained about; or that the petitioner knew about the act complained about, forgave such conduct and had since resumed marital relationship; or that there was an agreement between the spouses to fabricate the grounds for divorce etcetera.

According to Herring⁷⁸, arguments in favour of the fault principle of divorce are that it provides the "psychological need for parties to blame each other in divorce and the law should recognize this; the need for the public to know who is at fault in marriage to properly attract public censure and odium. If one party has behaved badly and caused the end of the marriage, that wrong should be publicly acknowledged; if it is too easy to divorce, marriage will become devalued." There are some disadvantages attached to the fault divorce proceedings namely, the fact that getting all the relevant witnesses to establish and prove the fault alleged is expensive; it is time wasting as the divorce can rag on for a long time with the parties "airing their dirty laundry in public;" and it may actually be very difficult to obtain the relevant evidence to establish the fault of a spouse even where such bad character actually exist as "fault-based grounds usually include mental cruelty... the abused spouse may be terrified to describe the relationship on paper and testify about it in court..⁷⁹?

2.7 What is Desertion and its Constituent Element

Desertion is the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a withdrawal not from a *place*, but from a *state of things* (the consortium omnis vitae).

⁷⁸ Jonathan (n 47).

⁷⁹ 'No-Fault Divorce? It's About Time' *Salon* (18 June 2010) <https://www.salon.com> accessed 12 December 2025.

The Constituent Elements

For a plea of desertion to succeed, the following four elements must be proved to exist simultaneously:

1. The Factum of Separation

There must be a physical separation between the parties. While this usually involves one spouse leaving the matrimonial home, the law recognizes that parties can be in desertion while living under the same roof if they have ceased to be "one household" and have become "two households."⁸⁰

Total Breach: There must be an end to common life, including the sharing of meals, chores, and sexual intimacy.

2. Animus Deserendi (Intention to Desert)

The deserting spouse must have the mental intention to bring the matrimonial union to a permanent end.⁸¹

- **Involuntary Absence:** If a spouse is away due to work, imprisonment, or illness, the *factum* of separation exists, but the *animus* does not.
- **Supervening Intent:** A separation that starts out as a business trip can turn into desertion if the spouse later decides never to return.

3. Absence of Consent

Desertion must be "against the will" of the petitioner. If the parties mutually agree to live apart, it is a "voluntary separation" rather than desertion.

Passive Acquiescence: A spouse who is left does not have to physically prevent the other from leaving, but they must not be a willing party to the separation.

⁸⁰ [1949] P 227; see also *Adesanya* (n 67) 42.

⁸¹ *Pulford v Pulford* [1923] P 18.

4. Absence of Just Cause

The deserting spouse must have no legal justification for leaving. A spouse has "just cause" if the other spouse's conduct is grave and weighty, such as domestic violence or persistent cruelty.

Constructive Desertion: Where the conduct of Spouse A is so unbearable that it forces Spouse B to leave, Spouse A is legally the deserter. This is because Spouse A's conduct showed an intention to drive the other away.⁸²

2.6 Arguments in Support of Fault-Based Divorce

Petitions based on the fault facts of adultery, behavior or desertion have consistently accounted for the majority of divorces. One core argument in favor of fault is that having to produce a fault for the divorce will act as a deterrent and hence protect marriages. Parties who have their allegations of fault heard by the court feel sense of restoring moral base to the divorce proceeding, they consider that conduct should still have a part to play in determining the consequences of that breakdown. It is also argued that the retention of fault provides a public affirmation of „guilt“ and „innocence“ within the marriage which enables the innocent party to feel vindicated in his or her decision to end it, which to the party is an important psychological point. However, one of the difficulties with the whole concept of divorce for fault is that it assumes that fault is the only possible justification for divorce. People who hold this belief, whether for religious or other reasons, may well need to feel that they are morally justified in what they have done. Unfortunately for them, most times the law cannot accurately allocate moral blameworthiness, for there are always two sides to every marital history and different people assess these in different ways. The theory underpinning the use of fault as a basis for divorce is that petitions are an accurate account of who or what was

⁸² Matrimonial Causes Act 1970, s 18; see also *Lang v Lang* [1955] AC 402.

responsible for the breakdown of the marriage and indeed that is precisely what many ordinary people think the law does or should say. What the law in fact requires, as well as the practice, are different. Rather than accurate accounts of the primary reason for the breakdown of the marriage, most petitions are probably best styled as narratives produced to achieve a divorce.

There is a strong presumption that irretrievable breakdown will be established if a fault fact is made out. However, both elements – irretrievable breakdown and a Fact – need to be established. Even where it is accepted that the marriage has broken down beyond repair, a Fact still must be made out. This was reaffirmed in the recent UK divorce case where both the Court of Appeal in 2017, and the Supreme Court in 2018, dismissed petitioner’s appeal, agreeing with the husband that behavior had not been made out on the evidence. And that petitioner had failed to prove, within the meaning of section 1(2)(b) of the Matrimonial Causes Act 1973 (UK legislation), that her husband had behaved in such a way that she could not reasonably be expected to live with him.⁸³ Despite the fact that most divorces are fault based, the concept of matrimonial fault is still unable to act as deterrent as divorce has not decreased, therefore ascribing fault is hardly acting as a restraint. The futility of attributing blame is hence seen or recognized. It is believed that fault is to provide a moral framework for marriage and will act as a restraint on the divorcing parties. For this reason, fault divorce is an ineffective means of trying to achieve acceptable standards of marital behavior. A decision that a spouse is responsible for the failure of the marriage does not contribute positively to arriving at a settlement of the financial position where for example that „guilty“ spouse is to continue to take care of the couple’s children. Instead focus is shifted from giving attention to the likely needs of the parties and the children in the aftermath of the

⁸³ [2018] UKSC 41.

breakdown of their relationship. Fault is in most cases needlessly generating or exacerbating conflict between the parties.

2.7 Criticisms of Fault-Based Divorce

It takes a longer time to obtain as there is much reliance on affidavit and evidences hence takes time of the court. It involves several court appearances therefore lawyer will charge more so it is quite expensive. In fault, the respondent is sometimes confronted with a heavy weight behavior petition containing an assemblage of fictions and so respondent will feel anger, with hostility and bitterness resulting from this. Allegations from faults make juicy news and headlines in the papers. It encourages petitioners to make allegations most times exaggerated against their spouses. This can result in needless conflict, unfairness and a sense of injustice which does not save marriage. The whole story may never be brought out which would at least enable the court to form a valid judgment as to who is at fault, this is particularly true especially in undefended divorce. In petition relying on fault-based facts, the petitioner is encouraged to dwell on past. Where antagonism is created or exacerbated by the petition due to allegations in fault divorce, the respective bargaining power of the parties is distorted, the atmosphere is not conducive to calm and sensible negotiation about the future needs of the children. The bitterness of most such divorce proceedings will simply be transferred to the issues of custody and financial provision and property adjustment. Petitioner might not know how much evidence would be sufficient to prove the particulars of the fact being used, he/she might feel the need to make additional or exaggerated more forceful allegations to ensure the petition was successful, and this could increase acrimony between the parties. Divorce petitions are often not accurate descriptions of why a marriage broke down and the courts make no judgement about whether allegations are true. Using fault had made the process more bitter, fault had made it harder to sort out arrangements for

children, and fault made sorting out finances harder. The use of fault, mainly behaviour, had a negative impact on contact arrangements, including fueling litigation over children. Fault does not protect marriage or deter divorce.

It encourages people to enter into a blame game and therefore increases acrimony within the family.⁵⁸ Blaming one person for the breakdown of the marriage and listing their failures is likely to cause difficulties in what may well already be a fairly fraught relationship where any trust may be quite fragile, if it exists at all. What fault does is fanning the flames and does increase conflict. Being on the receiving end of, especially behaviour particulars, could be a deeply uncomfortable and upsetting experience for respondents. For some, it also felt a deeply unfair process, where the petitioner was given free rein to say what they wished about the respondent and the court would take that at face value. Respondents on the receiving end of fault-based petitions inevitably feel cast as the „guilty“ party. It falls short of fairness and justice. Fault can be seen as needlessly generating or exacerbating conflict between the parties. There is the driving desire in fault divorce to see that the guilty party is punished especially if the other party is the victim to justify his/her position. In most cases this affects planning the children’s future.

2.8 Theoretical Framework

This study is based on two theories, the Matrimonial Offence or Fault based theory and the breakdown theory. The theories are highlighted below:

2.8.1 Matrimonial Offence (Fault) Theory

Basic Fault Theory was proposed by Michael Balint, and alludes to an individual's inability to form healthy relationships due to unresolved dependency issues from early childhood in relation to the formation of object reactions in an effort to deal with a lack of adjustment between their psychological needs and the lack or negative care provided by someone close

to them⁸⁴. Under the 'fault theory', marriage can be dissolved only when either of the spouses had committed any matrimonial offence. And only the innocent party can seek the remedy of divorce under this theory. Up to 1970, Nigerian law on divorce was based on the Matrimonial Offence Theory which required that a marriage may only be dissolved when a spouse has committed a matrimonial offence like adultery, cruelty or desertion.⁸⁵ This was a consequence of application of English divorce Laws in Nigeria.⁸⁶ It will be recalled that in England the matrimonial offence theory was developed by the old ecclesiastical courts which originally had exclusive jurisdiction to dissolve marriages. When in 1857 secular divorce was introduced the concept was carried over into the new law. The movement away from the fault theory emanated in New Zealand⁸⁷ and subsequently was accepted in several Commonwealth countries including Australia and England. In England, the new trend began with the 1966 report of the Archbishop's Groups on a new divorce law which was subsequently considered by the English Law Commission.

The Commission's Report' put forward a compromise solution which, while advocating a divorce law based on the breakdown principle, retained some elements of the matrimonial offence principle. In the Commission's opinion, a good divorce law should seek to achieve the following objectives: 1) To buttress, rather than to undermine, the stability of marriage; and ii) When, regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation.

⁸⁴ S Kahlon, 'Divorce Under Fault and No-Fault Theory' (2019) <https://www.legaladvice.com> accessed 20 May 2024.

⁸⁵ C Deuzel, 'International Dictionary of Psychoanalysis: Basic Fault' (2019) Encyclopedia.com <https://www.encyclopedia.com> accessed 20 May 2024.

⁸⁶ EI Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers Plc 2014).

⁸⁷ English Matrimonial Causes Act 1965.

2.8.2 Breakdown Theory

First the law should make it possible to dissolve the legal tie once that has become irretrievably broken in fact. If the marriage is dead, the object of the law should be to afford it a decent burial. The Matrimonial Causes Act⁸⁸ provides that either party to a marriage may petition for divorce upon the grounds that the marriage has broken down irretrievably". The provision of section 15 (1) of the Matrimonial Causes Act, 1970 is considered to be one of the main objectives of the Act which was to make irretrievable breakdown the sole ground for divorce in Nigeria⁸⁹. However, on the enactment of this Act, there was an initial confusion as to whether the Act provides for 'one ground' of divorce or 'grounds' of divorce. Under breakdown theory, all petitioner has to do is give any reason that is sufficient in the eyes of law for the divorce. The most frequently given reason is "irreconcilable differences" or an "irretrievable breakdown of the marriage" which basically means that the couple does not get along and that the marital relationship cannot be fixed. A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.⁹⁰

⁸⁸ Divorce and Matrimonial Causes Act 1920; Matrimonial Proceedings Act 1963.

⁸⁹ Ibid.

⁹⁰ MC Onokah, *Family Law* (Spectrum Books Ltd 2003) 88.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR DISSOLUTION OF MARRIAGE IN NIGERIA

3.1 Concept of Dissolution of Marriage under Nigerian Law

Dissolution of marriage is the act of bringing marriage to an end i.e. the termination of marriage. When we talk of dissolution of marriage we are talking of divorce, this is because divorce is the legal dissolution of a marriage by a court.

