

Law of Marriage and Divorce: The Role of Church in Upholding Marriage Sanctity and Providing Alternatives to Litigation

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Abstract: The paper reviews law of marriage and divorce as applicable to Christian couple. It highlights the concept of Christian marriage to be a permanent one-flesh union and specifically focuses on the issue of Christian home which is built on Godly values and divine lifestyles with the overall purpose that each home will portray God's glory and be a witnessing platform in the society in particular and to the entire world in general. It dialectically appraises the institution of marriage and family in today's society from socio-legal perspectives that have been gradually withering away the values of marriage as a divinely established institution ordained by God.

I. INTRODUCTION

Marriage is a universal institution recognized and observed globally as a social system created on, and operated by the social rites and religious sacrament. The available historical perspective of the institution of marriage may have begun from the existence of the first human beings on earth; when God created Adam and Eve and gave them the viability of recognizing each other as married couples. God placed them in the Garden of Eden and gave them responsibilities as couples saying; "...it is not good for a man to be alone. I will make a companion who will help."¹ Thus, marriage is an institution ordained by God, the first union was ordained and orchestrated by God Himself.

In most jurisdictions, a marriage is a contract, a special species of contract, treated as a contract *sui generis*². Each legal system determines the features of a marriage³. In Nigeria, marriage is of three distinct forms: statutory, customary and Islamic marriages. For this purpose, our discussion will be limited to statutory marriage, which is monogamous in nature and is in accordance with Christian faith, wherein two human beings, a man and a woman, dedicate themselves absolutely to one another, two bodies become one flesh and two persons – one spirit. The ideal of Christian marriage is unique, eternal and indissoluble. In the world of today, however, Christian marriage is faced with a number of challenges such as mixed

marriages, homosexuality, premarital and extra marital sex, high number of divorces, lack of care of children of marriage, abortions, and birth out of wedlock, cultural conflicts, ethnic differentiations and secularity of the society⁴.

Aim and Objectives of the Paper

This paper reviews matrimonial law as applicable to Christians. The paper examines the concept of Christian marriage to be a permanent one-flesh union and specifically focuses on the issue of Christian home which is built on Godly values and divine lifestyles with the overall purpose that each home will portray God's glory and be a witnessing platform in the society in particular and to the entire world in general. It further examines the law of marriage, with specific focus on statutory marriage which is synonymous with Christian marriage and dialectically appraises the institution of marriage and family in today's society from socio-legal perspectives that have been gradually withering away the values of marriage as a divinely established institution ordained by God. Recent trends revealed that Christians are not immune to sin which at times leads to broken homes. Therefore in handling marital problems, Christians resort to spiritual guidance. This paper looks at how a pastor can balance competing interest between spiritual standards for marriage and secular reality of imminent divorce in modern world of today.

II. METHODOLOGY

The paper adopts doctrinal method through the use of Library based literature for the work. A comparative study of marriage and divorce laws in Nigeria and the United Kingdom was undertaken. Also faith based doctrines of the Roman Catholics, the Anglican Church of England and Nigeria, the Nigerian Baptist Convention and the Pentecostals were considered. The mode of acquiring data is primary and secondary sources. The primary source includes Statutes like the Marriage Act 1945 and Matrimonial Causes Act of 1970 and the Child's Right Act, 2003 and other applicable state laws; customary laws and The Holy scriptures. The secondary source includes case laws, decided cases, newspaper reports

¹ Genesis Chapter 2 verse 18

² *Sui generis* is a Latin expression that translates to "of its own kind." It refers to anything that is peculiar to itself; of its own kind or class. In legal contexts, *sui generis* denotes an independent legal classification.

³ See Cheshire, North & Fawcett, *Private International Law*, Fourteenth edn. p 917.

⁴ Nigeria is multi-religious state with different faith based beliefs, cultural practices and values.

and the internet materials. Information obtained from these sources were subjected to content analysis.

Sanctity and Sacrilege of Marriage

Marriage is at the center of God's plan for creation. From the very beginning, God emphasized the sacredness of marriage and the family. In the Gospel of Matthew, Jesus teaches about the importance of marriage and lifelong commitment⁵: The Book of Matthew 19: 6 says "So then, they are no longer two but one flesh. Then, what God has joined together, let not man put asunder." In fact, the Bible tells us God "hates divorce" and desires married couples to remain committed to one another (Malachi 2:16). Marriage in Christendom, is the most sacred institution in human affairs as it is ordained by God and it is supposed to be a loving relationship between the couple for procreation, companionship and fulfillment of socio-economic needs⁶. According to Ecclesiastes 4:9 "Two are better than one, because they have a good reward for their labour".

