
Original Paper

Mechanism for the Protection of the Sanctity of Statutory Marriage in Nigeria: An Appraisal of the Provisions of Sections 39 to 48 of the Marriage Act Cap M6 Laws of the Federation of Nigeria 2004.

Paul Okhaide Itua, Ph.D¹

Department of Commercial and Industrial Law, Ambrose Alli University Ekpoma, Edo State, Nigeria

Abstract

Nigeria operates a dualistic marriage system. The extant laws recognises as valid marriage contracted in accordance with the Marriage Act, and those contracted under Native Law and Custom indigenous to various tribes in Nigeria. The Marriage Act makes elaborate provisions that regulate the conducts of parties to a statutory marriage. However, the reverse is the position under native law and custom for lack of codification. In recent times, there have been an upsurge in the number of divorce petitions filed before our courts. This development necessitated this inquisition as to whether the sanction provisions in the Marriage Act are inadequate to protect the sanctity of statutory marriage, or they are obsolete and require amendments. Adopting the doctrinal research methodology, this research evaluates the provisions of the Marriage Act dealing with offences and punishments. It posits that the sections are adequate to guarantee the sanctity and stability of statutory marriages. The research identifies absent of enforcement and prosecution based on these provisions as the albatross for the instability and recommend steps that could enhance the enforcement mechanism that would ultimately guarantee the stability of the marriage institution.

Keywords: Statutory Marriage, Punishment, Offences, Sanctity of Marriage, and Marriage Act.

Introduction

In Nigeria, two systems of marriage contracts are recognised by law. These are marriages contracted in accordance with the Marriage Act², usually referred to as statutory marriage and marriages contracted in accordance with native law and custom indigenous to the various tribes in Nigeria also known as customary law marriage. Thus, Nigeria is pluralistic in terms of ethnicity, religion, and laws.³ The concept of legal pluralism has emerged in the last few decades as a prominent theoretical perspective in socio-legal research.⁴ Hence, it is safe to argue and posit that it is pertinent or imperative to recognise the dualism that exist in Nigeria in the area of law, giving that Nigeria is country that recognises legal pluralism.⁵ Legal pluralism in Nigeria is complex and it assumed three distinct forms. Firstly, it is the legal pluralism that arises from multifarious legal traditions or legal culture. In this context, our laws are basically derived from three distinct laws or legal systems. These are customary law, Islamic law and English style law.⁶ The second form of Pluralism arises from the fact that the Federal and State

¹ LL. B (Hons) BL, LL.M, Ph. D (Associate Professor).

² Marriage Act, Cap M6. Laws of the Federation of Nigeria 2004.

³ A.O. Abdulmumin, "Religious and Customary Law in Nigeria" 25 *Emory International Law Review*

⁴ I, Shahr, "Legal Pluralism and the Study of Shari 'a Courts" (2008) 5 *Islamic L & y* 112.

⁵ T.O. Ocheja, "Dualism in the Law of Succession in Nigeria" a chapter in *Legal Pluralism in Africa: A compendium on Africa Customary Law* (Nigerian Institute of Advance Legal Studies Lagos 2012) 586.

⁶ A.O. Abdulmumin, "Religious and Customary Law in Nigeria" 25 *Emory International Law Review* 882.

Government share legislative powers raising differences that exist between federal and state laws, as well as differences amongst individual states. The third expression of pluralism relates to the country's political history.⁷ The first form of legal pluralism identified by Ocheja, that arises from "multifarious legal traditions or legal culture" is responsible for the dualism of laws concerning marriage in Nigeria. This dualism in the marriage system is acknowledged and validated by the provision of section 35 of the Marriage Act.⁸ This Section provides that:

Any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary, but save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any customary law, or in any manner apply to marriage so contracted.

The provisions of Sec. 35 of the Marriage Act clearly prohibit any person who is married under the Act from contracting any marriage under customary law. The reason being that such a person will not possess the single status capacity that is required, which is also one of the essential validities of a statutory marriage prescribed by the extant law. It is essential for both parties to the marriage to possess the necessary capacity before they can contract a marriage under the Act,⁹ that is monogamous in

There is an ongoing debate as to whether Islamic law is distinguishable from customary law, that will require it to be classified as a different source of law in Nigeria as opined by the author. Generally, in Nigeria, Islamic law has always been seen as part of customary law. See EI Nwogugu, *Family Law in Nigeria*. Revised (ed), (Heinemann Educational Books (Nigeria) Plc 2006) Ixxxii. The reason being that Muslim law is also classified as customary law. See *Zaidan v Zaidan* (1974) 4 UILR 283. According to JND Anderson in a paper titled "Relationship between Islamic and Customary law in Africa" in *Journal of African Administration* 1960 <<https://www.heinonline.org>> assessed 22nd February 2026 posited that "the main distinction that can be drawn, as I see is between those territories where Islamic law is regarded as a special variety of native law and custom, and those territories where it is considered to be a third, distinct system. Examples of countries where it is applied as a variety of native law and custom are provided by Northern Nigeria up to the year 1956," However, in *Alhaji Ila Alkamawa v Alhaji Hassan Bello & Anor* (1998) LPELR-424 (SC). Wali, JSC (as he then was) held as follows when he considered the nature of Islamic law. He stated that "Islamic law is not the same as customary law as it does not belong to any tribe. It is, therefore, a complete system of universal law, more universal than the English common law." In the same vein, Jamiu Muhammad Busari in his article titled "Shari'a as Customary Law? An Analytical Assessment from the Nigerian Constitution and Judicial Precedents in *AHKAM: Jurnal Ilmu Syariah* Vol.21 No.1 (2021) Busari < <https://www.Journal.uinjkt.ac.id>> assessed 21st February 2026. posited that Under the Nigerian legal classification, *shari'a*, the Islamic legal system is classified as customary law. It is on these premises that the Muslims' agitations for full-fledge *shari'a* applications and declassification from being a customary law are always thwarted and termed "unconstitutional" by the *shari'a* antagonists. Meanwhile, the Muslims and protagonists viewed the problems as judicial misinterpretations and legal incongruity. In this study, with the adoption of an analytical approach, *shari'a* and customary law is assessed from the provisions of the Nigerian Constitutions and some judicial precedents to unravel the actual position of *shari'a*. It was then discovered that, despite the classification under the Nigerian legal system, *shari'a* could not have been a customary law due to some factors which include its sources, divinity, permanency, and universality. For further reading, see AA Oba "Islamic law as customary law: the changing perspective in Nigeria". *International and Comparative Law Quarterly* Vol, 51 No 4 (Oct. 2002) 817-850. <<https://www.jstor.org/stable/3663189>>

⁷ T.O. Ocheja, "Dualism in the Law of Succession in Nigeria" a chapter in *Legal Pluralism in Africa: A compendium on Africa Customary Law* (Nigerian Institute of Advance Legal Studies Lagos 2012) 586. For an in dept analysis on the effect of legal pluralism as it concerns the subject of legitimacy, legitimation, and succession in Nigeria, see PO, Itua, "Legitimacy, legitimation and succession in Nigeria: An appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended on the rights of inheritance" *Journal of Law and Conflict Resolution* Vol. 4(3), March 2012. <<https://www.academicjournals.org/JLCR>> accessed 23rd February 2026.

⁸ Marriage Act, Cap M6. Laws of the Federation of Nigeria 2004.

