

MATRIMONIAL CAUSES ACT

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MATRIMONIAL CAUSES ACT

An Act to make provisions for matrimonial causes.

[1970 No. 18.]

[Commencement.] PART I

Jurisdiction

[17th March, 1970]

1. Institution of matrimonial cause proceedings only under this Act

(1) After the commencement of this Act, a matrimonial cause shall not be instituted otherwise than under this Act.

(2) If a matrimonial cause has been instituted before the commencement of this Act but not completed, it shall be continued and dealt with only in accordance with the provisions of this Act.

(3) Where before or after the commencement of this Act a matrimonial cause has been instituted, and whether or not it has been completed, proceedings in relation thereto for any relief or order of a kind that could be sought under this Act shall be instituted after the

commencement of this Act only under this Act, so however that, subject to the succeeding provisions of this and the next section--

(a) any jurisdiction of a court of summary jurisdiction of a State or of a court of appeal from such a court, under the law of that State, to make—

(i) orders with respect to the maintenance of wives or children or of access to children; or custody

(ii) separation orders or other orders having the effect of relieving a party to a marriage from any obligation to cohabit with the other party,

shall not be affected by this Act or any proceedings thereunder; and

(b) proceedings for or in respect of such an order, or for its enforcement, may be continued or instituted as if this Act had not been made.

(4) Where a marriage is dissolved or annulled by a decree of a court of competent jurisdiction under this Act-

(a) any jurisdiction of such a court or of a court on appeal from such a court, to make orders of the kind specified in subsection (3) (a) of this section shall, by virtue of this subsection, cease to be applicable in relation to the parties to the marriage or the children of the marriage; and

(b) any order of that kind (unless it is a maintenance order, when subsection (6) of this section will apply) made by such a court in relation to those parties or children shall cease to have effect.

(5) A court in the exercise of its jurisdiction under this Act may at any time by order direct that an order of the kind specified in subsection (3) (a) of this section made by a court of summary jurisdiction, or by a court on appeal from such a court, shall cease to have effect; and that order shall cease to have effect accordingly.

(6) Where an order of the kind specified in subsection (3) (a) of this section made with respect to the maintenance of a wife or of children ceases to have effect under subsection (4) or (5) of this section, the order made may, in so far as it relates to any period before it so ceased to have effect, be enforced as if this Act had not been made.

2. Jurisdiction in matrimonial causes

(1) Subject to this Act, a person may institute a matrimonial cause under this Act in the High Court of any State of the Federation; and for that purpose the High Court of each State of the Federation shall have jurisdiction to hear and determine--

(a) matrimonial causes instituted under this Act; and

(b) matrimonial causes (not being matrimonial causes to which section 101 of this Act applies) continued in accordance with the provisions of Part IX of this Act, so however that jurisdiction under this Act in respect of matrimonial causes within this paragraph shall be restricted to the court in which the matrimonial cause was instituted,

and in any case where maintenance is ordered in proceedings in a High Court, a court of summary jurisdiction in any State shall have jurisdiction to enforce payment in summary manner.

(2) Proceedings for a decree--

(a) of dissolution of marriage; or

(b) of nullity of a voidable marriage; or

(c) of nullity of a void marriage; or

(d) of judicial separation; or

(e) of restitution of conjugal rights; or

(f) of declaration of marriage, may be instituted under this Act only by a person domiciled in Nigeria.

(3) For the avoidance of doubt it is hereby declared that a person domiciled in any State of the Federation is domiciled in Nigeria for the purposes of this Act and may

institute proceedings under this Act in the High Court of any State whether or not he is domiciled in that particular State.

3. Void marriages and prohibited degrees of consanguinity

(1) Subject to the provisions of this section, a marriage that takes place after the commencement of this Act is void in any of the following cases but not otherwise, that is to say, where--

(a) either of the parties is, at the time of the marriage, lawfully married to some other person;

(b) the parties are within the prohibited degrees of consanguinity or, subject to section 4 of this Act, of affinity;

(c) the marriage is not a valid marriage under the law of the place where the marriage takes place, by reason of a failure to comply with the requirements of the law of that place with respect to the form of solemnisation of marriages;

(d) the consent of either of the parties is not a real consent because--

(i) it was obtained by duress or fraud; or

(ii) that party is mistaken as to identity of the other party, or as to the nature of the ceremony performed;

(iii) that party is mentally incapable of understanding the nature of the marriage contract;

(e) either of the parties is not of marriageable age.