Legal Definition of Marriage

A legal definition of marriage was given by Lord Penzance in *Hyde v Hyde*⁷ "as a voluntary union for life of one man and one woman to the exclusion of all others". The marriage must be voluntary, this implies that there must be free consent of both parties to the union. The consent must be genuine for all intents and purpose. There is no compulsion in such an arrangement. The transaction must not accommodate force or use of force to enter into such a union. Also, the marriage should be a union for life. The true meaning of this requirement is that from the inception of the union, the parties intended that it would be for life. This does not imply that the marriage is indissoluble, it can only be dissolved by a process of law in court. The third condition is that it must be a union of one man and one woman to the exclusion of all others. By implication, it is a type of marriage which does not accommodate more than one wife during the subsistence of the marriage.

The Nigerian Family Law

The Nigerian family law is governed by multiplicity of laws; the received English law, the customary law and Islamic law⁸. Each of the three classes has different legal incidents and effects. The Marriage Act⁹ regulates statutory marriage, which is essentially monogamous and it is prescribed in the exclusive legislative list of the Constitution¹⁰. Under this system, a man who is married to a woman is prohibited from entering into another form of marriage be it customary or statutory with another woman during the subsistence of the

first marriage¹¹. The Nigerian family law has recorded a number of changes in the field of case laws and statute law¹².

Monogamous Marriage as a Christian Marriage

God instituted marriage to be the framework for intimate relationship between the couple and to serve as a veritable channel of sexual expression in accordance with biblical injunctions as well as process for procreation between a man and a woman¹³. Therefore an ideal Christian home is the foundation for Godly virtues and platform for love, peace and harmony in the family. Every Christian marriage must strive towards building a home as distinct, separate and different from building a house. In a home setting, Christ is the bedrock upon which life is built, where family as the social unit live together, compared to building a house which is a physical structure as living abode for one or a few families. The Nigerian law takes into cognizance family within the context of our society to include nuclear and extended family¹⁴.

Co-Existence of Customary and Statutory Marriages

These two systems of marriage are incompatible with one another, although they have operated side by side in Nigeria for over a hundred years without a clash, at least from the legal point of view. There is equal parity as to the validity of competing customary marriage and statutory marriage. The determining factor is the first in time. This is in consonance with the maxim of equity that where equities are equal the first in time, prevails. Thus, the Marriage Act prohibits supervening effects of a particular brand of marriage over another. Therefore, if a man contracted a valid marriage be it customary or statutory, he cannot during the existence of such a marriage contract a different form of marriage with a third person¹⁵. The effect of violating these provisions makes whatever subsequent marriage(s) conducted to be null and void. The penalty for either of the two cases is imprisonment for five years under the Marriage Act¹⁶. Thus, the Marriage Act does not desire the mixing of the two systems, the intentions of the drafters of the Act seem to suggest that a party, more particularly a man, since he is the one capable of contracting two seemingly subsisting marriages must make up his mind under which of the two systems he wants to marry. Within the realm of Nigerian law, a man and a woman can be

¹¹ Matrimonial Causes Act Cap. M7, Laws of Federation of Nigeria, 2004

¹² The most remarkable legislative intervention is the Matrimonial Causes Act of 1970, (Matrimonial Causes Act Cap. M7, Laws of Federation of Nigeria, 2004) which is the first indigenous legislation on the subject, thereby putting an end to the application of the English Matrimonial Causes and decided cases as binding authorities in Nigeria. They can only serve as persuasive authorities. The Matrimonial Causes Act provides that there is only one domicile for the whole of Nigeria for the purpose of divorce proceedings and other related matrimonial matters.

¹³ See Olasope, Stephen Akinola, What God has joined together, 2009, GIA Ventures.

¹⁴ See Bromley's Family Law, Nigel Lowe & Gillian Douglas, eleventh edn. Oxford University Press, 2015

¹⁵ See Itse Sagay, "Widow Inheritance versus Monogamy Marriage: The Oba's dilemma" in Journal of African Law, 2009.

¹⁶ Sections 47 and 48.

⁵ www.simmsshowerslaw.com

⁶ ijsshr.com

⁷ (1886) LR 1 P&D 130, 133

⁸ Nwogugu E.I., Family Law in Nigeria, reprinted 2019, HEBN Publishers Plc, Ibadan p1-3.

⁹ Marriage Act, 1914 Cap. M6. Laws of Federation of Nigeria, 2004.

¹⁰ eprints.soas.ac.uk

validly married under the Statute and under customary law at the same time.

Conversion of customary marriage to statutory marriage

The Nigerian Marriage Act makes provision for the possibility of conversion from customary marriage to statutory marriage so that if a man marries a woman under customary, he can later remarry the same woman under the statute¹⁷. But there is no similar provision for the conversion of a marriage under the Act to a customary law marriage. It is therefore, possible to convert a customary marriage only by the parties remarrying one another and not in any other way. The general preponderance of opinions of jurists on Nigerian family law is that a customary marriage ceases to exist as soon as the statutory Marriage has taken place and that the customary Marriage no longer exists in fact and in law¹⁸.