⁹See EI Nwogugu, *Family Law in Nigeria*. Revised (ed), (Heinemann Educational Books (Nigeria) Plc 2006) 25

nature. However, by virtue of Sec. 33(1) of the Marriage Act, this prohibition does not affect same parties who are already married under customary law, before they decided to “enhance” the status of their marriage from a potential polygamous one to a monogamous marriage.¹⁰ Therefore, Sec. 35 of the Marriage Act preserved customary law marriage in Nigeria. In *Mgbodu v Mgbodu*¹¹ the Court of Appeal Per Helen Moronkeji Ogunwumiju, held thus, when the court considered the provision of Sec.35 of the Marriage Act.

Section 35 of the Marriage Act provides as follows: 35. Any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law; but, save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any customary law, or in any manner apply to marriages so contracted. (Underlining mine) The Appellant in this case has strenuously argued that the proviso hereinabove recognizes customary law despite a prior celebration of a statutory marriage. That couldn't be more wrong. The underlined phrase 'SAVE AS AFORESAID' which translates as 'EXCEPT AS STATED ABOVE' completely put paid to the erroneous arguments of the Appellant. Without much ado, what Section 35 simply means is that any marriage celebrated in accordance with customary law shall be valid notwithstanding anything contained in the Marriage Act EXCEPT where it is invalid by reason of the existence of a Statutory marriage before the said customary marriage. In other words, the only condition that can invalidate an otherwise proper marriage conducted in accordance with customary law is when one of the parties to the customary marriage was at the time the customary marriage was conducted, married to another person under the Marriage Act and the marriage was still subsisting. Let me say that while a subsequent Statutory marriage by or to a person who is either married under the Act or in accordance with Customary law is forbidden, subsequent marriage under the Act or in accordance with Native law and Custom is not forbidden under any law where the parties remain the same. In other words, where Mr. A marries Mrs. A in accordance with Native law and custom, they can proceed to conduct another marriage under the Act if they so wish and vice versa. However, during the pendency of either a marriage in accordance with Native law and custom or a marriage under the Act, Mr. A, or Mrs. A cannot validly conduct any marriage with another person under the Act. This is the position of the law as provided in Section 33 (1) of the Marriage Act as follows: 33. (1) No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had. That been said, the proviso in Section 35 as I said earlier in this judgment is irrelevant to the circumstances of this case where there was a valid and subsisting statutory marriage, the trial Court predictably did not allude to the proviso in its judgment.

Also, in *Nola & Ors v Graham-Douglas & Anor*¹² the Court of Appeal Per Isaiah Olufemi Akeju JCA held as follows when the court considered whether a statutory marriage contracted during the existence of a marriage contracted under customary law between either of the parties to the statutory marriage and a third party is valid in law.

Resolving this issue at pages 748 - 749 of the Record of Appeal the learned trial Judge cited and quoted Section 33 (1) of the Marriage Act which provides that "No Marriage in Nigeria shall be valid where either of the parties thereto at the times of the celebration of such marriage is married under Customary law to any person other than the person with whom such marriage is had." His Lordship then stated that: "The above provision is very clear, it gives due respect and credence to a pre-existing customary marriage. It provides no dichotomy between a marriage under the Act and under Customary Law in the sense of one

¹⁰ *Jadesimi v Okotie -Eboh & Ors* (1996) LPELR- 1590 (SC).

¹¹ (2018) LPELR-43770(CA). 7 - 9 Paras B – D.

¹² (2019) LPELR-48285(CA) 14 - 16 Paras E - A

being main and the other minor... In view of the clear provision of Section 33 (1) of the Marriage Act and having regard to the fact that there was an existing customary Iya marriage between the late Chief Donald Graham-Douglas and the late Mrs. Gladys Claudiana Graham-Douglas, it is very clear that the marriage between the late Chief Donald Graham-Douglas and the 2nd defendant was invalid. That being the case, it follows that the 2nd defendant was in law, not the wife of the late Chief Donald Graham-Douglas and therefore cannot be described as the sole surviving wife of the late Chief Donald Graham-Douglas." Having been well reasoned and based on the evidence before the Court and the applicable law I accept the foregoing findings of the learned trial judge.

These case law authorities demonstrates the acceptance and the preservatives mechanism employed by the legislator in ensuring that these two-marriage systems co-exist within the same legal system.¹³ Customary law marriage which is potentially polygamous in nature may be defined as the voluntary union for life of one man with one or several wives.¹⁴ The main characteristic of this system of marriage, is the capacity of the man to marry as many wives as he desire. His legal capacity does not diminish or extinguish by the mere fact that he is married to only one wife. However, if he does decide to "enhance" the status of his marriage from being polygamous to a monogamous one by contacting a marriage under the Marriage Act, then he automatically losses that legal capacity he once enjoyed under customary law to marry more than one wife. In *Jadesimi v Okotie-Eboh & Ors*¹⁵ the Supreme Court Per Huhammadu Lawal Uwais JSC held as follows, when the court considered the nature of customary law marriage *vis-a-vis* statutory marriage. According to the learned jurist:

It is a matter of common knowledge that most people in Nigeria who contract marriages under the Marriage Act, undergo a form of customary marriage earlier as a matter of practice and adherence to the custom of their forefathers. Some refer to such practice as "traditional engagement" while others simply refer to it as solemnization of customary marriage. It is never intended by the practice that the marriage under the Marriage Act should nullify the customary marriage or engagement but rather that it would supplement the practice or custom. The parties are of course aware that by applying the Marriage Act to their relationship, their marriage would become monogamous.

The Marriage Act¹⁶ makes adequate provisions for the protection and preservation of sanctity of statutory marriage, and by extension the marriage institution in Nigeria. The intention of the legislator was to ensure that once parties are married under the Act, they abide by the provisions of the Marriage Act which in certain circumstances are met to protect public policy and public morality. Thus, the Act in Sec. 39-48 provides for the criminalisation and punishment for certain acts, when committed by the parties either prior, during the processes of formalisation and finally after the parties must have been married. The Act, via the aforesaid sections intended to preserve the marriage institution. Unfortunately, despite these provisions in the Act, there are disturbing statistics concerning the rise in the rate of divorce concerning statutory marriages in the country¹⁷. This research seeks to interrogate the reasons

¹³ For the legal consequence of contracting a statutory marriage after been married under native law and custom, see E.F. Ijalana, and J.O. Agbana "A Critical Appraisal of the Concept of Double-Decker Marriage under the Nigerian Family Law" *Beijing Law Review* 2021, 12, 1163-1178 available online at <<https://www.scirp.org/journal/blr>> accessed 23rd February 2026. See also the case of *Jadesimi v Okotie -Eboh & Ors* (1996) LPELR- 1590 (SC).

¹⁴ See EI Nwogugu, *Family Law in Nigeria*. Revised (ed), (Heinemann Educational Books (Nigeria) Plc 2006) Ixxxi

¹⁵ (1996) LPELR-1590(SC).

¹⁶ Marriage Act, Cap M6. Laws of the Federation of Nigeria 2004.

¹⁷ The Federal Capital Territory (FCT) High Court showed that over 2,000 divorce cases were filed between the year 2019 and February 2020, with an average of 30 cases being entertained every day, even as the Court is trying hard to reconcile couples through arbitration panels. Findings further revealed that the figure is higher at the Customary Courts, the Alkali, and the Sharia Customary Courts within the FCT.

for this increase in the rate of divorce. It queried whether the rise in the rate of divorce could be attributed to the fact that the provisions of Sec.39-48 of the Marriage Act are observed more in breach than in compliance. Could it be that the provisions of the extant law i.e., the Marriage Act are moribund that urgently need amendment in order to bring the statute in line with what is acceptable in other jurisdictions.

