

MATRIMONIAL CAUSES

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Marriage is a lifetime commitment. Indeed for most couples, marriage vows are exchanged with a lifelong union in mind. This is truer in Africa and Nigeria in particular. The society frowns on divorce and unless the situation has irredeemably gotten out of control, an African woman will stay in a loveless marriage, even if it's only for the sake of her children and to avoid the embarrassment and social stigma attached to being divorced. A lot of women have had their lives cut short by an estranged husband while hanging on to a long dead marriage. This is not to say that men are always eager for a divorce, or they are least affected by the trauma. Men and women enter into marriage with enthusiasm and optimism hoping to live happily together ever after, and a lot of couples fight really hard to make that dream come true but not all of the whole lot wins the battle.

Much as one may never wish to experience one, some marriages may have to end in divorce in the best interest of all parties concerned. When a marriage has broken down irretrievably, it becomes necessary to give it a proper burial or else its ghost will come back to hunt either of the couple.

The procedure for dissolution of marriage in Nigeria applies, with a slight variation, to other parts of English speaking West Africa, and depends largely on the nature of marriage contracted by the parties, whether it was a statutory marriage, marriage under the customary law or Islamic law. The focus of our discourse in this series shall be on dissolution of a statutory marriage (marriage under the Act) and marriage under the customary law.

Statutory marriage as the name suggests is a marriage contracted under or in accordance with the relevant matrimonial statutes. The laws regulating matrimonial causes in Nigeria are **Matrimonial Causes Act 1970, Matrimonial Causes Rules, 1983, Case law, English Common Law rules that are not inconsistent with the provisions of the Act/Rules** and the Marriage Act which governs the celebration of marriage.

The Matrimonial Causes Act/Rules apply only to statutory marriage i.e. marriage under the Act: **Nwangwu V. Ubani (1977) 10 NWLR (Pt. 526) 559.**

They
do not apply to a customary marriage.

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Before instituting a petition for dissolution of a marriage, it is often helpful to consider the validity or otherwise of the marriage having regard to the manner and circumstances of celebration, with a view to determining whether there was a marriage recognizable by law in the first place. There are marriages recognized as void ab initio by law and there are marriages that may though be invalid, but will be treated as valid until the question of its validity is brought before a competent Court for determination, after it has been pronounced as such. While the former is referred to as void marriage, the latter is referred to as voidable marriage.

Section 3 (1) of the Matrimonial Causes Act 1970 provides for five instance of a void marriage to wit; (a) where either of the parties to the marriage was at the time of the marriage, lawfully married to another person under the Act, (b) where the parties to the marriage are within the prohibited degree of consanguinity and affinity (There is absolute bar against marriage where the relationship is that of consanguinity. But in certain circumstances and by leave of court, where the relationship is that of affinity the court might allow the parties to marry, hence prohibition in the case of affinity can be waived) (c) where the marriage is not a va