Divorce is also termed dissolution of marriage. The term divorce imparts a dissolution of the marriage relation between husband and wife i.e. a complete severance of the tie by which the parties were united as husband and wife.⁹¹ According to the researcher divorce or dissolution of marriage is the legal ending of a marriage. It is also the legal action that ends the marriage relationship of spouses before the death of either of them.

The Matrimonial Causes Act provides for dissolution of marriage; however, the said Act provides for are prerequisites for dissolution of marriage in Nigeria. In the case of *Amobi v Nzegwu*⁹² where a man purportedly remarried another woman where his divorce petition had only been made Decree *nisi*⁹³, the said marriage was held to be invalid. It is therefore imperative to understand what needs to be proved and at what stage a marriage can be said to have been terminated. It is only when this is properly ascertained and appropriated that a woman and her children can claim right accruable to them because of the divorce. It would be difficult to protect the rights of a woman who is in a void marriage or a marriage in which her husband did not have single status at the point of her marriage to him. Divorce is one of the principal reliefs under the Matrimonial Causes Act, 1970 in Nigeria.

⁹¹ B O Alloh, *Unpublished Classroom Lecture Notes on Family Law* (Faculty of Law, Delta State University, Abraka, 2017/2018 session) 24.

⁹² (2005) 12 NWCR (PE 938) 120.

⁹³ Under the Matrimonial Causes Act, a decree *nisi* is the initial decree in dissolution proceedings, after which the court may make the decree absolute upon the expiration of three months.

The grounds upon which a court may be called upon to find nullity of marriage are as provided in Section 3 and Section 5 of the Matrimonial Causes Act while the grounds upon which a court may be called upon to dissolve a marriage is provided for in Section 15 of the Matrimonial Causes Act and they are both different and disparate in content and application.

In *Oghoyone v Oghoyone*,⁹⁴ a marriage between the appellant and one Wilhemina Agatha Huyssodin, a Dutch national was conducted. While this marriage was still subsisting, the Appellant purported to marry the respondent on the 9th of April, 1994 at the Lagos city Hall. There were no children of the marriage. The Appellant and the respondent had a flourishing business of selling used cars imported from abroad. The respondent commenced divorce proceedings against her husband at the Ikeja High Court. After hearing the matter and upon due consideration of the facts, the court declared the marriage null and void and held that the property of the respondent be divided into two equal parts for the benefit of both the appellant and the respondent. On appeal the court of appeal upheld the judgement of the High Court.

3.2 Legal Framework for Dissolution of Statutory Marriage in Nigeria

As paradoxical as it is, Nigeria's dominant religions frown at divorce. Even the traditionalists don't support divorce and separation of marriage, morality police also shuns its option in the society. Folks don't hesitate to quote that marriage is for life using till death do you part and the religious cliché "what God has joined together, let nobody put asunder".⁹⁵ Due to the sanctity of the institution of marriage, even judges and courts that are legally empowered to declare a marriage to come to a close are always reluctant to grant divorce pleadings. Judges do all their best to make sure that divorce processes don't pull through or couples seeking divorce can still make the marriage work but when it is obvious that what is the best option is

⁹⁴ (2010) 3 NWLR(pt.1182) p.586.

⁹⁵ A. Stan, 'Divorce process in Nigeria' (2022) <https://www.thecable.ng/divorce-process-in-nigeria/amp> accessed 11 January 2026.

divorce the judge will be left with no other option but to grant it.⁹⁶ The divorce laws and the process of divorce in

Nigeria are topical issues for any person contemplating a divorce in Nigeria.⁹⁷ The divorce is clearly not an extremely pleasant subject to discuss, considering its effect. However, it is important for any person seeking to divorce to be fully acquainted with the process.⁹⁸ The major laws guiding the divorce process in Nigeria are Matrimonial Causes Act (MCA) LFN 1990 and Matrimonial Causes Rules. These are not only laws bothering on divorce in Nigeria. There are several judicial decisions that are instrumental to the totality of laws guiding the divorce process in Nigeria.⁹⁹ Hence, this chapter will examine the legal frameworks and Institutions for the Dissolution of Marriage in Nigeria.

The 1999 Constitution of Federal Republic of Nigeria (as amended)

The Constitution is the ground norm and the bedrock upon which the existence of order is founded and cannot be challenged by any man, association or entity.¹⁰⁰ The constitution is supreme and its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria'.¹⁰¹ Any provision that is inconsistent with the provisions of the constitution shall be void'.¹⁰² The Supreme Court in *Alhaji Bani Gaa Budo Nuhu v Alhaji Ishola Are Ogele* held thus; 'To suggest that the provision of the constitution should be construed subject to the prescription of an inferior statute is a legal apostasy and any law inconsistent with such provisions is null and void and of no effect'¹⁰³. Thus, everything within

⁹⁶ Ibid.

⁹⁷ O. J Jegede, 'Divorce Laws And Process Of Divorce In Nigeria' (2020) *Resolution Law Firm* <https://www.mondaq.com/nigeria/divorce/958994/divorce-laws-and-process-of-divorce-in-nigeria> accessed 10 January, 2026

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Constitution Federal Republic of Nigeria 1999(as amended 2011) section 1(1)

¹⁰¹ Ibid, s. 1(2).

¹⁰² Ibid, s. 1(3)

¹⁰³ (2003)18 NWLR (Pt. 852) 251, see also *Odoemena Nwige v Eze Edwin Okere*.

the ambit and territory of the country is under the supreme authority of the constitution including the legal frameworks for the dissolution of marriage in Nigeria and this is the bed rock upon which the legal frameworks for marriage and dissolution of marriage in Nigeria is formed. Chapter IV of the constitution grants every person the fundamental rights and these rights shall not be taken away from the individual except as provided by the Constitution with respect to the exceptions in which such right can be deprived of the individual.¹⁰⁴

The 1999 Constitution of the Federal Republic of Nigeria (as amended) forms the foundation of all laws in the country, including those relating to marriage and family. Section 315,¹⁰⁵ recognises all laws relating to marriage and dissolution of Marriage in Nigeria, including the Matrimonial Causes Act and other relevant laws being the existing legal framework for the dissolution of marriage in Nigeria. Under the Constitution, every individual, regardless of gender, is entitled to fundamental rights and freedoms, which include the right to life, dignity, personal liberty, and freedom from discrimination. The Constitution guarantees the right to life, stating that "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offense of which he has been found guilty."

This practices potentially intersect with marriage rights and dissolution of such, the practices, emphasizing the importance of safeguarding the integrity and rights of families involved in marriage and divorce arrangements, under the legal protection provided by the Constitution.¹⁰⁶ It is important to note that while these provisions can be interpreted in a way that raises concerns about the marriages, dissolution of marriage in Nigeria and its frameworks, there is no explicit Legal framework within the CFRN 1999 for the dissolution of marriage in Nigeria. The legal landscape regarding the legal frameworks for dissolution of

¹⁰⁴ *Op cit* Chapter IV

¹⁰⁵ CFRN 1999 s. 315

¹⁰⁶ *Ibid*, section 37

marriage in Nigeria is further shaped by relevant legislation and court decisions that have addressed the topic.

Matrimonial Causes Act 1970 (as amended) Cap. M7 LFN 2004

The Matrimonial Causes Act governs marriages, dissolution of marriage, and custody of children. A marriage is voidable if at the time of the marriage “the wife is pregnant by a person other than the husband.”¹⁰⁷ However, only the husband can nullify the marriage because of pregnancy; the wife has no right to petition to do so.¹⁰⁸ Under Section 47, both husband and wife have grounds for a decree of restitution of conjugal rights, if either refuse to cohabit with and render conjugal rights to the other.¹⁰⁹ With respect to the wife, if the husband has paid any money to her with respect to a decree under Section 47 and she refuses to comply with the decree within a reasonable time, the money paid becomes a debt due and payable by the wife to the husband and recoverable by action in court.

The Act mandates the court not to be quick to grant divorce prayers; they should try to make sure the couples try the option of reconciliation.¹¹⁰ This is to happen through the active steps of the court, by setting up mediation and appointing conciliators for the reconciliation process of the couples seeking divorce to see if the partners can sort out the differences. The law also mandates the judge to first act as a conciliator to seek for the reconciliation of the couple first. He can only step into his judicial capacity to commence hearing of the divorce petition when the mediation and conciliation for the reconciliation of the partners fails. It is only when section 11 of the act has been fulfilled by the judge and the parties still want divorce that the judge can go ahead to hear the divorce petition. Therefore, in Nigerian courts, before the prayer for divorce can be granted by the judge, the couple(s) must prove and it must be

¹⁰⁷ Matrimonial Causes Act 1970 (as amended) Cap. M7 LFN 2004, Section 5(d)

¹⁰⁸ MCA, 1970, section 35(c)

¹⁰⁹ Ibid, s.47

¹¹⁰ Ibid, s.11

“manifestly be seen” that the marriage has broken down irretrievably,¹¹¹ this means that the partners and even the court have tried everything to make the marriage work but it’s clearly not working and the partners going their separate ways is the best option at the time being.¹¹² The Act¹¹³ provides thus; A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.¹¹⁴

Marriage Act LFN 2004

The Marriage Act is the primary legislation that provides for the celebration of marriage in Nigeria.¹¹⁵ The only form of marriage recognized in Nigeria under the Act is monogamous marriage (marriage between one man and one woman). Under the Marriage Act 2004, spouses are regarded as equal partners in marriage. This means that husbands and wives enjoy equal rights and responsibilities within the marital union, including decision-making, financial matters, and child-rearing. During the marriage, Spouses are legally obligated to provide financial maintenance and support to each other. The Act acknowledges couples’ obligation to contribute to each other’s well-being, including financial assistance for basic necessities, healthcare, and education. This provision ensures the well-being and stability of the marital relationship. Statutory marriage is initiated by the giving of a notice of marriage by either party to the Registrar of Marriages where the marriage is intended to take place. The notice shall be in Form A and should be signed by the party giving the notice.¹¹⁶ Upon paying the prescribed fees, the Registrar shall publish a copy of the notice by pasting it on the outer door of his office and the notice board of the registry after it has been entered in the

¹¹¹ Ibid, s.15

¹¹² Ibid, s.15

¹¹³ Ibid, s.15(1)

¹¹⁴ Ibid.

¹¹⁵ Ibid, s.30.

¹¹⁶ The Marriage Act, Laws of the Federation (LFN) 2004.

"Marriage Notice Book" and the person must include his or her name, address, and the grounds for the objection in compliance with the provision of section 14 of the Marriage Act.¹¹⁷ Under the Marriage Act, the marriage Registrar must be satisfied by an affidavit as specified by the Act, before issuing the certificate.¹¹⁸ The marriage must be celebrated within three (3) months of the date of the notice of marriage. If the marriage is not held within this period, the notice and other subsequent processes shall become void, and a fresh notice must be given before the parties can lawfully get married.¹¹⁹ However, where the Minister grants a license (in Form D) authorizing the celebration of a marriage between the parties named in the license by a registrar, or by a recognized minister of some religious denomination or body, the requirement of the notice of marriage and registrar's certificate can be dispensed with.¹²⁰ Marriages can be celebrated in a licensed place of worship before any recognized Minister of the church denomination or body to which such place of worship belongs provided that the marriage is celebrated with open doors between the hours of eight (8) o'clock in the forenoon and six (6) o'clock in the afternoon in the presence of two or more witnesses besides the officiating minister.¹²¹

In Conclusion, a statutory marriage (often called court marriage) in Nigeria is a union of a man and woman as defined by the Marriage Act. The Marriage Act is not the exclusive law governing statutory marriage and its validity in Nigeria. Section 3 and 5 of the Matrimonial Causes Act LFN 1990 also provides instances where a marriage could become void or voidable under Nigerian law. Such instances may include where the consent of one of the parties to the marriage was obtained by duress or fraud, or a party is mistaken as to the identity of the other party or the nature of the ceremony performed. From the foregoing, the

¹¹⁷ Marriage Act, LFN 2004, section 7

¹¹⁸ Ibid, s. 14

¹¹⁹ Ibid, s.11(1)

¹²⁰ Ibid, s.12

¹²¹ Ibid, s.13

kind of marriage celebrated under the Marriage Act, also known as the statutory marriage is also dissolved under the Matrimonial Causes Act. That is, while the Marriage Act is the legal framework that governs the celebration of a Statutory marriage and its incidents, the Matrimonial Causes Act on the other hand is the legal framework which governs the dissolution of same marriage celebrated under the Marriage Act.