Historical background on statutory marriage in Nigeria

In Nigeria, two different systems of marriage laws exist side by side. One system is based on the English law while the other is based on “native law and custom” or simply “customary law.”¹⁸ In *Chinweze & Anor v Masi & Anor*¹⁹ Chukwudifu Akunne Oputa JSC (of blessed memory) held when the Supreme Court considered the types of marriages recognized under Nigerian law as follows:

A man's family normally consist of the man, his wife or wives and the children born to him by such wife or wives. I have on purpose used the expression wife or wives because we have here in Nigeria two types of marriages recognised by law (a) Marriage under the Marriage Act or Ordinance. This is a monogamous system of marriage and (b) Marriage by Customary law. This is a polygamous system.

This research is primarily focus on statutory marriage which is based on the English laws that were received into Nigeria during the colonial era, which has since been modified over time. It is imperative to state from the onset that the laws of the Federation of Nigeria do not, in general constitute a unified body of laws. Lagos became a British colony in 1862. At that time there existed in this area a system of local customary law only. One of the first actions of the British authorities was to establish for the colony a law-making body, a system of court based on the British model and to introduced into it the main body of English law.²⁰ No attempt was made to abolish wholesale the customary law and institution that were already in existence in Lagos. This was largely due to the British colonial administration policy of preserving as far as compatible with imperial rules, the law and imperial administration of colonial territories.²¹ There is no doubt that important changes had taken place since then. Suffice it to say that the sources of law established for the colony of Lagos set a pattern for the colony of Lagos as it was finally established in 1914, and which has basically remained unchanged ever since. The first Ordinance dealing with marriage was enacted in Nigeria in 1863.²² Unlike the subsequent Marriage Act, this Ordinance did not prohibit polygamy, which is the hallmark of statutory marriage.²³ This Ordinance was replaced by the Marriage Act of 1884²⁴ that introduced the concept of

<<https://www.sunnewonline.com/worries-as-court-get-more-divorce-cases/>> accessed 26th February 2026

¹⁸ Harinder Boparal, “The Customary and Statutory Law of Marriage in Nigeria” African Indigenous Law proceeding of the workshop (7-9 August 1974) by institute of African studies, University of Nigeria Nsukka, ed. By Elias, Nwabara and Akpamgbo (Enugu 1975.) 530.

¹⁹ (1989) LPELR-851(SC).

²⁰ See Ordinance No. 3 of 1863. See generally Park, *Sources of Nigeria Law* (1963)

²¹ Harinder Boparal, “The Customary and Statutory Law of Marriage in Nigeria” African Indigenous Law proceeding of the workshop (7-9 August 1974) by institute of African studies, University of Nigeria Nsukka, ed. By Elias, Nwabara and Akpamgbo (Enugu 1975.) 532

²² Ordinance No. 10 of 1863.

²³ See *Adegbola v Folaranmi* (1921) 3, N.L.R. 89.

²⁴ Ordinance No. 14 of 1884. For a discussion on the origin and the marking of this Ordinance, see Zabel, “The Legislative History of the Gold Coast and Nigerian Marriage Ordinance” *Journal of African Law* 13 (1969) 64. See also Morris, “The Development of Statutory Marriage Law in Twentieth Century British Colonial Africa”. *Journal of African Law* 23 (1979) 36-74, for a discussion of the proliferation, of this Ordinance with some amendment, to the British colonies between the Sahara and the Zambesi except Gambia.

monogamous marriage into Nigeria.²⁵

This Act was latter replaced by the Marriage Act of 1914,²⁶ with its minor modification, continued to be in force till date. The provisions of the 1914 Act are however identical with the provisions of the 1884 Act, which it repeals and replaced.²⁷ As mentioned earlier, the British colonial administration did not interfere with the already established system of customary law that was in existence. However, the attitude of the Christian missionaries, which was echoed by the courts, and the legislature was to regard at least until the first quarter of the twentieth century. Customary law marriages were regarded as unchristian, and therefore an inferior kind of marriage. This explained why some provisions of the Marriage Act, shows a clear bias in favour of statutory marriage as opposed to customary law marriages.²⁸

It is therefore not surprising that both the 1884 Act and the 1914 Act provided for the “validation” for certain religious marriages celebrated in the Nigerian Protectorate before 1914.²⁹ The significant and the purpose of the “validation” has been questioned by Boparal.³⁰ He argued that the essence of the validation is doubtful, as to whether the validation required by the 1886 and the 1914 Act meant valid before 1914. He concluded that the question is of no practical importance since none of those marriages is still subsisting today. A major piece of legislation was promulgated in 1900 known as the Marriage Proclamation³¹ for the Protectorate of Southern Nigeria. it is instructive to note that up to 1907, there was no provision for statutory marriages in the Northern part of Nigeria. However, that same year the Marriage Proclamation 1907 was made for the Northern Protectorate.³²

This legislation was also like the 1884 Ordinance. The Marriage Ordinance of 1914³³ repeal the Marriage Ordinance of 1908, the Marriage Proclamation of 1907, and the Foreign Marriage Ordinance of 1913. The 1914 statute is substantially similar to the 1884 Ordinance and based on the same principle of monogamy as the English law of marriage.³⁴ The most significant aspect of the Nigerian law is that it made the celebration of the marriage a purely civil function, leaving it open to the parties to observe³⁵ any religious ceremony they think fit. Thus, today the celebration of monogamous

²⁵ Harinder Boparal, “The Customary and Statutory Law of Marriage in Nigeria” African Indigenous Law proceeding of the workshop (7-9 August 1974) by institute of African studies, University of Nigeria Nsukka, ed. By Elias, Nwabara and Akpamgbo (Enugu 1975.) 533.

²⁶ Ordinance No. 18 of 1914, Cap. 115 Law of the Federation of Nigeria 1958.

²⁷ It is of importance to note that Lagos was ceded to the British Crown in 1861 and the Marriage Ordinance of 1863 applied only “in the “settlement of Lagos and its dependences” the Marriage Act of 1884 was enacted when Lagos was part of the Colony of the Gold Coast. Lagos was separated from the Gold Coast Colony in 1886 but the 1884 Act continue to apply in it. The Colony of Lagos was merged with the Protectorate of Southern Nigeria in 1906, the 1884 Act now came to apply to the whole of the new entity. The Protectorate of the Northern and Southern Nigeria were merged in 1914, and the 1914 Act was enacted to cover the new Nigeria.

²⁸ See the Provision of Sec. 35 of the Marriage Act, Cap M6. Laws of the Federation of Nigeria 2004. This section reaffirms the concept of Monogamy in the Act. See also Sec. 46 which criminalised and provide for a term of imprisonment for anyone that violate the provision of the section.

²⁹ Ordinance No. 11 of 1914.

³⁰ Harinder Boparal, “The Customary and Statutory Law of Marriage in Nigeria” African Indigenous Law proceeding of the workshop (7-9 August 1974) by institute of African studies, University of Nigeria Nsukka, ed. By Elias, Nwabara and Akpamgbo (Enugu 1975.) 533.