(2) The prohibited degrees of consanguinity and affinity respectively on and after the commencement of this Act shall be those set out in the First Schedule to this Act, and none other.

[First Schedule.]

(3) A marriage solemnised before the commencement of this Act shall

not be void-

able on the grounds of consanguinity or affinity of the parties unless the parties were, at the time of the marriage, within one of the degrees of consanguinity or affinity set out in the First Schedule to this Act but nothing in this subsection shall make voidable a marriage that would not, apart from this provision, be voidable.

4. Marriage of persons within prohibited degrees of affinity

(1) Where two persons who are within the prohibited degrees of affinity wish to marry each other, they may apply, in writing, to a judge for permission to do so.

(2) If the judge is satisfied that the circumstances of the particular case are so exceptional as to justify the granting of the permission sought he may, by order, permit the applicants to marry one another.

(3) Where persons marry in pursuance of permission granted under this section, the validity of their marriage shall not be affected by the fact that they are within the prohibited degrees of affinity.

(4) The President may arrange with the Governor of a State for the performance by judges of the High Court of that State of functions under this section.

(5) In this section, **“judge”** means a judge in respect of whom an arrangement made under subsection (4) of this section is applicable.

(6) Rules made under section 112 of this Act may make provision for the practice

and procedure in and in connection with applications under this section, and may include

provision for or in relation to the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation, and the payment of expenses of witnesses.

5. Voidable marriage

(1) Subject to this Act, a marriage that takes place after the commencement of this Act not being a marriage that is void, shall be voidable in the following cases but not otherwise, that is to say, where at the time of marriage----

(a) either party to the marriage is incapable of consummating the marriage;

(b) either party to the marriage is--

(i) of unsound mind; or

(ii) a mental defective; or

(iii) subject to recurrent attacks of insanity or epilepsy;

(c) either party to the marriage is suffering from a venereal disease in a communicable form; or

(d) thenwainfet is preg by a person other than the husband.

(2) For the purposes of this section, “**mental defective**” means a person who, owing to an arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, requires oversight, care or control for his own protection or for the protection of others and is, by reason of that fact, unfitted for the responsibilities of marriage.

6. Validity, etc., of certain marriages not affected

(1) Save as expressly provided in this Part of this Act, nothing in this Part shall affect the validity or invalidity of a marriage that took place before the commencement of this Act.

(2) A provision of this Act shall not affect the validity or invalidity of a marriage where it would not be in accordance with the rules of private international law to apply that provision in relation to that marriage.

7. Special provisions as to wife’s domicile

For the purposes of this Act-

(a) a deserted wife who was domiciled in Nigeria either immediately before her marriage or immediately before the desertion shall be deemed to be domiciled in Nigeria; and

(b) a wife who is resident in Nigeria at the date of instituting proceedings under this Act and has been so resident for the period of three years immediately preceding that date shall be deemed to be domiciled in Nigeria at that date.

8. Law to be applied

The jurisdiction conferred on a court by this Act shall be exercised in accordance with this Act, and any law in force immediately before the commencement of this Act which confers jurisdiction in divorce or matrimonial causes on the High Court of a State or provides for the law and practice to be applied in the exercise of that jurisdiction shall, to the extent that it does so, cease to have effect.

9. Staying and transferring of proceedings

(1) Where it appears to a court in which a matrimonial cause has been instituted under this Act that a matrimonial cause between the parties to the marriage or purported marriage has been instituted in another court having jurisdiction under this Act, the court may in its discretion stay the matrimonial cause for such time as it thinks fit.

(2) Where it appears to a court in which matrimonial cause has been instituted under this Act (including a matrimonial cause in relation to which subsection (1) of this section applies) that it is in the interest of justice that the matrimonial cause be dealt with in another court having jurisdiction to hear and determine that cause, the court may transfer the matrimonial cause to the other court.

(3) The court may exercise its powers under this section at any time and at any stage either on application by any of the parties, or of its own motion.

(4) Where a matrimonial cause is transferred from a court in pursuance of this section--

(a) all documents of record filed in that court shall be transmitted by the registrar or other proper officer of that court to the registrar or other proper officer of the court to which the cause is transferred; and

(b) the court to which the cause is transferred shall proceed as if the cause had been originally instituted in that court, and as if the same proceedings had been taken in that court from which the cause was transferred, but all subsequent proceedings shall be in accordance with the practice and procedure of the court to which the cause is transferred.

10. Courts to aid one another

All courts having jurisdiction under this Act shall severally act in aid of and be auxiliary to one another in all matters under this Act.

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