Same Sex Marriage (Prohibition) Act 2013

The Same Sex Prohibition Act of Nigeria, 2013, (hereinafter referred to as the Act)¹²² being an Act prohibiting any marriage contract or civil union entered into between persons of same sex, solemnization of the same; and for related matters was signed into Law on the 7th day of January, 2014 by the then former President of the Federal Republic of Nigeria, Dr. Goodluck Jonathan.¹²³ That is, the Act makes it illegal for same-sex individuals to marry, enter into a civil union, or gain entitlement to any benefits of a valid marriage.¹²⁴ Additionally, it prohibits the public display of same-sex relationships.¹²⁵ Any marriage or union entered into legally outside Nigeria is considered void within the country and no related benefits are recognized.¹²⁶ The Act specially defines marriage as between a man and a woman and establishes criminal penalties against people who solemnize, witness, or aid various events supporting homosexuality.¹²⁷ The act also prohibits registering any same sex organizations and public displays of same sex romantic affection.¹²⁸ The Act further prescribed

¹²² Ibid, s.33(3)

¹²³ Same Sex (Prohibition) Act, 2013, Laws of the Federation of Nigeria, 2004.

¹²⁴ M. Eseyin, 'Same Sex Marriage Prohibition Act of Nigeria, 2013: A Still Birth? (2015), *Journal of Law, Policy and Globalization*, <https://www.semanticscholar.org/paper/Same-Sex-Marriage-Prohibition-Act-of-Nigeria%2C-2013%3A-Eseyin/bd63cba55987d1cad395f1e6f1353f3ee409490b> accessed 16 January, 2026.

¹²⁵ Same Sex (Prohibition) Act, 2013, section 1

¹²⁶ Ibid, s.4(2)

¹²⁷ Ibid, s.(1) (2) (3).

¹²⁸ Ibid, s.7

Punishments for the contravention of any of the provisions and these includes; imprisonment for 10-14 years depending on the offense.¹²⁹

Maintenance Orders Act Cap. M1 LFN 2004

The Maintenance Orders Act was enacted to facilitate the enforcement of maintenance orders made in England or Ireland in Nigeria and vice versa. The reciprocal provisions of the Act have been extended to the Gambia, Ghana, Sierra Leone, Grenada, the Commonwealth of Australia, etc. In Nigeria, the Matrimonial Causes Act (MCA)¹³⁰ and the Child Rights Act (CRA)¹³¹ both provides for maintenance of dependents. The MCA provides for support for both a spouse and children of the union below the age of 21, if any; however, the CRA is applicable to children below the age of 18 only.¹³² Maintenance is usually monetary, intended to secure the future of the spouse and/or the children of the marriage financially during and/or after the proceedings and not to enrich the spouse.¹³³ The Maintenance Orders Act (MOA) is the primary legislation that regulates the enforcement of maintenance orders in Nigeria. The introductory note of the MOA states that the Act was enacted to facilitate the enforcement of maintenance orders made in England or Ireland in Nigeria and vice versa.¹³⁴ Section 2 of the Maintenance Orders Act defines a maintenance order to mean an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and in respect of Ireland, includes an order or decree for the recovery or repayment of the cost of relief or maintenance

¹²⁹ Ibid, s.(4) (5).

¹³⁰ Ibid, s.5

¹³¹ Cap M7, Laws of the Federation of Nigeria, 1990.

¹³² Cap C50, Laws of the Federation of Nigeria, 1990.

¹³³ A. V Ogunnubi, 'Nigeria: Enforcement Of Maintenance Orders In Nigeria And Across The Globe' (2024) *S.P.A. Ajibade and Co.* <https://www.mondaq.com/nigeria/family-law/1409720/enforcement-of-maintenanceorders-in-nigeria-and-across-the-globe> accessed 15 January, 2026.

¹³⁴ (1974) 2 SC 41.

made by virtue of the provisions of the Poor Relief (Ireland) Acts, 1839 to 1914.¹³⁵ The MOA outlines the steps to be taken for maintenance orders issued in Nigeria to be enforceable in England and Ireland where the person the order is against resides in either England or Ireland, and vice versa. The provision of the MOA only applies to maintenance orders issued by a court, thus, a private arrangement for maintenance must be taken before the court for it to be sanctioned. A reciprocal arrangement extends beyond the two to other nations recognized in the Maintenance Orders Proclamations.

3.3 Institutional Framework for Dissolution of Marriage in Nigeria

The Court

The High Court of each State of the Federation has jurisdiction to hear Matrimonial Causes matter.¹³⁶ However, it is important to bear in mind that, in order to invoke the Court's jurisdiction, the petitioner must be domiciled in Nigeria. 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. The law also mandates the judge to first act as a conciliator to seek for the reconciliation of the couple first.¹³⁷ He can only step into his judicial capacity to commence hearing of the divorce petition when the mediation and conciliation for the reconciliation of the partners fails.

Therefore, in Nigerian courts, before the prayer for divorce can be granted by the judge, the couple(s) must prove and it must be "manifestly be seen" that the marriage has broken down irretrievably, this means that the partners and even the court have tried everything to make the marriage work but it's clearly not working and the partners going their separate ways is the best option at the time being. Also, courts will be hesitant to grant partners divorce for a

¹³⁵ Ibid.

¹³⁶ Matrimonial Causes Act), section 2(1)a

¹³⁷ MCA, s.11.

marriage that is less than two years, this is called the two years rule. Thus, the law provides that it is only with the leave of the court that a proceeding for divorce and separation of marriage that is less than two years can be commenced.¹³⁸ The party seeking the divorce must also prove to the court that the marriage has broken down irretrievably and irredeemably and the court granting the couple divorce is the last and ultimate alternative.

Marriage Registry

Marriage registration and certification is particularly important for women and children. Proof of marital status provides them with legal protection from discrimination in enjoying the benefits accorded by marital union. Divorce (or the dissolution of marriage) is the final termination of a marital union, cancelling the legal duties and responsibilities of marriage between two people. Divorce laws vary considerably between countries but most require the sanction of a court or other authority in a legal process. Divorce certificates are important for alimony (spousal support), child custody, child support, distribution of property and division of debt. Divorce also allows the divorced parties to marry others. By virtue of section 27 of the Marriage Act, marriages can be celebrated in the Marriage Registry before the Registrar after parties to the intended marriage have given notice and obtained the registrar's certificate.¹³⁹ If the parties opt to contract the marriage in the Registrar's office before the Registrar of marriages, the marriage shall be celebrated by the Registrar with open doors, in the presence of two witnesses between the hours of 10am and 4pm.

3.4 Dissolution of Marriages under the Matrimonial Causes Act

The Matrimonial Causes Act of 1970 significantly altered Nigeria's pre-existing divorce law by replacing the former matrimonial offence theory with the irretrievable breakdown factor (i.e. adultery, cruelty and desertion). Therefore, Section 15(1) of the M.C.A. 1970 specifies

¹³⁸ Ibid, s.30

¹³⁹ Marriage Act, section 27.

the following reasons for divorce as opposed to the numerous ones allowed under the previous marriage law:

A petition under this Decree by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably". Thus a petition for divorce which fails to ask for dissolution of marriage on the specific ground that the marriage has broken down irretrievably will not succeed.

Therefore, the word "dissolution of marriage" simply refers to the end of a marriage. The whole of the judicial proceedings is what dissolves the holy union. The marital partners are released from the partnership, and as a result, they go their separate ways. A marriage may be dissolved under statutory law, common law, or Islamic law.¹⁴⁰

Islamic divorce is effective when the husband declares his intention to disown his wife through the breakdown of the marriage. The traditional Sharia Law recognizes three different sorts of divorce.

- a) Talaq
- b) Divorce by mutual consent
- c) Divorce by judicial decrees.¹⁴¹

The unilateral rejection of the wife by the husband is known as a talaq. There are two types of divorce that are based on consent. These are Musawa and Khul. Musawa is the term used to describe the breakup of a marriage based on the repayment of any unpaid debts associated with the union. According to Sharia Law, a divorce can be obtained by a process known as khul, or release, in which the wife harbors resentment toward her husband and convinces him

¹⁴⁰ E S Scott, 'Rational Decision-making about Marriage and Divorce' (n.d.) <https://scholarship.law.columbia.edu/faculty> accessed 1 January 2026.

¹⁴¹ S Patel, 'The Different Methods of Islamic Separation – Part 2: The Different Types of Talaq' <https://www.familylaw.co.uk> accessed 1 January 2026.

to agree to the dissolution in exchange for payment, as in the case of *Husaina v. Tsiriko*.¹⁴² Islamic law is well recognized for requiring the woman to observe a waiting period of three months known as the time of Iddah before the spouses' marital ties are finally severed. This waiting period is required after either party to a marriage under that law has received a judicial divorce. A lady observing her Iddah is not allowed to remarry during that time, according to the Holy Koran. The three months are used as a post-divorce rapprochement measure. According to Islamic law, It is the husband's duty to see that his wife observes Iddah.

The laws governing the dissolution of marriage under customary law are neither as developed or as strict as those governing formal marriage, therefore a procedure that works in one system might not be appropriate in another. Either a non-judicial divorce or an acceptable customary court's ruling can end a marriage governed by customary law.¹⁴³ Customary Law Marriages may be ended without the need for legal action. The non-judicial divorce process can be initiated by the spouses jointly or solely. When spouses disagree, families first try to bring them back together; if this is unsuccessful, they may come to an agreement on how to reimburse the bride price that was paid for the marriage.¹⁴⁴ *Mueller v Mueller*¹⁴⁵ case is illustrative of non-judicial divorce.

3.5 Jurisdiction of Courts in Divorce Proceedings

Jurisdiction here simply means, the court that has the power to entertain divorce proceedings. Section 2 of the Matrimonial Causes Act states that “a person may institute an action under this Act in the High court of any state of the Federation and the High court of the Federal Capital Territory”. Thus, it is the High court of the thirty-six (36) of the Federation and the

¹⁴² (1997) 10 NWLR Pt. 526 P 559

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ (2006) 6 NWLR (PT 977) 627 at 631

Federal Capital Territory that has jurisdiction over divorce proceedings. If divorce proceeding is brought before any court aside the high court of a state, the proceeding is nullity ab initio¹⁴⁶. A simple analogy will suffice here. If Mr. A marries Mrs. A in a marriage registry in Port Harcourt, Rivers State in the year 2010 and in 2015 Mr. A and Mrs. A moved to Lagos after their marriage but later Mrs. A was seduced by one rich politician and Mr. A wants a divorce. Where would Mr. A go to institute the proceeding for divorce? The law is that he may go back to Port-Harcourt in Rivers State or he may go and institute the divorce proceeding in Lagos State where he is currently residing or that he can go to any state of the Federations and the proceedings will be competent. However, consider a situation where Mr. A while still residing in Lagos and his wife, Mrs. A is also residing in Lagos decided to take the matter to the High Court of Kano state so that the proceedings will be inconvenient and difficult for Mrs. A, though the proceeding is still valid and competent, but the principles of Forum Convenience“ will be brought to play in the issue of Jurisdiction so as to ameliorate the issue of Inconvenience and the power of the court to transfer such petition may be invoked. Such power has been given to the Court by Section 9 of the Matrimonial Causes Act. Under that Section, the courts are empowered to transfer Matrimonial Causes to any court in any other state if it is in the interest of Justice that such divorce proceeding be dealt with in that other Court as seen in *Adegoroye v Adegoroye*¹⁴⁷; *Ani vs. Ani*¹⁴⁸

3.5.1 For the court to have Jurisdiction for a petition for dissolution of Marriage, the petition must be accompanied by the following documents:

- (a) A verifying Affidavit to verify the fact stated in the petition
- (b) A notice of the petition in appropriate form i.e. forms 8, 9 or 10

¹⁴⁶ Section 2 of Matrimonial Causes Act makes it mandatory that any divorce proceeding of any statutory marriage in Nigeria must commence at High Court of a State or FCT High Court.