³¹ No 20 of 1900. This statute was amended by No. 22 of 1901, No.6 of 1902 and No. 3 of 1903

³² No. 1 of 1907 Laws of the Protectorate of Northern Nigeria, 1910, 541.

³³ No. 18 of 1914.

³⁴ Marriage Act, 1949.

³⁵ See Zabel, “The legislative history of the Gold Coast and Nigerian Marriage Ordinance” *Journal of Africa Law*.

marriage in Nigeria is regulated by the Marriage Act, such marriage is usually referred to as statutory marriage.³⁶

Conceptual Clarification

Statutory Marriage

All over the world marriage as a universal institution is recognised and respected. As a social institution, marriage is founded on and governed by the social and religious norm of society.³⁷ Marriage is also a creation of the law. Thus, statutory marriage can be defined as the “legal union of one man and one woman as husband and wife”.³⁸ Also, statutory marriage, as distinguished from an agreement to marriage, and from the act of becoming married, “is the legal status, condition, or relation of one man and one woman united in the law for life or until divorced, for the discharged to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex.”³⁹ It is also “A contract, according to the form prescribed by law by which a man and woman capable of entering into such contract, mutually engage with each other to live their whole life (or until divorced) together in state of union which ought to exist between a husband and wife.” Prior to the recognition of same-sex relationship and marriages in certain jurisdictions, it used to be universally accepted that marriage, being a union of man and woman, involves two persons of opposite sex.

Therefore, sex constitute an essential determination of marriage relationship. Consequently, in order to establish the existence of a valid marriage, it must be proved that the persons involved are man and woman⁴⁰. This used to be the universally acceptable position before the recognition of same-sex marriage in many countries of the world.⁴¹ However in Nigeria by virtue of Sec. 1(a)(b) and 2 of the Same-Sex Marriage (Prohibition) Act⁴², a marriage contracted, or civil union entered into between persons of same-sex is prohibited. Also, a marriage contract or civil union contracted between persons of the same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there from by virtue of the certificate shall not be enforced by any court of law.

Statutory marriage in Nigeria is monogamous. It is the same in character as that which Lord Penzance described in the *locus classicus* case of *Hyde v Hyde*⁴³ as the “voluntary union for life of one man and one woman to the exclusion of all others.” In *Amobi v Nzegwu & Ors*⁴⁴ the Supreme Court Per Olukayode Ariwoola JSC define marriage under the Marriage Act thus:

Marriage under the marriage Act generally means the legal union of a couple as spouses. In other words, it is ‘the voluntary union for life of one man and woman to the exclusion of all others’ see *Hyde and Hyde and Woodmansee* (1866) LPD & D 130, per Lord Penzance.

Vol. 13, 64-79, 158-178.

³⁶ EI Nwogugu, *Family law in Nigeria* (Revised (ed), Foludex, Press Ltd. Ibadan 2006) 23.

³⁷ Ibid Ixxviii.

³⁸ HC Black, *Black Law Dictionary with Pronunciations* (6th (ed), West Publishing Co., 1990) 972.

³⁹ Ibid.

⁴⁰ Id.

⁴¹ same-sex marriage, the practice of marriage between two men or between two women. Although same-sex marriage has been regulated through law, religion, and custom in most countries of the world, the legal and social responses have ranged from celebration on the one hand to criminalization on the other. <<https://www.britannica.com>> accessed 27th of February 2026. See also, “The church of England allows blessing for same-sex couple” <<https://www.britannica.com>> accessed 27th February 2026.

⁴² Same-Sex Marriage (Prohibition) Act, 2013.

⁴³ (1886) LR 1 P&D 130, 133.

⁴⁴ (2013) LPELR-21863(SC), see also the definition provided by Olukayode Ariwoola JSC in the case of *Amobi v Nzegwu & Ors* (2013) LPELR-21863 (SC). (Pp 61-61 paras D-D).

For any union to qualify as statutory marriage in Nigeria, three key elements must be present. One the marriage must be a voluntary union between the parties. This presupposes that consent must be freely given without duress. Secondly, the union must be intended to be for life. The mere fact that the union must be for life does not mean it cannot be dissolved by a decree from a competent court with jurisdiction.⁴⁵ Thirdly, it must be a union of one man and one woman to the exclusion of all others. This last element makes it monogamous because it does not admit more than one woman. Once the man has capacity to marry more than one wife, it does not matter whether he exercises that right or not, the fact that he possesses such capacity qualify the marriage to be described as a customary law marriage.

Statutorily, the Interpretation Act⁴⁶ by Sec. 18 defines a monogamous marriage as “a marriage which is recognized by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage.” In *Chukwu & Ors v Chukwu & Ors*⁴⁷ the Court of Appeal considered whether a statutory marriage contracted during the existence of another statutory marriage is valid under the Marriage Act. After a careful consideration of the facts, the court Per Ignatius Igwe Agube JCA held as follows:

From the foregoing averments in the Affidavits which were exhibited by the 1st Respondent, it is crystal clear as rightly submitted by the learned Counsel for the Appellants that Chief LAS Chukwu was already married to the 1st Appellant statutorily before Exhibit "B" was issued and the so-called marriage contracted with the 1st Respondent. In the same vein the 1st Respondent falsely put forward the said LAS Chukwu as a Bachelor in 1999 when the said Chief Chukwu was already married to Ethel Chukwu (the 1st Appellant) whom the 1st Respondent rightly described as the first wife. Accordingly, there was no LAS Chukwu who was a Bachelor as at 7th September 1999 when the so-called Marriage under the Act was contracted with the 1st Respondent. Thus, in line with Sections 34, 35, and indeed 36 of the Marriage Act and the authorities of *Onwudinjoh v. Onwudinjoh* [1957-58] 11 ERNLR 1, *Craig v. Craig* (1964) LLR 96, *Nwankpele v. Nwankpele* [1973] 3 U. I. L. R 8, *Abisogun v. Abisogun* [1972] 10 S.C. 1 and the maxim *Ex turpi causa non Oritur actio* the purported marriage of the 1st Respondent with the late LAS Chukwu having been contracted after the earlier statutory or Church marriage with the 1st Appellant, was ab initio null and void as the so called certificate marked Exhibit B must have been fraudulently acquired.

This judicial authority further validates and supports the monogamous nature of statutory marriage in Nigeria. Apart from the Marriage Act, the Matrimonial Causes Act⁴⁸ equally regulate statutory marriages too. In *Sunmonu v Sunmonu*⁴⁹ the Court of Appeal considered the question whether marriage under the Matrimonial Causes Act includes a marriage conducted in accordance with Muslim rites or customary law. The Court Per Ugochukwu Anthony Ogakwu JCA answered the question in the negative and held as follows:

By Section 69 of the Matrimonial Causes Act, marriage for the purpose of the Matrimonial Causes Act, does not include a marriage entered into according to Muslim rites or other customary law. In the words of Mukhtar, JCA (of blessed memory) in *ENWEZOR vs ENWEZOR* (2012) LPELR (8544) 1 at 15: “The marriage under the Matrimonial Causes Act for purpose of maintenance, custody and settlement does not include one conducted under customary law.

⁴⁵ See Sec. 15 (1) of the Matrimonial Causes Act. Cap M7. Laws of the Federation of Nigeria 2004.

⁴⁶ Interpretation Act, Cap 192. Laws of the Federation of Nigeria 1990.