Choice of Nature of Marriage

In Nigeria, the system of marriages are there, it is for an individual to choose which type suits him best, fully aware of the incidents of each. But there can be no mixing of the two. You cannot be validly married under the statute and under customary law at the same time, unless it is to the same person. This is what has been described as **Double-decker** Marriage especially one of the two marriages i.e. statutory marriage is contracted outside Nigeria. Although some notable jurists have argued that a subsequent statutory marriage¹⁹ after a valid customary marriage between the same parties converts a prior customary marriage and thereby the first marriage ceases to exist. Also some writers have argued that it is even doubtful whether there can be a valid subsequent customary marriage between the two parties already statutorily married²⁰. It is my opinion that a prior customary marriage creates a social and cultural status on the parties of which certain incidents of their matrimonial life style will be regulated without any objective of creating a new legal status on the subsequent legal status created by the celebration of statutory marriage.

Patterns and Trends of Marriage in Contemporary Times

Of recent, statutory marriage has been faced with evolving legal and social practices in a varied proportion and

dimension. In modern times across the globe, it is no longer universally acceptable that marriage is now a voluntary union. Nowadays, some marriages are forcefully conducted e.g. marriage by elopement, marriage conducted at warfront by soldiers. Marriage is also no longer for life, as some couples enter into marriages for various short term objectives: i.e. to obtain a particular nationality for residence purposes, or to obtain an exit visa from a country in which one of the parties is normally resident or of which he or she is a citizen²¹. In some jurisdictions, the law of marriage has been redefined changing a requirement of a man and a woman to two persons. The exclusion of all others are often honoured more in breach than in compliance in view of odd practices of some supposed monogamous partners cohabitating with third parties. Remarkably, the first marriage was between Adam and Eve, God never intends marriage between persons of the same sex, it is an abomination. Marriage also connotes leaving all others and cleaving to one's spouse for life²². For this reason, a man shall leave his father and mother and be joined to his wife and the two shall become one flesh²³. This is intended by God, marriage is an exclusive union between a man and woman. There is no provision for extra marital relationship or affair. It is a union to fulfill a determinate counsel or purpose of God for which the parties involved must be up and doing to carry out God's reasons for their union. The Roadmap to an intimate marriage is to abide with the Biblical scriptures by the couple and to be vigilant of the devices of modernity and conscious of the two kingdoms; heaven and hell. All Christians must strive to finish strong and to make heaven. Understanding the kingdom of God and realising the fallen world is imperative, self-confidence should be de-emphasised while dependence on God should be enhanced.

Essentials of Statutory Marriage

A statutory marriage may be celebrated in any licensed place of worship or in a Registrar's office – under Sections 21 and 27 Marriage Act. A marriage in a Registrar's Office must be contracted in the presence of two witnesses with open doors, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon²⁴ upon satisfactory compliance by the parties to the provisions on Preliminaries to Marriage.²⁵

¹⁷ See *Ohochuku v. Ohochuku* (1961) 1 All ER 253. See also Eugene Cotran "Marriage, Divorce and Succession Laws in Kenya: is integration or unification possible?" In *Journal of African Law* 2009.

¹⁸ See I.O. Agbede *Recognition of Double Marriages in Nigeria Law 1968* 17 ICLQ 735; D.A. Ijalaye *Capacity to marry under Nigerian Customary Law*, *Nigerian Bar Journal* 1967 Vol. 3, pg. 20; Itse Sagay: *Multiple Marriages in Nigeria – A Conflict of Law with Culture*, NBJ Vol. XII 1974 pg. 82; A.B. Kasunmu *The Matrimonial Causes Decree 1970: A Critical Analysis*, *Nigerian Journal of Contemporary Law* Vol. 2 No. 1 pg. 98; Akande, *The Legal Problems of Converting Customary Marriage into a Statutory Marriage in Nigeria* being a Paper presented at the National Conference on Marriage Laws in Nigeria. Cf. See Adeniyi Olatunbosun, *Double-Decker Marriage in Private International Law – A Dialectical Appraisal*, in *Indian Society of International Law New Delhi* Vol. 4, No. 1 Jan – March 2004, pp. 139 –159,

¹⁹ Open.uct.ac.za

²⁰ See Itse Sagay: *Multiple Marriages in Nigeria – A Conflict of Law with Culture*, NBJ Vol. XII 1974 pg. 82

²¹ See a paper submitted to National University of Singapore.

²² www.homedalecalvary.org

²³ Matthew 19: 5.

²⁴ www.lawyard.ng

- (a) ²⁵ notice of intention to marry in Form A;
- (b) upon receipt of this notice, the registrar shall enter the notice in a book, to be called the Marriage notice book. He shall publish such notice by affixing a copy of the same to be affixed on the outer door of his office, until he grants his certificate or until three months shall have elapsed. See Sections 7 and 10 Marriage Act;
- (c) the registrar at the expiration of twenty-one days and before the expiration of three months from the date of the notice, upon payment of the prescribed fee, shall issue his certificate as in Form C provided one of the parties had sworn to an affidavit disclosing that one of the parties has been resident within the district in which the marriage is intended to be celebrated at least fifteen days earlier than each of the

Upon satisfactory compliance with these preliminaries, the Registrar shall then fill up, and he and the parties and witnesses shall sign, the certificate of the marriage in duplicate, and shall file the other in his office. The production of the said certificate before a court of law is an evidence of the existence of a statutory marriage. Mere production is not a complete proof, the court shall examine the veracity of its genuineness, as a party adverse to its true existence can raise an objection and if the existence of such a certificate is debunked, then the statutory marriage built on it collapses.