¹⁴⁷ (1996) 4 N.W.L.R Pt. 433 p.712

¹⁴⁸ (2002) 6 N.W.L.R Pt. 762

- (c) A form of acknowledgement of service by the respondent and;
- (d) A copy of the Marriage certificate

It should also be noted that there are instances where the marriage certificate has been lost, destroyed or one of the spouse has refused to give up the marriage certificate as he or she is unwilling to submit to divorce proceedings. The proper step under this situation is for the petitioner to apply for the certified true copy (CTC) of the marriage certificate at the appropriate marriage registry.

3.5.2 Reconciliation

The Matrimonial Causes Act and Matrimonial Causes Rules do support settlement and resolution of dispute by encouraging reconciliation among parties. No petition would properly lie in court for consideration without the petitioner or his counsel showing the court that they have made effort to settle the aggrieved parties, but such moves for settlement has yielded no fruitful results. The reason for this is that, an aggrieved petitioner may take a decision in anger and institute a divorce proceeding, and also for the Pcourt to stem the ever-increasing rate of divorce in our society, this is seen according to order II, rule 33 Section 34 matrimonial cause rule.

3.5.3 Recognition of Marriages Contracted Outside Nigeria

Ordinarily, Nigerian Courts recognise statutory marriages contracted in Nigeria. However, it provides the conditions in which Nigerian courts will recognise a foreign statutory marriage thus:¹⁴⁹

“Subject to sections 50 to 53 of this Act, a marriage between parties one of whom is a citizen of Nigeria, if it is contracted in a country outside Nigeria before a marriage officer in his office, shall be valid in law as if it had been contracted in Nigeria before a registrar in the registrar office.”

¹⁴⁹ Section 7 of the Matrimonial Causes Act (“the Act”)

The conditions stipulate in¹⁵⁰ are that for such marriage to be recognised and valid under Nigerian law with a marriage must have been contracted before a Nigerian Diplomat or Consular office of the rank of Secretary or above, at his office. The office used by a marriage officer for the performance of his diplomatic or consular duties shall be regarded as the marriage officer's office for the purposes of the Act. The Act shall apply in relation to a marriage contracted before a marriage officer as nearly as may be contracted before a marriage registrar in Nigeria.

In the same vein, since Nigeria is a common law country, common law rules on recognition of foreign marriages on the basis of the law of the place where the marriage was celebrated (loci celebrations) applies. This is given credence by the Act.¹⁵¹ The Section provides that a marriage will be declared void if it is not a valid marriage under the law of the place where the marriage was celebrated, by reason of failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages. Therefore, marriages which are validly contracted in the place of celebration will be recognised in Nigeria and shall confer jurisdiction on Nigerian Courts.

Also, the Act¹⁵² provides for evidence of marriage thus;

Every certificate of marriage which shall have been filed in the office of the registrar of any district, or a copy thereof purporting to be signed and certified as a true copy by the registrar of such district for the time being, and every entry in a marriage register book, or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any court of justice or before any person having by law or consent of parties authority to hear, receive, and examine evidence.

¹⁵⁰ Section 49 of the Act

¹⁵¹ Section 50 to 53 of the Act

¹⁵² Section 3(1) (c) of the Act

Consequently, upon presentation of a certificate of marriage duly certified by the registrar of a foreign district, such certificate shall be admissible as evidence of the marriage by Nigerian courts.

3.6 Dissolution of Marriage under Customary Law

The customary law marriage however is a bilateral contract between the husband and his family on the one hand, and the wife and her family on the other hand. Generally, either the husband or the wife may initiate divorce action. The unilateral act of one party, and especially of the wife, cannot bring about a divorce. The families of the two spouses participate in divorce proceedings as they did in contracting the marriage. The family of the wife can also initiate the termination of their daughter's marriage. In such a situation they would have obtained the consent of their daughter. They initiate the divorce by withdrawing her from her husband's home and refunding the marriage symbol.¹⁵³ However, if she withholds her consent by refusing to leave her matrimonial home, their refund of the marriage symbol will have no effect whatever on the marriage¹⁵⁴. Members of the husband's family lack the right to directly initiate their son's divorce,¹⁵⁵ but can indirectly induce their son to start divorce action against his wife.¹⁵⁶

With particular reference to Okirika Division in the Rivers States under the system of marriage known as *Iya* a husband can take steps to divorce his wife but the wife is not permitted by the local customary. Wife cannot initiate the process unless her husband

¹⁵³ S.N.C. Obi *The Ibo Law of Property* (London, Butterworth and Co 1966) p 364, that "A wife can leave her husband at will, and would be removed by her relatives from a husband who had consistently ill-treated her"; also *Lawal v. Lawal*, (unreported) Customary Court Ake-Abeokuta, reported in *Lagos Weekend*, 7 July, 1989, where both the husband-petitioner and the wife-respondent testified that "her father advised her to find another man...", she left her husband and found herself another man for whom she became pregnant prior to the petition.

¹⁵⁴ S.N.C. Obi; *The Manual Customary Laws obtained in Anambra and Imo States* (Enugu, Government Printer, 1977), at p. 299.

¹⁵⁵ *Ibid* at p. 290.

¹⁵⁶ (1972) Suit No. 43/72 (unreported) Eket Customary Court.

consents to her doing so. If he refuses to give his consent, the marriage will continue to subsist. If the wife leaves him subsequently, then any child she bears for another man is regarded as belonging to her husband. In the case of *Solomon v Gbobo*,¹⁵⁷ the wife's father sought an order to compel his daughter's estranged husband to consent to the divorce she sought to initiate.

3.7 Procedure for Dissolving Customary Law Marriage

Customary law does not prescribe any length of time a party must be married before initiating a divorce action. A divorce can take place at any time after the celebration of a marriage. This is in contradistinction to an Act marriage where divorce action must start at any time after two years of the marriage, except where obtaining a divorce decree will offset exceptional hardship on the part of the petitioner.¹⁵⁸ Divorce of customary law marriage may be obtained either by the judicial or the extra-judicial mode.

3.7.1 Extra-judicial Mode

Many people look on customary law marriage as easily dissolved is consequent upon this mode of divorce. This traditional mode does not require any formalities as it is the case under the Marriage Act. An Act marriage can only be dissolved by a court of law which has jurisdiction under the M.C.A 1970,¹⁵⁹ and never extra-judicially. A man may initiate termination of his marriage by conducting himself in any of the following ways:

(a) throwing out one or more of his wife's cooking utensils or other personal effects, so that the wife packs them up and returns to her maiden home¹⁶⁰;

¹⁵⁷ (1975) E.C.S.N.L.R. 457.

¹⁵⁸ S.27 of the Marriage Act, CAP. 218, Laws of the federation of Nigeria, 1990.

¹⁵⁹ Ibid.

¹⁶⁰ See *Okpanum v. Okpanum*(1972) 2E.C.S.NB.L. 581, AT P. 565, where Agbokoba J. stated; "it is sufficient to arrange a meeting where he duly informs his parent-in-law of his intention to bring the marriage to an end"; see *The Customary Law Manual*.

(b) getting his wife to follow him to her maiden home, carrying a pot of palm-wine he has purchased, and on reaching there telling her father or guardian: “This is your daughter whom you gave me in marriage, now take her back please”;¹⁶¹

(c) quitting the matrimonial home and telling his wife that he is through with their marriage. This is a modern mode in Nigerian society and occurs mostly in the circle of less privileged men who have married women of affluence, who themselves either own the house used as the matrimonial home or have been financially responsible for their husbands. This class of men is inclined to quit the matrimonial home once their wives have set them up financially.

Exemplified this system of divorce further by saying, Jordan:

A man divorced his wife by simply ordering her out of the compound. There was no other technicality about it, though he generally added a wealth of symbolism of flying her cooking pots after her. The fact that he had this extra-ordinary power served more than anything else to keep women in subjection. In practice, it did not occur without very serious reasons, because it caused endless complications.¹⁶²

A wife who desires to dissolve her customary marriage can, on the other hand, initiate the process herself in any of the following ways:

(a) taking all her personal effects and quitting their matrimonial home, informing her husband that she is through with the marriage;

(b) indulging in promiscuity while still in the husband’s house;

(c) going through the preliminaries of a subsequent customary marriage with a view to refunding the husband the marriage symbol he had given, from the symbol that the prospective husband would give on her marriage.¹⁶³

¹⁶¹ S.N.C. Obi (ibid)

¹⁶² See *Solomon v Gbobo*(1974)E.C.S.N.L.R. 457; *Edet v. Essien*, (1932)11 N.L.R. 47

¹⁶³ *Chawere v. Hannah and Johnson* (1935). (supra)

3.7.2 Judicial Mode

In this situation, “A man can...divorce his wife by bringing her before the courts and giving sufficient reasons. A woman cannot divorce herself but she can bring her husband before the courts and obtain release from him if the courts decide his guilt”.¹⁶⁴ Whereas in the extra-judicial mode dissolution of the marriage can be initiated by a third party i.e. the wife’s maiden family in connection with their daughter, in the judicial mode either spouse can bring an action, with or without her family. Judicial action is almost always brought when agreement cannot be reached extra-judicially over the quantum of the marriage symbol to be refunded to the husband, or where the husband has refused to accept the marriage symbol and so the wife is not free to remarry,¹⁶⁵ or where the wife has refused to leave the matrimonial home after the husband has sought to terminate the marriage. Thus, in effect, in some cases of customary divorce, the judicial mode is resorted to in order to obtain the *dejure* divorce after a partial performance of the extrajudicial mode.¹⁶⁶

In the first instance, the wife alone or with her maiden family may initiate action in court in the hope that the court will decide that the quantum refundable is no more than the maximum stipulated by the law.¹⁶⁷ In the other instances, the husband initiates legal action. It is usual for the courts to attempt reconciliation between the spouses. Failing this, and without any local legislation which gives the courts the discretionary power to refuse granting a divorce, it proceeds to settle the issues which are the crux of the case, after declaring the marriage dissolved. The courts may on occasion however, refuse to grant divorce of a customary marriage if the interests of the children of the marriage will be jeopardised. Declaring that:

¹⁶⁴ See *Solomon v Gbodo* (1974) Supra.

¹⁶⁵ See S.N.C. Obi; *Modern Family Law in Southern Nigeria* (London, Sweet and Maxwell 1963) p. 136s.

¹⁶⁶ See Laws of Eastern Region of Nigeria, 1963. Cap. 76.

¹⁶⁷ (1972) Suit no. 43/72. (Unreported). Eket C.C.

“the issue of the children is very important”, the court in *F. Bassey v E. Isich*¹⁶⁸ ordered the couple to continue to live together as man and wife for another year to allow the wife to show signs of improvement in her behaviour.

3.8 Reasons for Seeking Divorce in Nigeria

The following are the ten most commonly cited reasons for divorce, drawn from various records, and in no particular order.