⁴⁷ (2016) LPELR-40553(CA) 69 - 73 Paras D – D. See also, the case of *Nola & Ors v Graham-Douglas & Anor.* (2019) LPELR -48285(CA)

⁴⁸ Matrimonial Causes Act. Cap M7 Laws of the Federation of Nigeria 2004.

⁴⁹ (2021) LPELR-56002 (CA) 19 - 19 Paras A - D

Under our legal jurisprudence, two principal enactments that regulate statutory marriage are the Marriage Act⁵⁰ and the Matrimonial Causes Act⁵¹.

Offences relating to statutory marriage

In Nigeria, the word crime is synonymous with the word offence⁵² and both words are used interchangeable.⁵³ A crime is defined as “an act or omission which under any written law is deemed to be a crime, thus attracting punishment.”⁵⁴ Therefore, the hallmark of a crime, is the singular criterion of the act or the omission complained of or alleged, being designated as a crime in a statute, be it an Act of the Federation, a law of a State, an edict of a state or by-law of a local government.⁵⁵ A crime from the philosophical perspective of positive law “are the kind of conduct that are prohibited, on pain of threatened sanctions by the law.”⁵⁶ Thus, crimes are at least, socially proscribed wrongs, the kinds of conducts that are condemned as wrong by some purportedly authoritative social norm. “That is to say that they are wrongs which are not merely ‘private’ affairs, which properly concern only those directly involved in them: the community as a whole, in this case the political community speaking through the law, claims the right to declare them to be wrongs.”⁵⁷ Therefore, it has been well established in plethora of cases; and also trite principles of law that a person shall not be convicted of a criminal offence unless that offence is defined, and the penalty therefor is prescribed in a written law.⁵⁸ To that extent, offences provided for in the Marriage Act constitute offences in the eye of the law for which adequate punishment have also been provided. These offences should not be confused with Matrimonial offences. Matrimonial offences have been defined in different ways, depending on the jurisdiction under consideration. According to law Insider, matrimonial offence “means any ground upon which relief can be granted by the court.”⁵⁹ On the other hand, Oxford Reference define matrimonial offence to mean “Misbehaviour, such as adultery, desertion, or cruelty, by a party to a marriage.”⁶⁰ These definitions does not aptly capture the essence of offences in relation to statutory marriage in Nigeria.

Historically, matrimonial offences use to be part of our law on divorce. Prior to 1970, the Nigeria law on divorce was based on the matrimonial offence theory.⁶¹ This arose from the fact that the law on matrimonial causes in force in England from time to time was made applicable to Nigeria.⁶² To that

⁵⁰ Marriage Act. Cap M7 Laws of the Federation of Nigeria 2004.

⁵¹ Matrimonial Causes Act. Cap M7 Laws of the Federation of Nigeria 2004.

⁵² See *Attorney-General v Awoyele* (1952) 19 NLR 52. See also, AG Karibi-Whyte, *Groundwork of Nigerian Criminal Law*. (Nigerian Law Publication Ltd, Lagos 1986) 76-77

⁵³ Oluwatoyin Doherty, *Criminal Procedure in Nigeria Law and Practice* (Blackstone Press Limited London 1990)

⁵⁴ Ibid 1. See also Section 114 (1) of the Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria 2007 that defines Crime to mean “an offence punishable by imprisonment”

⁵⁵ Ibid.

⁵⁶ See Legal Punishment *Stanford Encyclopaedia of Philosophy* <https://plato.stanford.edu/Archives/> accessed 5th March 2026.

⁵⁷ Ibid

⁵⁸ See *Aoko v Fagbemi & Anor*. [1961] All NLR 400 and *Undokwu v Onugha & Anor* 7 ENLR 1.

⁵⁹ <<https://www.lawinsider.com>> accessed 28th February 2026.

⁶⁰ <<https://www.oxfordreference.com>> accessed 28th February 2026.

⁶¹ See, for example, the English Matrimonial Causes Act, 1965 which applied in Nigeria until 1970.

⁶² EI Nwogugu, *Family law in Nigeria* (Revised (ed), Foludex, Press Ltd. Ibadan 2006) 155.

extent, the change in English law in this respect became part of Nigerian law.⁶³

In 1970, the Matrimonial Causes Act⁶⁴ was promulgated by the then Military Government to take the place of English Rules, which up till then applied.⁶⁵ This Act is significant because it marks the introduction of the first indigenous legislation in the field. Most importantly, the Act introduced the “breakdown principle into the Nigerian law of divorce, while at the same time retaining elements of the matrimonial offence principles. Consequently, Sec. 15(1) of the Act provides that either party to a marriage may petition for divorce “upon the ground that the marriage has broken down irretrievably.” This section thus established a single ground for divorce in Nigeria, which is irretrievable breakdown in the place of several which existed under the old law, thereby jettison the matrimonial offences theory. Presently, under our law, the matrimonial offence theory does not exist under the provisions of the Matrimonial Causes Act.⁶⁶

Furthermore, “misbehaviour, such as adultery, desertion, or cruelty, by a party to a marriage” defined as matrimonial offence by Oxford Reference, now constitute grounds that a petitioner in Nigeria must prove before a court in order to establish that the marriage has broken-down irretrievably before the court can dissolve the marriage. On the other hand, offence relating to statutory marriage are those offences which the Marriage Act has declared to be offences, and which adequate provisions for punishments have been provided.⁶⁷ These offences are as follows:- contracting a marriage with a person previously married in accordance with the Act, making false declaration for Marriage, false pretence of Impediment to marriage, unlawful performing of marriage ceremony, wilful neglect of duty to fill up or transmit Certificate of Marriage, personation in Marriage, fictitious Marriage, contracting marriage under the Act when already married by native law, contracting marriage by native law when already married by the Act and marrying a minor without prescribed consent.

Theoretical Framework

Legal punishment presupposes that a crime has been committed for which punishment is imposed and a criminal law as that which defines crimes as crimes; and a system of criminal law presupposes a state, which has the political authority to make and enforce the law and to impose punishments.⁶⁸ For centuries, legal, moral and political philosopher had sought to provide answers to the fundamental question of whether and how legal punishment can be justified, in the same vein allowing the state to use its apparatus of the law to inflict intentionally burdensome treatment on its citizens.⁶⁹ In trying to answer these questions, philosophers have developed various theories concerning punishment. These theories sought to justify the need to impose punishment for any offence committed by the offender. Thus, for centuries, the search for a precise definition of punishment has eluded philosophers, and it is likely to be a futile exercise⁷⁰ because of the complexity of the subject matter. However, in most jurisdictions, there are legal justifications for punishment. Therefore, legal punishment involves the imposition of something that is intended to be both burdensome and reprobative, on a supposed offender for a supposed crime, by a person or body who claims the authority to do so. To be effective,

⁶³ Section 4 of the Regional Court (Federal Jurisdiction) Act, 1958. Cap. 177 Laws of the Federation of Nigeria, 1958. This section has now been repealed by section 155(2) of the Matrimonial Causes Act. Cap M7 Laws of the Federation of Nigeria 2004.

⁶⁴ No.17 of 1970

⁶⁵ EI Nwogugu, *Family law in Nigeria* (Revised (ed), Foludex, Press Ltd. Ibadan 2006) 156.

⁶⁶ Matrimonial Causes Act. Cap M7 Laws of the Federation of Nigeria 2004.