Dissolution of Marriage- Divorce

In Nigeria, the laws regulating the institution of marriage and incidences are contained in the Marriage Act²⁶ and Matrimonial Causes Act.²⁷

Overview of Reasons and Ground for Divorce

There are several reasons why a party to a marriage may seek for divorce, but in spite of the reasons, that may be adduced, the sole ground for divorce is the provision that the "**marriage has broken down irretrievably**". In *Ekrebe v. Ekrebe*²⁸ the court held that, the appellant cannot be heard since the above phrase under Section 15(1) was not included in the petition even though the petition itself contained the words "*cruelty, desertion and adultery*". The court held that these are only part of relevant facts to be considered and not the ground for dissolution. Furthermore in the case of *Ezirim v. Ezirim*,²⁹ Nnaemeka Agu J. C who delivered the unanimous opinion of the court observed that:

"It is necessary to bear in mind the fact that although the Act created only one ground of divorce, to wit; that the marriage has irretrievably broken down; yet that the facts which may lead to the marriage breaking down irretrievably are categorized under sub-sections (a) to (h) of section 15(2). Only those facts can suffice to file a petition for divorce. In other words, a court hearing a petition for divorce ought not to hold that the marriage has irretrievably broken down unless the petitioner or cross-petitioner, as the case may be satisfies the court on one or more of the ... facts".

parties is twenty-one years old; that there is not any impediment of kindred or affinity or any other lawful hindrance to the marriage and that neither of the parties to the intended marriage is married by customary law to any person other than the person with whom such marriage is proposed to be contracted.

²⁶Marriage Act 1914 Cap M6 of the Laws of the Federation of Nigeria 2004 as amended

²⁷Matrimonial Causes Act 1970 Cap M7 of the Laws of Federation of Nigeria 2004.

parlinto.aph.gov.au ; unilorin.edu.ng; www.mondaq.com; www.nou.edu.ng

²⁸ (1999) 3NWLR, 514, see also *Labode v. Labode* (1972) N.M.L.R., 195 at P. 197

²⁹ Suit N0FCA/L/56/78 (unreported February 6, 1981, court of Appeal, Lagos Division.

titusnnapugwu.blogspot.com

The Matrimonial Causes Act 1970 and the Matrimonial Causes Rules 1983 are the primary laws that govern matrimonial causes such as divorce, annulment, legal separation, etc of marriage in Nigeria. The Act provides that the court with jurisdiction to hear and determine matrimonial causes is the High Court of any State of the Federation.

Statutory requirement for counselling before divorce

A petition for dissolution of marriage will not be entertained if the parties have not undergone mandatory counseling before the filing of the petition. Section 11 of the MCA provides:

"11(1) It shall be the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so).

It is trite to state that before the court dissolves a marriage, the court has the duty to consider the possibility of parties reconciling as provided under the Section 11 of the Act. So before a court in Nigeria dissolves a marital union, it must be satisfied that there is no possibility for parties to reconcile. Sometimes the court may refer the parties to mediation for the sole purpose of possible reconciliation. But where after exploring the possibilities for reconciliation and the parties failed, the court will have no choice but to dissolve the marriage³⁰.

Particulars of Ground for Dissolution of Marriage

For the court to hear a petition for the dissolution of marriage, the petitioner must satisfy the court of at least one or more of the facts stated below:

1. That the respondent has willfully and persistently refused to consummate the marriage. For this fact to be pleaded, the petitioner must prove that the respondent has failed to have sexual intercourse, but where it is proved that sex occurred even once, the marriage will be deemed consummated and therefore the petitioner cannot rely on this ground for divorce. Section 15(2) (a) of the Matrimonial Causes Act of 1970 provides that the proof of willful and persistent refusal of a spouse to consummate the marriage will enable a court hearing a divorce petition to decide that the marriage has broken down irretrievably. Thus 'willful' means in the context, the doing of something as a matter of conscious will and 'persistent' in this context is a word which implies continuity and seems to be somewhat analogous to the word "repeatedly" "It must be shown that the refusal was conscious, deliberate and continuous after repeated efforts by the petitioner aimed at consummation.

2. That since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the

³⁰ Remarkably it is in a divorce petition that the court is obliged to find out from the two sides whether or not they have explored reconciliation process before the petition is set down for hearing and at any stage of the trial the court is open to settlement and reconciliation

respondent. For this fact to hold water in court, the petitioner must prove that not only does the other party commit adultery but he/she finds it unbearable to live with such infidelity. By Section 15 (2) (b) of the Matrimonial Causes Act 1970, a court will come to the conclusion that a marriage has broken down irrevocably where, since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent. For the petitioner to succeed on the ground of adultery under the Matrimonial Causes Act, he/she has to prove not merely the commission of adultery by the respondent but also that the petitioner finds it intolerable to live with the respondent. In addition to these facts, it has to be established that these facts occurred after the celebration of the marriage.