Differences in priorities

A difference in priorities, which a lot of men and women discuss and anticipate prior to their marriage, can become major issues at a later stage.

Religious, cultural or ethnic differences

Couples of different religious, cultural or ethnic background may sometimes disregard the expectations of each other’s religion/culture/ethnicity, causing resentment. Conflict can also arise when children are involved, as most parents prefer their children to take on their own traditions.

Parental responsibilities

It often happens that spouses aren’t able to constructively co-parent their children. Differing ideas on how to raise children commonly cause rifts in a marriage. They may have different approaches to discipline, with one parent taking the hardline while the other goes for a softer approach. This can lead to the children favouring the one parent over the other, forming two camps, and creating tension and resentment in the marriage.

¹⁶⁸ Ibid.

Finances

When times are tough, marriages take strain. Married couples, whether happy or not, may disagree about certain financial issues, which if not resolved can put undue stress on their relationship.

Sexual incompatibility

Men and women differ emotionally, mentally and sexually. Things change as the marriage progresses, i.e. children are born, health challenges arise and careers change. All these things can impact a couple's sexual relationship. If a spouse is not being physically fulfilled, he/she will look elsewhere. In most cases, sexual dissatisfaction will result in divorce.

Addiction

Addiction of any kind is like a black hole, sucking in everything in its path of destruction, throwing family life off balance the stronger it gets, putting undue strain on relationships. Whether the addiction is to alcohol, drugs or, increasingly, pornography or social networking, the effect is the same.

Social networking

Social media is affecting privacy and family interaction more and more, as it blurs the lines between public and private domains. The nature of these media outlets encourages free-spirited posting, commenting and sharing of information, often thoughtlessly. Spouses who spend countless hours on social networks to the exclusion of valuable family interaction, create a disconnect that often cannot be repaired, and divorce follows. What is posted on social networking sites is not as private as many think, and flirting is cited as the cause of an increasing number of divorces. With a multitude of profiles just a click away, it has made it really easy for people to see if the grass is greener on the other side.

Infidelity

Infidelity/adultery, more commonly known as 'cheating', is near the top of the list of reasons for divorcing in South Africa. Adultery is defined as extramarital sex that willfully and maliciously interferes with marriage relations, leading to the irretrievable breakdown of the marriage relationship. Infidelity undermines the root of the relationship, namely trust, and is a violation of the mutually agreed rules or boundaries that a couple assumes when they start their relationship.

Abuse

Abuse is one of the top reasons for divorce. Abuse occurs in all age groups, ethnic groups and class groups, and comes in a variety of forms, from physical abuse (domestic violence) to verbal, emotional, psychological and even financial abuse. It can include things like telling a child they are unwanted, name-calling, ignoring, restricting a person to a room, monitoring phone calls, forcing a spouse into doing something that he/she is uncomfortable with and withholding finances. Abusers can be male or female and abuse can occur in heterosexual relationships, same-sex relationships and parent-child relationships. While women and children are the most victimised, men are also abused, especially verbally and emotionally, although sometimes physically too.

Lack of communication

Lack of communication is the single biggest cause of divorce and accounts for almost 70% of all marital breakdowns. Without proper communication, no relationship can survive. Good communication does not mean always agreeing with each other. Couples with communication problems that usually lead to divorce are often unable to find a middle ground and are unwilling to compromise. A lack of communication in any area of a marriage can cause major damage to the relationship. Many couples lack communication when it

comes to making decisions about finances, leading to financial problems and endless arguments.¹⁶⁹

3.9 Challenges Facing Dissolution of Marriage in Nigeria

The effect of a decree of dissolution is to return the parties to single status with consequent capacity to contract a new valid marriage. This was succinctly stated by Justice Gray of the United State Supreme court in *Atherton v Atherton*.¹⁷⁰ However the reversal to single status is not the only effect of divorce. Divorce is associated with heart rending emotions, unspeakable sadness, depression, anxiety and much more. It leads to the creation of two households rather than one, with consequent increased cost and all parties involved suffer these effects. It also creates problems which impact upon the legal relations of the parties, children and society in general.¹⁷¹

Custody of Children

The term ‘custody’ has two meanings. In its first sense, it refers to the sum total of rights which a parent could exercise in respect of his child and may be regarded as equivalent to guardianship. These rights which continue until a child attains maturity or marries includes power to control education, the choice of religion, withhold consent to marriage and the administration of the infants property. It is this definition this study would rely on. On the other hand, in a narrower sense, ‘custody’ means the physical care and control of the child.¹⁷² It is an open secret that parents often forget or neglect the interest of their children when considering divorce. Children constitute the dependent part of the society and they need constant and continued care. As far as their divorce is successful, parents consider it a “clean

¹⁶⁹ Ubong Umoren, *Ten Most Commonly Cited Reasons for Divorce* (15 November) <https://share.google/oB31bi1EJmOZ7udW8> accessed 17 January 2026.

¹⁷⁰ 166 118 USA 155 [1901]

¹⁷¹ P Ibanitoru, 'Dissolution of Statutory Marriage in Nigeria: Problems and Prospects' (2015) Faculty of Niger Delta University Wilberforce Island, Bayelsa State.

¹⁷² [1969] 3 All ER 578.585 C.A

break-up".¹⁷³ Unknown to them, they launch the disruption of the lives of the products of the marriage. This further affects the psyche and welfare of the children as they will almost certainly see less of one parent from then on, a most depressing prospect. In determining questions of custody, the court besides every other thing considers the interests of the children to be paramount, pays regard to factors, none of which is accorded overwhelming importance.¹⁷⁴ These factors include: a.)The wishes of the child¹⁷⁵; b)Education and religion; c)The conduct of the parties¹⁷⁶; d.)The age and sex of the children¹⁷⁷e) Adequacy of arrangement for the child¹⁷⁸; f) Medical and Psychological factors¹⁷⁹; g) Putting brothers and sisters together.¹⁸⁰

Settlement of Property

Spouses married statutorily under the Act,¹⁸¹ may on the dissolution of the marriage apply to the court for settlement of their properties. Such a claim must however be made in the petition, or in the respondent's answer. In *Anyagbai v. Anyagbai*,¹⁸² the wife's (respondent) prayer for settlement of property in her favour was dismissed by reason only that it was not contained in her answer but was 'only thought of later from the ingenuity of her counsel'. In the determination of settlement issue, the court may make an order for the settlement of property to which both or either of the parties is entitled, whether in possession or in reversion, for the benefit of both or either of the parties (and the children of the marriage). The court will make the order as it considers just and equitable in accordance with the

¹⁷³ Ibid.

¹⁷⁴ [1980] 7-9 CCHCJ 239

¹⁷⁵ See *Allgood v. Hunt* 353,S.E 2d 699(1987).

¹⁷⁶ See *Okafor v Okafor* [1976] 6 CCHCJ 1927; *Williams v Williams* [1987] 2 NWLR 66

¹⁷⁷ See Re S [1958] 1 WLR 391; Re F [1969] 2 CH 238; *W v. W and C* [1968] 1 WLR 1310

¹⁷⁸ Re C (M.A) [1966] WLR 646.

¹⁷⁹ S(BD) v. S(D.J) [1977] Fam.179.

¹⁸⁰ (1980) 7-9 C.C.H.C.J 239.

¹⁸¹ Marriage Act Cap M6 LFN 2004.

¹⁸² (1979) 10-12 C.C.H.C.J 255.

provisions of the Act.¹⁸³ The Court of Appeal in *Akinbuwa v Akinbuwa*¹⁸⁴ approved as fair, just and equitable the order of the trial court for the settlement of movable and immovable properties of the husband on his wife and children on the dissolution of the marriage. In *Mueller v Mueller*,¹⁰⁰ the property in dispute on the dissolution of the marriage was found to be jointly owned by the parties. The CA shared the property equitably between them.

Lack of Maintenance

Section 70 of the Act,¹⁸⁵ confers on the High Court, the appropriate application of the power to make orders for two types of maintenance: maintenance per se and maintenance pending the disposal of proceedings in favour of a spouse or the children of the marriage. The section effected an important change in the law ,as the Supreme Court correctly observed,¹⁸⁶ “Not only have the provision done away with the confusing terminologies of ‘alimony’ and maintenance by using the word ‘maintenance’ even when alimony in the conventional sense is intended, they have also presumably done away with the rule concerning one-fifth of the joint income for the wife (which in any case had its origin in the practice of the ecclesiastical courts), and have submitted a more reasonable yardstick.” From the foregoing, it is obvious that maintenance is also referred to as ‘Alimony’.¹⁸⁷ This has been defined by Black’s Law Dictionary as, “A court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced”.¹⁸⁸ Under Section70 of the Act,¹⁸⁹ the court has a general power to make maintenance order with respect to the children of the marriage. But that power

¹⁸³ Matrimonial Causes Act Cap M7 LFN 2004, S.72(1)

¹⁸⁴ (1998) 7NWLR (pt 559) 661 at pp674-675.

¹⁸⁵ (2006) 6NWLR (pt 977) 637 at pp 644-645.

¹⁸⁶ Matrimonial Causes Act Cap M7 LFN 2004.

¹⁸⁷ [1974] ECSLR 706

¹⁸⁸ Matrimonial Causes Act Cap M7 LFN 2004, s.70

¹⁸⁹ Black's Law Dictionary (8th ed. 2004)

cannot be exercised for the benefit of a child who has attained the age of twenty-one years unless the court is of the opinion that there are special circumstances which necessitate the making of such an order. The phrase 'special circumstances' implies that there must be some good reason to equate a child who is over 21 years of age to one who is below 21. Thus, the Act adequately provides for maintenance of children of a dissolved marriage. The issue frequently encountered here is that most divorcing spouses are too busy presenting evidence in proof of 'irretrievable breakdown' than in securing the welfare of their children.

Time Consuming

Dissolution of marriage in Nigeria can be said to be time consuming and a little expensive, as it has been widely reported. At the customary level dissolution may be as quick as 3 months in customary, especially where there are no contentions. But the dissolution of statutory marriage in High Court may never be less than 6 months even without any contention. In fact, a highly contentious divorce case could take more than 2 years to be concluded. This brings about distractions in work places and also, the saying of time being money comes to play. Most people contemplating the dissolution of a marriage often wish to know the cost of getting a divorce in Nigeria. The truth is that there is no specific or fixed cost for such a process. The reason is that divorce proceeding involves proper litigation, which can be won or lost. In this regard, it is advised that anyone contemplating divorce should talk and bargain with his or her lawyer for an affordable cost. However, a lawyer would likely charge lower for a divorce matter that is unlikely going to be very contentious or for customary marriage's divorce case, compared to extremely contentious statutory marriage's divorce. The location of the court where the divorce petition is to be filed can also determine the duration and overall cost of such a process, as the process may be faster to conclude in some courts compared to others. Like it has been previously said above, the important determinant in the cost of divorce is the likelihood of contention in the proceedings. Meanwhile, a divorce

petitioner or respondent contemplating or facing divorce proceedings where matters such as custody of the children and settlement of properties are in high contention is advised to consult an experienced lawyer or law firm for such matter, and bargain for a best possible fee.

Stigmatization

Many couples considering divorce are hesitant to make the decision due to their fear of the stigma they may face. In fact, 1 in 10 divorcees report staying in their marriage after they knew it was over for this exact reason. Although divorce has become a normal part of society and human relationships, a recent study found that half of all couples who divorce feel a sense of shame and failure. This feeling, while natural, is not deserved.¹⁹⁰ Even though divorce is unfortunately a common part of life for many of us, we shouldn't have to put up with so much misunderstanding and judgment from social and religious circle. The stigma surrounding divorce is tied to several things, but most often to the idea that it's a sign of failure. Though, this is only a perception, and a very inaccurate one at that. Divorce is full of disappointment, struggle, pain, and difficulty, but it can be an incredibly powerful force for change. The possibility for growth that comes during and after the process of healing can lead to opportunities we'd given up on or never even imagined.¹⁹¹

3.10 Challenges Facing the Legal Framework for Dissolution of Marriage

Religious Beliefs

Karl Max described religion as the opium of the people. Religion directly influences the inner spiritual being of the people. Religion and morality decree something bad but does not proffer the reasons for its being bad, most times it is a commandment of God. Section 39¹⁹² guarantees freedom of religion. Law is not based on moral adulation or on any religious

¹⁹⁰ Matrimonial Causes Act Cap M7 LFN 2004

¹⁹¹ Ibid.