⁶⁷ See generally the provisions of Sec. 39 -48 of the Marriage Act, Cap M6 Laws of the Federation of Nigeria 2004.

⁶⁸ See Legal Punishment *Stanford Encyclopaedia of Philosophy* <https://plato.stanford.edu/Archives/> accessed 5th March 2026

⁶⁹ Ibid.

⁷⁰ Id.

punishment involves material imposition or exactions that are in themselves typically unwelcome, because they deprive people of things that they value such as liberty and time. Overall, the objective for punishment can be sum up in the purpose of punishment that can be categorized into four main theories, namely: deterrence, incapacitation, retribution, and rehabilitation/reformation. In *Elizabeth v FRN*⁷¹ the Court of Appeal Per Joseph Shagbaor Ikyegh, JCA held as follows when the court considered the essence of sentencing and punishment.

Sentencing is an important closing chapter of a criminal trial. The aim of it is retribution, deterrence, reformation and protection of the society. The retributive aspect is designed to express public revulsion from the offence and to punish the offender for his wrong conduct, while deterrence is to discourage the convict from further offences as well as potential offenders from committing offences. Reformation aims on reintegrating the offender into the society for honest living. Above all the protection of the society is the overriding factor.

The case law referenced above reaffirms the position that these four theories of punishment are validated and enforced by the courts in Nigeria during the process of sentencing of an offender, who has been convicted. Below is a brief discussion on these theories.

Deterrence Theory

The philosophy behind this theory, and approach is to inflict pain on the offender to deter him or her or others from doing the act or omission in the future. It may be general or specific. "Specific deterrence aims to discourage crime by punishing offenders for their crime and thereby conveying to them that crime does not pay while general deterrence seeks to dissuade potential offenders by the threat of anticipated punishment for engaging in an unlawful conduct."⁷² In *State v Kalu*⁷³ the Supreme Court reaffirm that death sentence is still the punishment for armed robbery; so as to serve as specific deterrence to other persons who may wish to engage in such crimes. On the other hand, general deterrence theories assume that, because most individuals are rational, potential offenders will calculate the risk of being similarly caught, prosecuted, and sentenced for the commission of a crime. They argue that by such evaluation, persons who would ordinarily engage in criminal activities are discourage from doing so. However, one of the criticisms against this theory is that it is difficult to validate. Despite the number of criminal convictions, in Nigeria, the incident of crime seems to be on the increase, thereby questioning the effectiveness of this theory⁷⁴. The protagonists have always argued that the theory has been responsible for the level of crime recorded at any given time, which would have been higher they argued, but for the general deterrence it offers.

Retribution Theory

The objective of the retribution theory is to punish the offender in a manner proportionate to the offence he has committed.⁷⁵ In *Onyebuchi v FRN*⁷⁶ the Court of Appeal Per Abubakar Mahmud Talba,

⁷¹ (2021) LPELR-54632(CA). See also *Maina v FRN* (2022) LPELR-58942(CA); *Yakubu v FRN* (2022) LPELR-57749 (CA) and *Dahiru v IGP* (2022) LPELR -59049 (CA)

⁷² UJ, Idem, and NE, Udofia, "Sentencing and Administration of Criminal Justice in Nigeria" *Donnish Journal of Law and Conflict Resolution* Vol. 4(1) January 2018 < <https://www.donnishjournal.org/djcr> > accessed 22nd March 2026.

⁷³ [1998] 1NWLR (Pt.583) 531.

⁷⁴ In Nigeria on the 10th of April 1985 during the Military Administration headed by General Buhari, Bartholomew Owoh (26) Lawal Akanni Ojulope (30) and Bernard Ogedegbe (29) were executed by Firing Squad at Kirikiri prison in Lagos. The three men and one lady known as Gladys Caroline Inyama were convicted by the Justice Adebayo Desalu led military tribunal for contravening the provisions of Decree No. 20. They were executed after being found guilty of drugs trafficking. Their execution was meant to serve as a general deterrence for drugs trafficking. Unfortunately, the crime of drugs trafficking continues under their administration.

⁷⁵ UJ, Idem, and NE, Udofia, "Sentencing and Administration of Criminal Justice in Nigeria" *Donnish Journal of Law and Conflict Resolution* Vol. 4(1) January 2018 < <https://www.donnishjournal.org/djcr> > accessed 22nd March 2026.

JCA held as follows when the court evaluated the factors to be considered in performing sentencing function.

The Administration of Criminal Justice Act, 2015 provides a guide for sentencing. Section 311(2)(b) provides: 'The Court shall in pronouncing sentence, consider the following factors in addition to section 239 and 240 of the Act. (b) The interest of the victim, the convict and the community.' This provision of the law is in line with the principle of retribution or retributive approach. It involves looking back at the circumstances under which the offence was committed in deciding what punishment the offender deserves for his conduct.

Similarly, in *Ali v FRN*⁷⁷ the Court of Appeal held Per Abubakar JCA when it considered the essence of imprisonment in relation to punishment of a person convicted of a crime.

The essence of imprisonment is to meet the legitimate expectation of the society of retribution, where the society strikes back at the offender as to deter potential offenders and make the commission of the crime unattractive, protect the public and society by ensuring that the dare devil criminals and recalcitrant offenders are taken out of circulation.

Although the court in sentencing a defendant who has been convicted of a crime is entitled to take into consideration the essence of punishment as espoused in the case of *Elizabeth v FRN*,⁷⁸ however, there are permissible circumstances where the court can impose a sentence that is dis-proportionate, provided the aim of such sentence is to protect the larger society.⁷⁹ In *Ojolade v State*,⁸⁰ the court considered whether the punishment of life imprisonment is mandatory for the crime of rape. The Court Per James Gambo Adundaga JCA held that:

It was submitted that the lower Court was prevented from tampering justice with mercy because Section 283 of the Penal Code Law is mandatory. I accept the appellant's argument that the said Section 283 stipulate a minimum sentence of imprisonment of not less than three years and a maximum sentence of life imprisonment. It is my firm view that the trial judge did not exercise his discretion judiciously and judicially when he sentenced the appellant to life imprisonment. Nothing in the law make the punishment of life imprisonment mandatory for rape.

Incapacitation Theory

Although incapacitation is one of the theories of punishment, which assumes that the state has a duty to protect the public from future wrong or harm, and that such protection can be afforded through some form of incarceration or incapacitation. Most case law authorities on essence of sentencing usually encapsulate this theory of punishment with other theories as enunciated in the case of *Elizabeth v FRN*.⁸¹ It has been posited that the target or objective of this theory is not on the motive of the offender, rather it is on his physical power which it seeks to disable or otherwise cripple to prevent repetition of the crime.⁸² Thus, advocate of life and death sentences have relied heavily on this theory to justified it

⁷⁶ (2022) LPELR-58156(CA)

⁷⁷ (2016) LPELR-40472 (CA). See also *Onah v FRN* (2017) LPELR- 43535 (CA)

⁷⁸ (2021) LPELR-54632(CA)

⁷⁹ UJ, Idem, and NE, Udofia, "Sentencing and Administration of Criminal Justice in Nigeria" *Donnish Journal of Law and Conflict Resolution* Vol. 4(1) January 2018 < <https://www.donnishjournal.org/djcr> > accessed 22nd March 2026.

⁸⁰ (2019) LPELR-48214(CA).

⁸¹ (2021) LPELR-54632(CA).