Proof of Adultery

Adultery may be defined as the voluntary sexual intercourse between a spouse and a third party of the opposite sex not being the husband or wife during the subsistence of the marriage. The element of freewill is fundamental to the concept of adultery. Once a spouse can establish an act of intercourse between the other spouse and a third party, the burden of proof shifts to the respondent to show that the sexual intercourse lacked his or her real consent.

Nature of Evidence: Because of its very nature, it is rare to obtain clear evidence of the commission of adultery. Hence, adultery is usually inferred from the surrounding circumstances such as undue familiarity, suspicious circumstances, conviction for rape, etc. In *Adeyemi v Adeyemi*, the husband at night visited his wife who was living apart from him. His wife's bedroom was in darkness. As a result of his banging of the door, it opened and he found both the respondent and co-respondent inside. The wife was sitting on a bed with only a wrapper thrown carelessly around her body and the co-respondent's shirt was not properly tucked into his trousers. It was found that the circumstances in which the parties were found pointed conclusively to the commission of adultery.

The Birth of a Child: The birth of a child for a man by a woman other than his legal wife will give rise to the inference that the man has committed adultery. The birth of a child by a wife during the marriage when the husband has no access constitutes evidence of the commission of adultery. The birth of a child during the subsistence of a valid marriage between the spouses within 280 days after its dissolution is conclusive evidence of the child's legitimacy. A husband may prove adultery by a conclusive evidence of non-access to the wife during the period the child could have been conceived. A spouse may not be compelled to give such evidence if it would show that the child was illegitimate.

- i. **Venereal Disease:** Where a spouse suffers from venereal disease which has not been contracted from the other spouse, a presumption of adultery is raised although such presumption may be rebutted by proof

that the disease was contracted other than by adultery.

- ii. **Cohabitation:** Adultery may be presumed from the general co-habitation of the respondent and co-respondent in the same house as husband and wife or if they spent a night together in a hotel. Bigamy is a *prima facie* evidence of adultery.
- iii. **Confessions and Admissions:** Confessions and admissions may prove evidence of adultery. Confessions are however, regarded with suspicion and caution by the courts particularly if the confessing party desires to obtain a divorce. The courts require that confession be corroborated. This may be deduced for example from a letter.
- iv. **Blood Test and DNA:** A court does not have the power to compel a party to submit to a blood test but it may draw appropriate conclusion from a refusal.

Intolerability

Adultery alone does not establish irretrievable breakdown of a marriage. Under the act intolerability of the alleged adultery must be proved-- Section 15(2) (c). In a decree for Divorce where Adultery is alleged with a specific person, the co-respondent who is that specified person must be made a party to that proceeding unless the rules of court direct otherwise. See Section 32(1) MCA.

3. That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. A court may find that a marriage has broken down irrevocably if since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. The conduct of the respondent in question must have occurred since the celebration of the marriage. The conduct must also have some reference to the marriage. The behaviour in question must be sufficiently framed such as in the following situations.

- i. **Rape, Sodomy or Bestiality:** If since the celebration of the marriage the respondent has committed rape, sodomy or bestiality, conduct of this nature is grave and would enable the court to conclude that the petitioner cannot reasonably be expected to live with the respondent.
- ii. **Habitual Drunkenness or Intoxication:** The petitioner cannot be expected to live with the respondent where since the marriage the respondent has for a period of at least two years been a habitual drunkard or habitually been intoxicated by reason of taking or using, to excess, any sedative, narcotic or stimulating drug or preparation.
- iii. **Frequent Conviction and Leaving the Spouse without Support :** Section 15(2) (c) of the Matrimonial Causes Act 1970 comes into play where

since the marriage, the respondent has within a period not exceeding 5 years suffered frequent convictions for crime and has been sentenced on the aggregate to not less than three years imprisonment. Besides, he must have habitually left the partner without a reasonable means of support. The convictions and sentences must have occurred after the marriage.

- iv. **Imprisonment:** Where in the marriage, the respondent, has been in prison for a period of not less than three years after conviction, Section 16 will operate. For an offence punishable by death or imprisonment for life or for a period of five years or more, and he/she is still in prison at the date of the petition.
 - v. **Attempt to Murder and Assault:** Where since the marriage and within one year immediately preceding the date of petition, the respondent has been convicted of an attempt to murder or unlawfully kill the petitioner. Where also he has committed the offence concerned with the intentional infliction of grievous bodily harm on the petitioner involving maiming, disfigurement, which seriously interfered with health or comfort of the petitioner.
 - vi. **Habitual and Woeful Failure to Support:** Where the respondent has habitually and woefully failed during the period of two years immediately preceding the date of petition, to pay maintenance to the petitioner under a court order under a separation agreement. The order must be one made by a court in Nigeria. The failure of the respondent to pay maintenance for the petitioner must also be wilful which connotes a deliberate act or decision on the part of the respondent.
 - vii. **Insanity:** Insanity in one of the situations envisaged under Section 15(2) (c) of the Matrimonial Causes Act, 1970. This happens if the respondent at the time of the petition is of unsound mind and unlikely to recover. In addition it must be proved that since years immediately preceding the date of the petition, he has been confined for a period or periods of not less than five years in one or more institutions in or outside Nigeria where persons of unsound minds are confined.
4. That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition. The desertion means that the respondent has abandoned the matrimonial home without justification¹. A marriage will be regarded as having 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. Desertion means the separation from the other which brings co- habitation permanently to an end without the consent of