¹⁹² Matrimonial Causes Act Cap M7 LFN 2004, s.15(2)(h).

injunction, it is an authority or command which must be obeyed just or unjust. I agree with the natural law theorists' threats that postulate that there is always morality and religion intertwined in law.¹⁹³ Whereas law, morality and religion have sanctions in varying degrees i.e. force or coercion for law, religion is fear or suffering in hell fire and morality is reprobation, repulsion and ostracism. Marriage and divorce are two opposite sides of a coin. Marriage signifies the unity of two persons to become one in a Christian conjunction while divorce signifies the disunity of this oneness to become two. The institutions of marriage and divorce in Nigeria are unique due to its philosophy about what makes up an ideal family. This becomes a challenge facing the legal framework for the dissolution of marriage in Nigeria as religion does not support the idea of dissolution regardless of the situation, rather it will opt for the solution of counselling.

Cultural Challenges

When examining different cultural perspectives on divorce, it is vital to approach the subject with cultural empathy. Cultural empathy refers to the ability to understand and appreciate the values, traditions, and perspectives of different cultures. In the context of divorce, cultural empathy allows us to recognise that what may be perceived as acceptable or necessary in one culture between a husband and wife might not be the case in another.¹⁹⁴ Family members play a crucial role in shaping cultural views on divorce. In some cultures, the emphasis on the family unit is so strong that divorce is often considered a last resort. Individuals may feel obligated to stay in an unhappy marriage for the sake of preserving family harmony, satisfying societal expectations, or maintaining the social status quo. Such cultural beliefs prioritize collective well-being over individual happiness. In certain cultural contexts, divorce is viewed not only as the dissolution of a marriage but also as the disruption of the entire

¹⁹³ The 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.

¹⁹⁴ Hon. Justice E.F. Ikponmwon 'Law, Religion, Marriage and Human Flourishing in Nigeria' (2018) Chief Judge Edo State, Nigeria at the sixth Annual International Conference of Aclars on Law and Religion in Africa

family and community. Marriage and family hold immense significance as foundational pillars of society. Divorce can be seen as a threat to the stability of the family unit, potentially impacting the well-being of children, the extended family, and the wider community.¹⁹⁵ Cultural perspectives on marriage and family greatly influence attitudes toward divorce. In some cultures, marriage is considered a lifelong commitment and a sacred bond that should not be easily broken. Divorce is viewed as a failure, often associated with shame or stigma. Consequently, individuals may be encouraged to work through difficulties, seek mediation, or rely on extended family support to preserve the marriage. On the other hand, certain cultures view marriage as a more flexible institution, recognising that relationships can evolve and change over time.¹⁹⁶ Divorce may be seen as a legitimate option when a marriage no longer serves the well-being of both partners. Again, in such cultural contexts, divorce rates might be higher, reflecting a more individualistic approach to relationships and personal fulfilment.

Lack of Reform

There is need for critical analysis of the Nigerian Matrimonial Causes Act.¹⁹⁷ It has become imperative in view of the fact that since the inception of the Act in 1970, there has been no amendment whatsoever in spite of the glaring need for a review and reform of the Act. Criticisms have been levelled against the Act right from its inception and identifies areas that need review and reform. This is as a result of the Nigerian MCA being a product of a military government, in which due processes such as parliamentary debates, due publicity and consultation of relevant stakeholders were not done before its amendment. Furthermore, there are problematic matters arising from the Act such as jurisdictional flaws, contemporary and contentious issues which suggests reform. The Act needs reform in order to be more realistic

¹⁹⁵ Ibid

¹⁹⁶ Lloyd Platt and Co (2023) 'Different cultural view on divorce' <https://www.divorcesolicitors.com/> accessed 21 January, 2024

¹⁹⁷ Cap M7 LFN 2004.

and responsive to social changes in Nigeria and also reflect our sociological background as well as check the disturbing trend of matrimonial challenges in Nigeria. Reform suggested include legally-backed up mandatory seminar for prospective marriage couples, legally-backed up mandatory use of Sociologists and Psychologists in divorce petition proceedings as well as establishment of Specialized Family Courts.¹⁹⁸

3.11 Reform Prospects for Dissolution of Marriage in Nigeria

Efficiency and Effectiveness of the Laws and Policies

The provisions of the Nigerian laws as regards to the dissolution of Marriage can be examined through fault principles and the no fault principles. The dissolution laws which are hinged on the no-fault principle make dissolution of marriages easier and so unwittingly increases the rate of divorce among couples thereby destabilizing the family system with attendant consequences on both parties, the products of the marriage, the extended family and even the society at large.¹⁹⁹ As such, the Nigerian law on dissolution being a combination of fault and no-fault principles requires streamlining through the amendment of the Matrimonial Causes Act 1970 to ensure that the instrumentality of the law is used to strengthen the family institution and not to encourage more broken marriages and homes spewing out frustrated spouses and unattended children lacking parental control and discipline, who become easy targets for various social ills bothering on criminality such as prostitution, armed robbery, child trafficking and such like. Marriage is a very beautiful thing; however, many marriages are falling apart and many feel trapped and long to have the marriage dissolved. The institution of marriage is sacred and our Matrimony causes law does not encourage divorce, hence a mere complaint by either of the party that she/he is no longer in love is not sufficient

¹⁹⁸ Arinze-Umobi, C 'A Case for Reform of the MCA' accessed 12 January, 2026.

¹⁹⁹ Dr Grace Ogonda Akolokwu, B.A. Education; LL.B; B.L; LL.M, Ph.D.; Senior Lecturer, Department of Private

ground upon which the court can grant divorce.²⁰⁰ A valid statutory marriage can only be dissolved by death or by Court pronouncement. The law requires that every petition for dissolution of marriage must contain specific ground or grounds that will fall within the set out facts under sections 15(2) and 16(1) of the Matrimonial Causes Act and the court will pronounce a decree of dissolution of marriage if satisfied on the evidence that a case for the petition has been made.

Improved Maintenance

Under statutory marriage, a wife has the right to be maintained and taken care of by her husband during and after the marriage. This maintenance is important to ensure that a wife is financially secured. The right to maintenance is not protected under customary marriage. The Quran however specifies this right and husbands are responsible for the maintenance of their wives. S.70 of the Act,²⁰¹ allows a court to make orders relating to maintenance of a wife in a marriage. An application for a maintenance order can be brought before the court on its own without an application for separation or divorce. This means that even during a marriage, a wife can ask a court to order her husband to pay her a sum of money periodically for her upkeep. In the case of *Amah v Amah*,²⁰² the court held that the principles guiding assessment of maintenance are: a) the station of life of the parties and their lifestyle, b) their respective means, income and earning capacities, c) the existence or non-existence of child or children in the marriage, d) the conduct of parties, and e) the length of the marriage. In the case of *Trestain v Trestain*,²⁰³ the court held that the fact that a husband obtains a decree for the dissolution of his marriage is in no way a bar to his wife's claiming and obtaining maintenance, since the fact does not necessarily give a true picture of the conduct of the

²⁰⁰ Eunice Tolulope Olatunji (2020) 'Dissolution of Statutory Marriage'https://uk.linkedin.com/in/eunice-tolulope-olatunji?trk=article-ssr-frontend-pulse-lite_publisher-author-card accessed 12 January, 2026.

²⁰¹ Matrimonial Causes Act Cap M7 LFN 2004.

²⁰² (2016) LPELR- 41087-CA.

²⁰³ (1950) probate 198.

spouses. Due to the shift from consideration of the effect of the commission of a matrimonial offence to irretrievably breakdown of marriage, the grant of an order of maintenance has also shifted spotlight from, "who is responsible for the breakdown of the marriage to who of the spouses by virtue of the fact of the dissolution of the marriage is entitled to be maintained by the other spouse". However, this was the view of the learned judge in *Wachtel v Wachtel*²⁰⁴ Denning M.R. observed that: it is no longer appropriate to talk about an innocent or guilty spouse. A court in considering the conduct of the parties is not required to carry out a post-mortem or to hear the mutual recriminations of the parties and go into their petty squabbles for the days on end as was the case under the old law". To this end, the order for maintenance under the Matrimonial Causes Act 1970 does not make a distinction between a man and a woman; either of them can depend on the circumstances of the case, be ordered to pay maintenance to the other spouse or any children of the marriage who is so entitled as the case may be.

²⁰⁴ (1973) Fam 72.

CHAPTER FOUR

DESERTION IN FOCUS: JUDICIAL SEPARATION

4.1 Introduction on Judicial Separation

Marriage is a legal union, which could either be both by law and by custom, where two people agree to come together and live together as husband and wife. They also agree that the provisions of the law govern the union. Not every marriage is rosy, a party in a marriage can choose to leave a marriage any day. He cannot be forced to remain in the marriage, as such will amount to a violation of Section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).²⁰⁵

Are judicial separation and desertion same? Absolutely not, moving forward, you will understand how judicial separation and desertion are not the same. Though both involve separation between spouses, they differ in nature, legal effect, and procedure.

4.1.2 Judicial Separation

Judicial separation means the physical separation between the husband and wife of a statutory marriage as ordered by a court of competent jurisdiction. In the case of *Kasingye v Kasingye*²⁰⁶ the judge, According to Black's Law Dictionary²⁰⁷, Judicial separation" is an agreement whereby a husband and wife live apart from each other while remaining married, either by mutual consent (of them in a written agreement) or by judicial decree.

Section 39 of the Matrimonial Causes Act states that:²⁰⁸

²⁰⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 35.

²⁰⁶ (unreported) cited in Nigerian matrimonial law authorities on judicial separation.

²⁰⁷ Black's Law Dictionary (10th edn, Thomson Reuters 2014) 1572.

²⁰⁸ Matrimonial Causes Act Cap M7, Laws of the Federation of Nigeria 2004, s 39.

“Subject to this part, a petition under this Act by a party to a marriage for a decree of judicial separation may be based on one or more of the facts and matters specified in Section 15(2) and 16(1) of this Act.”²⁰⁹

This means that the grounds for dissolution of marriage is same as the grounds for judicial separation. These grounds are;

1. The respondent has willfully refused to have sexual relations with you
2. Respondent has committed adultery, and the petitioner finds it intolerable to live with the respondent
3. The respondent has behaved in such a way that the petitioner cannot live with the respondent
4. Desertion for at least 1 year
5. The parties have lived apart for a continuous period of 2 years and the respondent did not object to the petition
6. The parties have lived apart for three years
7. The other party has failed to comply with the restitution of conjugal rights for at least a year
8. If the other party has been present from the marriage for such a time to raise reasonable presumptions of death The effect of a decree of judicial separation is that it relieves the petitioner from the obligation to cohabit with the other party to the marriage according to Section 41 of the MCA. While this is ongoing, the court cannot deem that there is desertion going on. Under Section 44 of the Act, it states that a decree of Judicial Separation does not prevent the institution of the petition for divorce if either party to the marriage chooses to petition for a decree of dissolution of marriage.

²⁰⁹ Matrimonial Causes Act, Cap M7, LFN 2004, ss 15(2) and 16(1).

It is also important to note that, the court, where the parties voluntarily resume to start cohabiting, can discharge a decree of Judicial Separation. This is done by both parties applying to the court for an order discharging the decree as provided under Section 45 of the Act.