⁸² See F, Zimring and G, Hawkins *Incapacitation: Penal Confinement and Restraint of Crime* (1st edn, Oxford University Press, New York, 1995) cited in UJ, Idem, and NE, Udofia, "Sentencing and Administration of Criminal Justice in Nigeria" *Donnish Journal of Law and Conflict Resolution* Vol. 4(1) January 2018 <

continuous inclusion in our statute books. On the other hand, the inclusion of death sentence *per se* in our laws is not incompatible with the present trend among civilized nations of the world. They argued that incapacitation aims to protect and prevent the community because confining individuals to prison, prevents them from committing further offences in the community during the period of incarceration. In *Onuoha Kalu v The State*⁸³ the constitutionality of the death penalty was considered by a full panel of the Supreme Court sitting as a Constitutional Court. Belgore JSC (as he then was) held thus:

The sentence of death is fully recognised and approved by the Constitution, and this could be found in the provisions of Section (sic) 213(2)(d), 220(1)(e). Nigeria is not peculiar in its Constitution and provisions of death sentence therein and in other statutes. Not up to ten per cent of the sovereign nations of the world abolished death sentence. Abolition of death sentence is not indicative of civilisation, rather in some cases is based on historical circumstances of some countries. At any rate in this country due to our Constitution, it is not the function of the Courts of law to abolish the sentence of death, the responsibility is on the legislative body.

Thus, incapacitation is justified, because the inmates will not be able to repeat criminal acts while they are under State control in the various correctional centres, and their behaviour are subject to strict control, while those sentence to death are remove from the society permanently.

Rehabilitation /Reformation Theory

It is generally believed that one of the most important objectives of sentencing is rehabilitation or reformation. This view has been expressed by academic and learned authors.⁸⁴ Amongst all the theories of punishment, rehabilitation or reformation has been described as the theory that seek to reform the criminal.⁸⁵ In this research, the term reformation or rehabilitation will be used interchangeably. In *Dahiru v IGP*⁸⁶ the Court Appeal Per Ridwan Maiwada Abdullahi, JCA held when the court considered the purpose of sentencing as follows: "Sentencing is aimed at the protection of the society through prevention of crime or reform of the offender which may be achieved by the means of deterrence, reformation or rehabilitation of the offender." The word reform has been defined as "to correct, rectify, amend and remodel."⁸⁷ It has been suggested that one of the reasons for the change of name from "Nigeria Prisons" to "Nigeria Correctional Centre" is to stress the importance of the correctional and reformatory character of the facility. It is envisaged that at the correctional centre, the offenders are provided opportunity to receive education or treatment that will eliminate criminal tendencies in them, so that the offenders become better members of the larger society when they are released from these centres.⁸⁸ In *Ekpo v State*⁸⁹ the Supreme Court Per Anyagbolu JSC (as he then was), considered the objective of reformation as a theory of punishment held in relation to sentencing of a young man of 18 years to 21 years' imprisonment for contravening Sec. 4 of the Counterfeit

<https://www.donnishjournal.org/djcr> > accessed 22nd March 2026.

⁸³ (1988) 11-12 S.C. 4; *Amoshima v State* (2008) LPELR-4369(CA)

⁸⁴ See A, Uduigwomen, *Studies in Philosophical Jurisprudence* (2nd edn, Calaber Jochrisam Publisher, 2005) 330 cited in UJ, Idem, and NE, Udofia, "Sentencing and Administration of Criminal Justice in Nigeria" *Donnish Journal of Law and Conflict Resolution* Vol. 4(1) January 2018 < <https://www.donnishjournal.org/djcr> > accessed 22nd March 2026.

⁸⁵ A, Uduigwomen, *Studies in Philosophical Jurisprudence* (2nd edn, Calaber Jochrisam Publisher, 2005) 330.

⁸⁶ (2022) LPELR-59049(CA)

⁸⁷ See Henry Campbell, and M. A., Black, *Black Law Dictionary with Pronunciations*, (6th Edn, Centennial Edition (1891-1991) West Publishing Co, 1990) 1281

⁸⁸ For further reading, see in UJ, Idem, and NE, Udofia, "Sentencing and Administration of Criminal Justice in Nigeria" *Donnish Journal of Law and Conflict Resolution* Vol. 4(1) January 2018 < <https://www.donnishjournal.org/djcr> > accessed 22nd March 2026.

⁸⁹ (1982) 6 SC 120.

Currency (Special Provisions) Act 1974.

I wish to place on record that I have much sympathy for the Appellant on the severity of the sentence passed on him. He is a young man of 18 years of age and a first offender, and if the principle of reformation of criminal had any place in the sentencing policy of our courts, the salvaging of this young man from the direction of crime to the rectitude should be our paramount pre-occupation.

Thus, it has been posited that most constructive steps to take toward reformation or rehabilitation of the offenders is to see that the offender does not commit the offence again. Therefore, the aim of every court is to fix a sentence proportionate to the offender's culpability which approach has been loosely described as the tariff system (the fact of the offence, the offender record, and any mitigating circumstances), reformation or rehabilitation of the offender shall be strong factor on the mind of the sentencing court.⁹⁰

Essential validity of statutory marriage in Nigeria

The principal enactments that regulate statutory marriages in Nigeria provides that parties to a marriage under the Act must possess the necessary capacity to marry. They are as follows. Age; prohibited degree of consanguinity and affinity; single status; consent of the parties; parental consent and sanity.

Marriageable age

It is a trite principle of law that any person that intend to contract statutory marriage in Nigeria must possess the necessary capacity to do so. Thus, it is imperative that such a person must have attained marriageable age. Failure to attain marriageable is fatal to the intending marriage, because of the legal consequent of such failure. By Sec. 3(1)(e) of the Matrimonial Causes Act⁹¹ provides that any marriage contracted in Nigeria where "either of the parties is not of marriageable age is void". This section presupposes that there is a specific age which the statute has designated as "marriageable age". Surprisingly, there is nowhere in any of the provisions of the Matrimonial Causes Act, and the Marriage Act⁹² where marriageable age is defined; neither did the statutes lay down any mandatory age for marriage. The lacuna created by this deficiency in the definition of what the law construe as marriageable age has led some academic and authors to proffer different interpretations. For example, Nwogugu⁹³ posited that:

in the absence of statutory definition of age of marriage, recourse may be had to the common law-rule on the subject. Part of the received English law in Nigeria is the common law of England. Under the common law, a valid marriage may be contracted if the parties have attained the age of puberty – fourteen years in the case of a boy and twelve years for a girl.⁹⁴

On the contrary, this research posits that although there is no express provision in any of the principal enactments that define the word "marriage age" nor specified a particular age as marriageable age, it is however palpable from certain provisions of the Marriage Act⁹⁵ that the age envisage as marriageable age is twenty-one years. For example, Sec. 18 of the Marriage Act dealing with the consent to marriage in certain cases provides as follows:

⁹⁰ UJ, Idem, and NE, Udofia, "Sentencing and Administration of Criminal Justice in Nigeria" *Donnish Journal of Law and Conflict Resolution* Vol. 4(1) January 2018 < <https://www.donnishjournal.org/djcr> > accessed 22nd March 2026.

⁹¹ Matrimonial Causes Act. Cap C7 Laws of the Federation of Nigeria 2004.

⁹² Marriage Act. Cap. C6, Laws of the Federation of Nigeria 2004.