the other spouse. To constitute desertion four elements must be present at the same time: de facto separation of the parties; *animus deserendi*; lack of just cause for the withdrawal from co-habitation; and the absence of the consent of the deserted spouse.

5. That the parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the petition does not object to the decree of dissolution being granted. A marriage will be regarded as having broken down irretrievably where the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted. Under the Act, mere physical separation does not constitute living apart. There must also be termination of consortium. There must be a clear intention on the part of one or both of the spouses not to return to the other and the treatment of the marriage having come to an end. The parties to a marriage will be treated as living apart unless they are living with each other.

6. That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition. The petitioner must prove that since the marriage the parties have lived apart for a continuous period of three years preceding the petition.

7. That the other party to the marriage has for a period not less than one year failed to comply with a decree of restitution of conjugal right made under the Marriage Causes Act. That the other party to the marriage has for a period of not less than one year failed to comply with a decree or restitution of conjugal rights

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

Order of Decree Nisi and Decree Absolute

The action for dissolution of a statutory marriage can be brought under any one or more of the facts stated above before the court can make a decree for dissolution of marriage. The decrees the High Court of the State can make are two orders called **Decree Nisi** and **Decree Absolute**. This means that the Decree Nisi is made first and this order gives the opportunity of the other party to appeal the decision of the court and the second order of Decree absolute is made 3 months after the first decree as provided under section 58 of the Act. The Decree Nisi is made absolute after 3 months where no appeal is made and there is no right to appeal the decision of the court after it has been made absolute. The marriage is completely dissolved where the order of decree absolute is made. The effect of dissolving a statutory marriage is that a party to the marriage can marry again as if the marriage had been dissolved by death.

Ancillary Reliefs

Part IV of the Matrimonial Cause Act, 1970 deals with the making of orders for maintenance, custody and settlements.³¹ The High Court is conferred with power to make various orders in respect of the parties to the marriage including the children of the marriage. Section 69 of MCA, 1970, provides extensively for the parties to whom these ancillary reliefs may be made. Parties to the marriage are within the ambit of the section 69, even if the purported marriage is void, but the Act does not provide for the marriage entered into according to Muslim ties or other customary forms of marriage. Parties to a valid or voidable contracted under the Act are also covered by the provision of section 69, MCA, 1970.³²

The reliefs available to parties of a marriage include the following;

- i. maintenance at common law
- ii. maintenance under the MCA, 1970
- iii. Maintenance pending disposal of proceeding
- iv. Custody, guardianship, welfare advancement or education of children of the marriage.
- v. Settlement of property

The presumption of law in Nigeria is that the title both legal and equitable resides in whoever's name is on the title deed in matrimony property. In view of most family administration practices in Nigeria, the husband undertakes capital projects and investment with his income, while the wife may be responsible for providing food, clothing and other non-income yielding and capital generating responsibilities (which the husband is by law ordinarily required to do). The lack of the concept of joint or matrimonial property usually works injustice on the wife on the termination of the marriage either by divorce or on the death of the husband.

How should a Pastor handle Divorce?

Marriage is one of God's plans for creation. From the evolution of mankind, God upheld the sacredness of marriage and the family. In the book of Matthew, Jesus teaches the importance of marriage and lifelong commitment: "So then, they are no longer two but one flesh. Therefore, what God has joined together, let not man put asunder."³³ From the biblical account God "hates divorce" and admonishes married couples to remain committed to one another.³⁴

Identified Potential Grounds for Divorce

When pastors counsel members regarding marriage, the first goal must be to set forth God's standard for marriage. Scripture, however, explores situations where divorce is permissible. First, adultery in the marriage relationship without repentance can sever the marital union and justify

divorce (Matthew 19:8-9). Jesus specifically says that anyone who divorces his wife, except for marital unfaithfulness, and marries another woman commits adultery. This standard greatly limits the situations in which divorce is permissible and rejects the modern concept of no-fault divorce now found in every state.