Judicial separation is suspension of cohabitation duty, but not dissolution of marriage.

Section 41 and 42 of the Act and the case of *Emmanuel v. Funke*²¹⁰ emphasise that a decree of judicial separation relieves the parties from the obligation to cohabit while it is in operation; all other rights, responsibilities, and obligations remain intact. The obligations that are not affected by legal separation include the followings:

1. Neither party can remarry while the decree subsists 2. The marriage is still intact

The welfare, maintenance and education of the children of the marriage must be catered for.

1. Either party may institute an action against the other in contract or tort.
2. Where either of the party dies intestate (without a will) property of the deceased shall devolve to the surviving party.
3. Where the husband is ordered by the decree to pay maintenance to the wife and defaults, he shall be held liable for necessaries supplied for the wife's use.

A decree for judicial separation is not simply granted, the parties must prove either of the facts stated in Sections 15(2) and 16(1) of the Act. A party must file the petition before the High Court of any State in Nigeria.

4.1.2 Differences between Judicial Separation and Desertion

The major keyword to differentiate between judicial separation and desertion is mutual consent. In judicial separation, the parties are aware of the intention to cease cohabitation, and they both agree to live apart with the court order, but in desertion, the deserter just leaves the matrimonial home without informing the other party of his/her intention to cease

²¹⁰ (2017) LPELR-43251 (CA)

cohabitation. The absence of consent in desertion and court order is the sole difference from judicial separation.

Another difference is that judicial separation is done by the court's decree, while desertion is a voluntary act, and no court decree is necessary before a deserter decides to leave the matrimonial home.

Desertion serves as a ground for the dissolution of a marriage, and it also serves as a ground for judicial separation. Desertion is a matrimonial offense, while judicial separation can serve as a remedy for intolerable behaviour of other spouses.

4.2 Case Law and Legal Precedents

Over time, Nigerian courts have developed a body of case law that helps to clarify the conditions under which desertion constitutes a valid ground for divorce. Some key cases in this area include:

*Adesoji v. Ajetomobi*²¹¹: In this case, the court clarified that desertion must be continuous, meaning that the spouse must have been absent without any intention of returning for the duration of the period specified by the Matrimonial Causes Act. The court further emphasized that the petitioner must prove that the departure was without justifiable cause.

*Anioje v. Anioje*²¹²: This case delved into the concept of consent. The court held that for desertion to be established, it must be shown that the spouse left the marital home without the other spouse's consent, and there must be no reasonable cause for the departure.

*Ugbotor v. Ugbotor*²¹³: This case focused on the intention behind the desertion. It stressed that the petitioner must prove the intent of the departing spouse to end the marriage. Simply

²¹¹ (2024) LPELR-61757(CA)

²¹² (2015) LPELR-24586 (CA).

²¹³ (2006) LPELR-7612 (CA)

leaving the marital home temporarily or without the intention to dissolve the marriage would not be sufficient to prove desertion.

*Igbuwe v. Igbuwe*²¹⁴: This ruling examined the elements of desertion and clarified that it was not just about physical absence but also about the withdrawal of emotional and financial support. The court ruled that desertion can be found even if one spouse does not physically leave the home, so long as they withdraw from their marital duties.

*Zaccheus v. Zaccheus*²¹⁵: This case expanded on situations where desertion is mutual. It demonstrated that a petitioner who had abandoned the marital home could still rely on desertion as a ground for divorce if they could prove that the respondent had subsequently deserted them.

4.3 Challenges Petitioners Face in Proving Desertion as a Ground for Divorce under the Matrimonial Causes Act

Desertion is one of the recognised facts upon which a marriage may be dissolved under the Matrimonial Causes Act (MCA) in Nigeria. By virtue of section 15(2)(c) of the Act, a petitioner must establish that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition.²¹⁶ Despite its statutory recognition, proving desertion poses significant legal and evidential challenges for petitioners.

One major challenge is the strict legal elements required to establish desertion. Desertion is not merely physical separation; it consists of two essential elements, *factum deserendi* (the fact of separation) and *animus deserendi* (the intention to permanently bring cohabitation to an end). The petitioner bears the burden of proving both elements concurrently.

²¹⁴ (2023) LPELR- 60748 (CA),

²¹⁵ (unreported) (commonly cited in practice guides on desertion in Nigeria).

²¹⁶ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 15(2)(c).

Demonstrating the respondent's intention to desert is particularly difficult, as intention is subjective and must often be inferred from conduct rather than direct evidence.

Another challenge relates to the requirement of absence of consent and justification. For desertion to be legally established, the separation must be without the consent of the petitioner and without reasonable cause. Where the respondent can show that the petitioner consented to the separation, or that there was a just cause, such as cruelty, persistent abuse, or unreasonable behaviour, the claim of desertion fails. This frequently complicates proceedings, as respondents often raise defences that recharacterise the separation as mutual or justified.

While desertion remains a valid ground for divorce under the Matrimonial Causes Act, the stringent legal requirements and evidential burdens placed on petitioners make it one of the more difficult facts to prove. These challenges underscore the importance of careful legal framing, credible evidence, and judicial discretion in matrimonial proceedings.

4.4 Burden and Standard of Proof in Divorce Proceedings

In divorce proceedings, the concepts of burden of proof and standard of proof play a crucial role in determining the outcome of a case. These principles ensure that claims made by a petitioner are substantiated with sufficient evidence and that the court can make a just decision based on established facts.

Burden of Proof

The burden of proof refers to the obligation of a party to prove the allegations they make in court. In matrimonial matters, the petitioner, who seeks the dissolution of the marriage, carries the primary burden of proof. This means that the petitioner must provide credible evidence to satisfy the court that the grounds for divorce, as specified under the Matrimonial Causes Act,²¹⁷ exist. The respondent, on the other hand, bears the burden of proof only if they

²¹⁷ Ibid.

raise affirmative defences, such as consent, justification, or misconduct that refutes the petitioner's claim.

For example, in a case where desertion is alleged, the petitioner must establish that the respondent abandoned them without reasonable cause for the required statutory period. If the respondent claims that the petitioner consented to the separation or that it was justified due to intolerable conduct, the respondent then has the burden of proving such claims.

Standard of Proof

The standard of proof in divorce proceedings is generally on a balance of probabilities. This standard, which is common in civil cases, requires that the court be satisfied that it is more likely than not that the allegations are true. Unlike criminal cases, where proof beyond a reasonable doubt is required, civil standards are lower but still demand credible and convincing evidence.

In practice, this means that the petitioner must produce evidence that persuades the court that the facts supporting the divorce are more probable than not. This can include witness testimony, documentary evidence, correspondence, or other forms of proof that substantiate the petitioner's claims. Courts exercise discretion and may weigh evidence carefully, especially in cases where credibility of the parties is contested.

4.5 Available Remedies to Petitioner in Divorce Proceedings

A divorce proceeding is a legal process to formally terminate a marriage. Divorce proceeding is usually commenced by way of petition filed against the respondent before the court of competent jurisdiction. In divorce proceedings, there are reliefs that can be granted by the court to either the petitioner or the respondent, depending on the facts of their case. This article focuses on the remedies that are principally available to the petitioner, even though, some of these reliefs may also be grantable to the respondent in deserving cases.

Injunction

An injunction is an equitable remedy granted by the court to compel a party to do or to refrain from doing an act. A court can grant an interim injunction (for limited number of days without hearing the other party) or interlocutory injunction as a temporary order during the course of litigation to compel a party to do or refrain from doing certain acts before the conclusion of the case or perpetual injunction which is usually granted after hearing the case on the merits. For instance, a party in divorce proceedings can apply to the court for an injunction for the maintenance of the issues (upkeep of the children) in the marriage even before the conclusion of the case or to restrain the other spouse from continuing the act which has led to the divorce proceedings e.g. spousal violence or domestic violence. Generally, in an application for an interim injunction, the applicant is required to give an undertaking as to damages that may be sustained by the respondent as a result of a frivolous injunction. However, as decided in a matrimonial case of *Hayes v. Hayes*²¹⁸ failure to give an undertaking as to damages does not nullify the application for injunction.

Dissolution of marriage

This is an important remedy that is available to a petitioner in divorce proceedings. The aim of a petitioner in divorce proceedings is to legally bring the marriage with the respondent to an end. To accomplish that, the petitioner has to establish the reasons why he or she desires an end to the marriage. And such reason must fall under the grounds established in *Section 15(2)*.²¹⁹ The petitioner must prove one or more of the statutory grounds in order to be granted the relief of dissolution.²²⁰ Please note that a decree of dissolution can either be granted or refused by the court. Please note also that there are certain bars or defences to an order or decree of dissolution of marriage which, if established, the court will refuse to grant

²¹⁸ (2000) 3 NWLR (Pt. 648) 276

²¹⁹ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 15(2).

²²⁰ See *Nanna v. Nanna* (2006) 3 NWLR (Pt. 966) 1 CA 25

a decree of dissolution. These bars or defences will be discussed below, namely: Condonation or Connivance.

Condonation and Connivance

A decree of dissolution will be refused where the petitioner has taken certain steps in connivance of the breach complained against. Condonation or connivance is a conditional remission or forgiveness by means of continuance or resumption of marital cohabitation by one of the parties of a known matrimonial offence (committed by the other) that would have constituted a ground of divorce. Once condonation or connivance is raised as a defence by the respondent and established by convincing evidence, the court will refuse to grant for an order of dissolution of marriage. The court will not allow a petitioner who has condoned the respondent's wrongful act to then turn around and use the same act as a ground for a prayer of nullity of the marriage or dissolution as the case may be.²²¹

Collusion

This is an act of conspiracy between two persons for fraudulent or deceitful purpose.²²² It can also be said to be a situation where the spouses have agreed to commit a fraud on the court. Where the court is satisfied that the parties to the suit conspired to deceive or commit a fraud by deceiving the court into granting the relief of dissolution of marriage, the court will refuse such prayer. For instance, where an arranged marriage was made between the parties for a specific goal (e.g. overseas travel or citizenship purposes, etc.) and after the goal must have been achieved by both parties, they then proceed to dissolve the "supposed marriage", the court being aware of this collusion will not grant a relief of the dissolution of the marriage.²²³

Custody of the Child of the Marriage

²²¹ See *Tongo v. Tongo* LPELR 2020 CA.

²²² (2014) LPELR 2839 CA

²²³ Matrimonial Causes Act, *Cap M7, Laws of the Federation of Nigeria 2004, s 27.*

Custody is also a remedy that is available to a petitioner or respondent in divorce proceedings. Custody in family law means the care, control, and maintenance of a child awarded by a court to a responsible adult. Custody involves legal custody (decision making authority) and physical custody (care giving authority), and an award of custody usually grants both rights. This relief determines who is entitled to the legal or physical custody of a child as decided in *Nwosu v. Nwosu*.²²⁴ In the determination of the custody of the child(ren) of the marriage which also entails the determination of the guardianship, welfare, advancement or education of the children of a marriage, the court gives regard to the interests of those children as the paramount consideration. It is on such basis that the court makes its order as to the custody of the issues of the marriage.²²⁵ It should be emphasized that throughout the gamut of matrimonial proceedings, the interest of the child of the marriage, as to his custody and welfare, is held in paramount.

In *Anyaso v. Anyaso*²²⁶, and *Oyelowo v. Oyelowo*.²²⁷ Such is this paramountcy that it has been held by the court that a decree shall not be made absolute until the court is satisfied as to the arrangements made for the care and upbringing of the child of the marriage; and a decree absolute made on an inadvertent or non-compliance with the custody and maintenance of the child shall be declared void.