The Apostle Paul provided another interpretation of the Scriptural basis for divorce in what is called the Pauline privilege. Under this view of Biblical marriage, when a non-believer leaves a Christian spouse, the Christian spouse is free to remarry (1 Corinthians 7:15). This version of marital unfaithfulness emphasizes the desertion aspect of divorce as well as the desire for both spouses to place God at the center of their lives. In many ways, Paul's view of divorce is just as limited as what Jesus presents in the Gospel of Matthew. Only when one spouse commits sexual immorality and/or rejects Christ, is divorce permissible. Both of these potential grounds for divorce demonstrate that Christian spouses who remain faithful cannot base their decision to divorce on Scripture. Pastors who are counseling members should emphasize God's plan for marriage and the sacredness of the union, especially when both spouses are committed Christians. Nevertheless, the reality of sin in our world and the rise in mixed religious marriages may lead to situations where the marital union is permanently broken. In these situations, pastors must carefully balance God's call for repentance and forgiveness with the unavoidable reality of divorce³⁵.

Helping Christians Understand their Legal Options

Every pastor must seek to strengthen and safeguard Christian marriage, counseling those facing marital infidelity or abandonment requires prayers and words of encouragement, except in instances of grave domestic violence and abuse. Recourse should be made to State laws that permit one spouse to seek a divorce with or without the other party's permission after a period of separation³⁶. What is paramount is when children are involved, a host of legal issues are presented for determination before separation³⁷.

³⁵ www.simmsshowerslaw.com

³⁶ Simms Showers LLP, is an expert on divorce options available in Virginia. Simms Showers, LLP is a partnership firm between principal attorneys J. Stephen Simms in Baltimore, MD and H. Robert Showers in Leesburg, VA. Together, Simms Showers, LLP represents clients over a wide variety of areas, including criminal defense, church and nonprofit law, personal injury and civil litigation, employment law, marriage defense and family law, estate planning, and more.

³⁷ These include child custody, child support, and visitation. As a result, having experienced Christian legal representation is vital to protecting a member's legal rights and helping them navigate the oftentimes intimidating legal system. The most common type of divorce is from the bond of matrimony through a separation divorce. This type of divorce, commonly called "no fault," may be granted after the parties have lived separate and apart for more than one year with no chance at reconciliation. Similarly, if no minor children are involved and the parties have entered into a property settlement agreement, the separation period can be reduced to six months. When a divorce is contested, however, there is always the possibility of court hearings to determine how to divide the couple's estate and to resolve child custody/visitation issues.

³¹ S. 69 MCA, 1970

³² *Williams v. Williams* (1976) 3 CCHCJ, 805

³³ See Matthew 19:6; King James Version.

³⁴ See Malachi 12:6; King James Version.

Churches' Doctrines on Marriage and Divorce

Religions tend to support and encourage marriage and regard the breakdown of a marriage with sadness. Christians believe that marriage is a covenant before God. What does Christianity say about divorce and remarriage? Divorce is mentioned in the Bible, the main source of authority and guidance for Christians, many times. Jesus's teaching on divorce is that it is adultery, which is forbidden in the Ten Commandments, but he did allow for divorce in the case of a partner's infidelity. He said "I tell you that anyone who divorces his wife, except for marital unfaithfulness, and marries another woman commits adultery".³⁸

This is interpreted in different ways by the various Christian churches:

The Roman Catholic Church does not recognise divorce, a marriage can only end when one partner dies or if there are grounds for an annulment. A couple may be granted a civil divorce and be divorced in the eyes of the state, but their marriage will continue 'in the eyes of God'. The Catholic Church does not recognise divorce as it goes against the teachings of Christ - No human being must separate, then, what God has joined together. Divorce is the breaking of the sacrament and the vows made between the couple and God. The nature of marriage states that it must be life-long. Therefore, the only way a marriage can end is if one of the individuals dies. If a couple does get a divorce then they will not be allowed to remarry in the Catholic Church, as it would be classed as committing adultery.³⁹

- The Church of England does not advocate divorce but it is allowed if the marriage has truly broken down and cannot be repaired. Someone who is divorced can now remarry in an Anglican church⁴⁰. The Church of England affirms, according to our Lord's teaching, that marriage is in its nature a union permanent and lifelong, for better or worse, till death do us part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the mutual society, help and comfort which one ought to have of the other, both in prosperity and adversity.
- The position of the Nigerian Baptist Convention on Divorce is that Divorce is the legal termination of a marriage which brings to an end the nuptial union of a couple. Baptists are encouraged to prevent divorce

in their marriages. Divorce brings disrepute to our Christian/Baptist testimony. As such the NBC recommends that:

- Couples should endeavour to live together until death do them part.
- Couples should not take divorce as the first option in conflict management.
- Since divorce is not a good witness to our faith, principle and practice, it should be avoided.
- Ask God to give you the grace to remain in your marriage.
- Monogamy is the will of God for marriage and should thus be maintained.
- As much as possible should endeavour to bring about reconciliation between the couple⁴¹.

Most Pentecostal churches maintain that marriage is a lifelong covenant and recognise divorce under strict circumstances such as infidelity or abandonment. The Assemblies of God recognises those who have divorced and remarried may enjoy membership in a local church, but are not generally allowed to hold ministerial credentials⁴². The Assemblies of God denomination values the institution of marriage and as a result takes divorce seriously. The purpose of its teaching about divorce is to obey Scripture and to effectively minister to the men, women, and children who are affected when a marriage ends.