Maintenance

A petitioner in divorce proceedings can seek a relief of maintenance for himself or herself and also for their child or children of the marriage pending the finality of the divorce proceedings. In assessing the maintenance to which the wife and the children in a marriage

²²⁴ (2011) LPELR- 8664 CA

²²⁵ See *Nanna v. Nanna* (2006) 3 NWLR (Pt. 966) 1 CA 35-36

²²⁶ (1998) 9 NWLR (Pt. 564) 150

²²⁷ (1987) 2 NWLR (Pt. 56) 239

are entitled, the court will have regard to what is fair and equitable based on the evidence adduced by the parties at the trial. The court will also consider the economic trends and the standard of life which the parties to the marriage previously maintained before the proceedings in which the order of maintenance is sought.²²⁸ Please note that maintenance may be granted to a spouse (even in the cases of adultery or other misconducts) if the court deems it necessary in the interest of the child in the custody of the spouse.

The court can therefore in exercising its power under the Nigerian law do all or any of the following: (a) order that a lump sum or a weekly, monthly, yearly or other periodic sum be paid immediately, or (b) order that a lump sum or weekly, monthly, yearly or other periodic sum be secured.

The sum to be awarded for maintenance of a party to a matrimonial proceeding or the child of the marriage shall be determined by, among other facts:

- (a) the stations in life of the parties and their lifestyles;
- (b) their respective means of income;
- (c) the existence or non-existence of child or children of the marriage; and
- (d) the conduct of the parties.²²⁹

Damages

This is the amount of money claimed by (or ordered to be paid to) a person to a court case as compensation for loss or injury. A petitioner in divorce proceedings can also seek damages as part of his or her reliefs. For instance, in the case where the petitioner was deserted by the respondent for a continuous period of at least one (1) year, pursuant to *section 15(2)(d)*,²³⁰ the petitioner can seek a relief of damages as compensation for the troubles he or she passed through by reason of the desertion. A petitioner seeking dissolution on the ground that the

²²⁸ Supra

²²⁹ Supra

²³⁰ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 15(2)(d).

respondent committed adultery can also seek damages as a compensation. However, the court in the case of *Alabi v. Alabi*²³¹ stated that damages on grounds of adultery are not compensatory for the loss which the petitioner has suffered, and consideration may be given to such matters as damage done to the husband by the blow to his honor, the hurt to his family life and injury to his feelings. Please note that in *Hayes v. Hayes*,²³² the Court of Appeal held that even where the plaintiff fails in his or her action, the trial court must still assess the damages due to the plaintiff so that if the plaintiff eventually succeeds on appeal, there will be no difficulty in settling the necessary monetary figures of award and by so doing it would obviate the necessity of sending the case back for such assessment.

Nullity of Marriage

The term “*nullity of marriage*” refers to the legal declaration that a marriage is void or invalid from its inception. In other words, a marriage that is declared *null* and *void* is considered to have never existed in the eyes of the law. A petitioner in divorce proceedings also has the above relief available to himself or herself, as the case may be. A petitioner praying the court to declare a marriage *null* and *void* based on the grounds set out in *section 3(1) of the MCA*²³³ must strictly prove that the marriage was indeed celebrated.²³⁴ A marriage may be declared null and void in favor of the petitioner seeking the relief if the court is satisfied, amongst others, that:

- (a) the respondent at the time of the marriage, was lawfully married to another person;
- (b) the court is satisfied that the parties are within the prohibited degree of consanguinity or affinity;

²³¹ (2007) 9 NWLR (Pt. 1039) CA.

²³² *Supra*

²³³ Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 3(1).

²³⁴ (2009) 12 NWLR (Pt. 1156) 612

(c) the court is satisfied that the consent of the petitioner to the marriage is not real because it was obtained by duress or fraud; or

(d) in *Etebu v. Etebu* the court is satisfied that the petitioner was mistaken as to the identity of the respondent at the time the marriage was celebrated. As mentioned somewhere above, where the petitioner has condoned the lawful marriage entered into by the respondent during the continuance of the subsisting marriage, the petitioner having condoned the act cannot on that basis seek a decree of nullity of the marriage on that ground..²³⁵

²³⁵ (2018) LPELR -46250 CA.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

This chapter presents the major findings arising from the examination of the problems of fault facts in the dissolution of statutory marriage in Nigeria, with particular emphasis on desertion under the Matrimonial Causes Act (MCA). It brings together the key arguments, analyses, and insights developed in the preceding chapters and situates them within the broader discourse on matrimonial law reform in Nigeria.

The chapter distils the core conceptual, doctrinal, and practical issues identified in the study, especially the tension between the statutory recognition of irretrievable breakdown of marriage and the continued reliance on fault-based facts to establish such breakdown. This tension is most evident in the legal treatment of desertion, which remains one of the most technical and controversial grounds for divorce under Nigerian law.

Attention is also given to how the law has defined and applied desertion, including its essential elements and statutory requirements. The chapter reflects on the extent to which these requirements align with the realities of marital relationships and separation in contemporary Nigerian society, as well as the challenges they pose for spouses seeking judicial relief from failed marriages.

Furthermore, the chapter evaluates judicial attitudes and practices in the interpretation and application of desertion as a fault fact. By examining relevant case law, it highlights patterns of strict adherence to technical rules, areas of inconsistency, and the implications of judicial conservatism for access to justice and the effective dissolution of irretrievably broken marriages.

The broader implications of retaining fault-based elements within an ostensibly irretrievable breakdown framework are also assessed. In particular, the chapter considers how fault facts

such as desertion may encourage adversarial litigation, prolong marital disputes, and undermine the objectives of fairness, dignity, and finality that should characterise matrimonial proceedings.

Finally, the chapter proposes practical and doctrinal recommendations aimed at reforming Nigerian matrimonial law to better reflect social realities and contemporary understandings of marriage breakdown. It concludes by emphasising the need for a more realistic, flexible, and humane approach to marital dissolution, one that prioritises substantive justice over technical fault-finding.

5.2 Summary of Findings

The study made the following findings:

This study reveals that although the Matrimonial Causes Act adopts irretrievable breakdown of marriage as the sole ground for dissolution, the facts required to establish such breakdown, particularly those contained in section 15(2)(a)–(h), retain strong fault-based characteristics. Desertion, as examined in this study, exemplifies the persistence of fault theory within Nigerian matrimonial law. The requirement that a petitioner must prove desertion for a continuous period of at least one year immediately preceding the filing of the petition underscores the law's continued reliance on blame and wrongful conduct, notwithstanding the stated objective of focusing on the breakdown of the marriage itself.

A key finding of the study is that desertion is one of the most technical and complex fault facts under the MCA. The elements of desertion *factum deserendi* (the physical act of separation) and *animus deserendi* (the intention to permanently bring cohabitation to an end) must coexist throughout the statutory period. In addition, the petitioner must establish the absence of consent and the absence of reasonable cause for the respondent's withdrawal from

cohabitation. These cumulative requirements impose a heavy evidential burden on petitioners, many of whom are already emotionally and financially strained by marital breakdown.

The study further finds that proving *animus deserendi* poses significant practical challenges. Intention is a subjective mental element, often inferred from surrounding circumstances rather than direct evidence. Nigerian courts have consistently required clear and convincing evidence of intention to desert, which may be difficult to establish where separation occurs gradually, informally, or in response to persistent marital conflict. As a result, many petitions fail not because the marriage is viable, but because the petitioner is unable to satisfy the stringent technical requirements imposed by law.

Another important finding is that the distinction between desertion and related concepts such as separation, constructive desertion, and justified withdrawal from cohabitation remains blurred in judicial practice. While Nigerian courts recognise constructive desertion—where the conduct of one spouse drives the other out of the matrimonial home—the threshold for establishing such conduct is often high. This has led to inconsistent decisions and uncertainty, thereby undermining predictability and fairness in the application of the law.

The study also finds that the requirement that desertion must be without reasonable cause operates harshly against spouses, particularly women, who leave the matrimonial home due to cruelty, neglect, economic deprivation, or threats to personal safety. In such cases, the law may technically regard the departing spouse as the deserter, unless sufficient evidence of justification is produced. This approach fails to adequately reflect the lived realities of many Nigerian marriages and may perpetuate injustice under the guise of legal formalism.

Judicial attitudes towards desertion, as revealed through case law, show a cautious and often conservative approach. Courts tend to adhere strictly to statutory requirements and precedent, sometimes at the expense of substantive justice. While this judicial restraint promotes

certainty, it also contributes to prolonged litigation and the maintenance of marriages that are clearly irretrievably broken in fact, if not in law.

Furthermore, the study finds that the continued reliance on fault facts such as desertion encourages acrimony, exaggeration, and, in some cases, fabrication of evidence. Parties are incentivised to portray one another as blameworthy in order to secure relief, thereby exacerbating hostility and undermining the possibility of amicable settlement. This adversarial process is inconsistent with the modern understanding of marriage breakdown as a complex social phenomenon rather than a simple consequence of individual wrongdoing.

Overall, the study concludes that desertion, as presently conceived and applied under Nigerian matrimonial law, often frustrates rather than facilitates access to divorce. The technicality, rigidity, and fault-oriented nature of the concept undermine the professed irretrievable breakdown principle and call into question the continued suitability of fault facts in contemporary Nigerian society.

5.3 Recommendations

In light of the foregoing findings, the study makes the following recommendations:

1. The Matrimonial Causes Act should be amended to reduce or eliminate the fault-based character of the facts used to establish irretrievable breakdown, particularly desertion, in favour of a clearer and more straightforward no-fault divorce regime.
2. The statutory requirement of proving animus deserendi should be reconsidered, with greater emphasis placed on the objective fact of prolonged separation rather than subjective intention.
3. The law should expressly recognise prolonged separation, irrespective of fault, as sufficient evidence of irretrievable breakdown of marriage.

4. Judicial guidelines should be developed to ensure a more consistent and flexible interpretation of desertion and related concepts such as constructive desertion and reasonable cause.
5. Greater protection should be afforded to spouses who withdraw from cohabitation due to cruelty, neglect, or other forms of intolerable behaviour, so that such withdrawal is not easily construed as desertion.
6. Alternative dispute resolution mechanisms, including mediation and counselling, should be strengthened within the matrimonial causes framework to reduce acrimony and encourage amicable settlements.
7. Continuous judicial education should be provided for judges handling matrimonial causes, with emphasis on the social realities of marriage breakdown and the need for substantive justice.
8. Law reform bodies and stakeholders should undertake periodic reviews of matrimonial legislation to ensure that it reflects contemporary social values and international best practices.

5.4 Conclusion

This study has examined the problems associated with fault facts in the dissolution of statutory marriage in Nigeria, with particular focus on desertion. It has demonstrated that, despite the formal adoption of irretrievable breakdown of marriage as the sole ground for divorce, Nigerian matrimonial law retains deep-rooted fault-based elements that complicate and, in many cases, undermine the divorce process.

Desertion, as analysed in this work, stands out as a highly technical and contentious fault fact. Its strict elements *factum deserendi*, *animus deserendi*, absence of consent, absence of justification, and the statutory time requirement create significant hurdles for petitioners.

These hurdles often result in the prolongation of marriages that have, in reality, irretrievably broken down. Rather than serving as a neutral indicator of marital failure, desertion frequently becomes a battleground for allocating blame.

The study further concludes that the persistence of fault facts encourages adversarial litigation, emotional distress, and strategic manipulation of evidence. This approach is at odds with the evolving understanding of marriage and divorce, which increasingly emphasises personal autonomy, dignity, and the practical realities of marital relationships. In a society undergoing rapid social and economic change, rigid adherence to fault-based divorce appears increasingly anachronistic.

Ultimately, the study argues that meaningful reform of Nigerian matrimonial law is both necessary and inevitable. A shift towards a more flexible, humane, and genuinely no-fault system of divorce would better serve the interests of justice, reduce unnecessary conflict, and align the law with contemporary social realities. Until such reforms are undertaken, desertion will likely remain a problematic and contentious feature of the dissolution of statutory marriage in Nigeria.

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