Therefore, many Christians experiencing marital difficulties will try to work through them as they have promised before God to stay together for the rest of their lives. Domestic violence is most often common incidents among couples including Christians nowadays. So also is cruelty and other forms of home variant abuse. In such instances, a couple should go to their church to ask for advice and support. However, if there is serious threats to life or likelihood of death, sometimes a couple might feel that divorce is the only option. In Baptist setting, most members of the Church will also try to work through any problems in their marriages to avoid divorce⁴³. However, if they cannot resolve these issues,

⁴¹ See : A Handbook on Beliefs, Policies and Practices of The Nigerian Baptist Convention 2012, <https://hopebaptchriode.files.wordpress.com/2020/03>

⁴² <https://christianityfaq.com/assemblies-of-god-beliefs-divorce/>

The Assemblies of God sorrows over divorce but acknowledges its validity for reasons such as marital unfaithfulness and when one spouse who is not a Christian decides to leave the marriage. Couples who are considering divorce are strongly advised to seek the wisdom and help of pastors and church leaders, albeit in order to salvage the home.

⁴³ Roman Catholics will try to resolve problems in their marriage to avoid divorce as it is forbidden by their Church. If the marriage has irretrievably broken down, they can get a civil divorce but they will be unable ever to remarry in the eyes of the Roman Catholic Church. This is because they made an everlasting covenant in church during their original marriage ceremony. In some instances the Roman Catholic Church will grant an annulment to a couple whose marriage is not working out, if it can be shown that the marriage is not 'valid'. For a marriage to be valid three conditions must apply: the couple must marry freely and without reservation; they must love and honour each other for life; and they must accept children lovingly from God. If it is shown that any of these conditions is not being met in the

³⁸ Matthew 19:9.

³⁹ <https://www.bbc.co.uk/bitesize/guides/zxcng8/revision/7>

⁴⁰ www.bbc.co.uk

See also : <https://www.churchofengland.org/sites/default/files/2017-10/marriage%20in%20church%20after%20divorce.pdf>

Yashi Ghai , " Law. Development and African Scholarship" The modern Law Review. 1987

Jill Cottrell. "A Bibliography of Materials on Nigerian Law published in Nigeria, The Journal of Legal Pluralism and Unofficial law 1973

they can get a divorce and they may remarry in the church. Also, the Pastor can link up with a Judge to broker peace in a form of arbitration or mediation. However, the judge may proceed to trial if the arbitration or mediation process fails between the two parties concerned.⁴⁴ According to Daily Trust Newspaper reported by *Joshua Odeyemi on 31 January 2020*; No fewer than 53 spouses have been allegedly killed in Nigeria by their partners from November 19, 2017, when Maryam killed her husband, till date, Daily Trust finding shows. Twenty-six months after killing her husband, Maryam Sanda was sentenced to death by hanging⁴⁵.

III. CONCLUSION

The process for a divorce in Nigeria is a very sensitive one and it is not easy for a marital union to be declared irretrievably broken down. For a statutory marriage to be dissolved, the court must be satisfied that the option for settlement has been explored unsuccessfully. If reconciliation failed then it is clear that the marriage has broken down irretrievably and then the court will grant a decree for the dissolution. The pastoral approach to divorce requires a delicate balance between Scripture's emphasis on marriage as a lifelong commitment and the reality that Christians are not immune from irreconcilable marital problems. All Christian counseling calls us to forgive one another and seek spiritual redemption. This advice will always serve as the foundation of any pastor's advice to his congregation. Yet ministry also requires pastors to be prepared for every situation, including those where the Bible recognizes the possibility of divorce. When one spouse engages in adultery or turns away from God, pastors are the first line of defense and should help believers understand their scriptural and legal options.

marriage, then one or both of the partners may ask for the marriage to be declared null and void. If a decree of nullity is granted, which means that the marriage never existed, the couple is free to remarry and do so in church.

⁴⁴ Hearing when reconciliation fails Where a judge has acted as conciliator under section 11 (1) (b) of this Act but the attempt to effect a reconciliation has failed, the judge shall not, except at the request of the parties to the proceedings, continue to hear the proceedings, or determine the proceedings; and, in the absence of such a request, the proceedings shall be dealt with by another Judge"

See also Paper Submitted to South African Theological Seminary

⁴⁵ The Court of Appeal in Abuja on Friday December 4, 2020 has upheld the death sentence passed on Maryam Sanda for the killing of her husband, Biliyaminu Bello. A three-member panel of the appellate court led by Justice Stephen Adah, dismissed Ms Sanda's appeal. The court said the 20 grounds of appeal she filed before the court lacked merit and were therefore dismissed. The Federal High Court presided by Justice Yusuf Halilu in the Federal Capital Territory had convicted Ms Sanda (FCT) over the killing of her husband at their Abuja residence in 2017.