⁹³ EI, Nwogugu, *Family Law in Nigeria* (Revised Edn, Foludex Press Ltd, Ibadan 2006) 24.

⁹⁴ Ibid.

⁹⁵ Marriage Act. Cap. C6, Laws of the Federation of Nigeria 2004.

If either party to an intended marriage, not being a consent widower or widow, is under twenty-one years of age, the written consent of the father, or if he be dead or of unsound mind or absent from Nigeria, of the mother, or if both be dead or of unsound mind or absent from Nigeria, of the guardian of such party, must be produced annexed to such affidavit as aforesaid before a licence can be granted or a certificate issued.

The above quoted provision of Sec. 18 of the Marriage Act⁹⁶ deal with necessity of obtaining parental consent by any of the party to the intended statutory marriage that is below twenty-one years. The importance of parental consent was echoed by Nwogugu⁹⁷ that “while the absence of parental consent does not invalidate the marriage, it an offence punishable with two years’ imprisonment for any person fully aware of the absence of such consent to marry or assist or procure any other to marry a minor.” It is instructive to note that Sec. 48 of the Marriage Act used the word “minor under the age of twenty-one years” as persons that required written consent before contacting a statutory marriage.

Secondly Sec. 11(1)(b) of the Marriage Act⁹⁸ provide “that each of the parties to the intended marriage (not being a widower or widow) is twenty-one years old, or that if he or she is under that age, the consent hereinafter made requisite has been obtained in written and is annexed to such affidavit.” The Marriage Act makes the issuance of a Registrar’s Certificate a condition precedence before the parties can contract a statutory marriage. The Registrar can only issue the certificate to the applicant when he has been satisfied by affidavit as to the facts contained in Sec. 11(1) (a) to (d). Once the parties fail to satisfy the provision of Sec.11(1)(b), the marriage if conducted shall be declared null and void marriage in accordance with Sec. 33(2)(c) of the Marriage Act,⁹⁹ and under Sec. 40 of the Act liable to a term of imprisonment.

Thirdly, by Sec. 33(2) of the Marriage Act,¹⁰⁰ a marriage shall be declared null and void if both parties knowingly and wilfully acquiesce in its celebration, subsection (c) “without a registrar’s certificate of notice or licence issued under section 13 of this Act duly issued.” The legal implication of Sec. 33(2)(c) is that where any of the party to the marriage is less than twenty-one years old, such a person not being a widower or a widow must obtain a written consent from his parent, if dead, by any other authorised persons as provided by Sec. 18 of the Marriage Act¹⁰¹ granting their consent to the marriage, and such written consent must be attached to the affidavit as required by Sec. 11(1)(b) of the Marriage Act.

Fourthly, Sec. 48 of the Marriage Act¹⁰² criminalises the conduct of any person who marry or assist in the marriage of a minor under twenty-one years. The section provides that “whoever, knowing that the written consent required by this Act has not been obtained, shall marry or assist or procure any other person to marry a minor under the age of twenty-one years, not being a widow or widower, shall be liable to imprisonment for two years.” In the light of the statutory provisions espoused above, it is clear that the intention of the legislature was to adopt twenty-one years as the marriageable age though not expressly stated.

Furthermore, this research is not unmindful of the proposition canvas by some authors to the effect that since the principal enactments are silent on the definition of marriageable age, then it is safe to assume that the minimum age should be eighteen years¹⁰³ as prescribed as the age for marriage by Sec. 22 of

⁹⁶ Ibid

⁹⁷ EI, Nwogugu, *Family Law in Nigeria* (Revised Ed, Foludex Press Ltd, Ibadan 2006) 27

⁹⁸ Marriage Act. Cap. C6, Laws of the Federation of Nigeria 2004.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Marriage Act. Cap. C6, Laws of the Federation of Nigeria 2004.

¹⁰² Ibid

¹⁰³ See EI, Nwogugu, *What next in Nigerian Family Law* (Nigerian Institute of Advance Legal Studies, Lagos 2006) 13. See also C, Ajuzie, and Osondu, *Modern Nigerian Family Law & Practice* (Printable Publishing Company, Lagos, 2012) 118. Where the authors posited that “By section

the Child Rights Act,¹⁰⁴ which provides that “No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever”. Contributing to the debate, Nwogugu posited that:

The Marriage Act does not in its present form prescribe a minimum age of marriage. This significant omission has to some extent been alleviated by the provision of section 21 of the Child Rights Act which prohibits the marriage of a person under the age of 18 years. However, there is need to amend the Marriage Act to reflect this age limit.¹⁰⁵

Also, C. Ajuzie and Osondu¹⁰⁶ posited as follows, concerning Marriageable Age:

By subsection(1)(e) of Section 3 of the Matrimonial Causes Act, both parties to marriage must have attained marriageable age, although the Matrimonial Causes Act did not define the term “marriageable age.” Marriageable Act under the Child’s Rights Act is now eighteen years and above since a child is defined in the Act as someone below the age of 18 years.”

With respect to the views articulated above by the learned authors, this research canvasses a contrary opinion from the views expressed by the authors quoted above and postulate that indeed there is a minimum age of marriage provided by the Marriage Act, though not expressly stated. It is trite principle of interpretation statutes that the court can deduce the intention of the legislature from the long title of a statute to adequately interpret same. The long title to the Child Rights Act,¹⁰⁷ goes thus: “An Act to Provide and Protect the Rights of a Nigerian Child; and Other Related Matters, 2003.” Whereas on the Other hand, the long title to the Marriage Act provides as follows: “An Act to make provisions for the celebration of marriage.” The importance of long title in an enactment cannot be over-emphasised. Thus, it is common to find most enactment taking off with long titles; introductory phases that give insights into the objects of the statute.¹⁰⁸ Therefore, long titles are of note in the construing laws with plain or unambiguity language.¹⁰⁹ In *Bello & Ors v AG Oyo State*.¹¹⁰ Adolphus Godwin Karibi-Whyte JSC (of blessed memory) held thus, when the Apex Court considered whether resort can be held to the long title in order to resolve any ambiguity in the provisions of a statute.

The long title of a statute is now accepted as an important part of it and may be relied upon as explaining its general scope and aids in its construction. Thus, in this case, the general scope of the Tort law as stated in the long title is inter alia to provide for the compensation of the families of the deceased persons killed by accidents. However, in determining the

¹⁰⁴ Child Rights Act 2003 was adopted in Nigeria to domesticate the Convention on the Rights of the Child, a U.N. Convention on the Rights of the Child, which came into force on the 20th of Nov.1989. The Convention was brought within the scope of the peculiarity of the African Child by virtue of the African Chapter on the Rights & Welfare of the Child, which was adopted by the Organization of Africa Unity (O.A.U) in Ethiopia in July 1990. Nigeria ratified the Convention on the 21st of March, 1991 and it was domesticated on the 31st of July 2003. In Edo State, the Act has been domesticated as the Child Rights Law 2007, Law of Edo State of Nigeria.

¹⁰⁵ See EI, Nwogugu, *What next in Nigerian Family Law* (Nigerian Institute of Advance Legal Studies, Lagos 2006) 13.

¹⁰⁶ C. Ajuzie, and Osondu, *Modern Nigerian Family Law & Practice* (Printable Publishing Company, Lagos, 2012) 118.

¹⁰⁷ Child Rights Act 2003

¹⁰⁸ See OF, Ogbuinya, *Guidelines to Interpretation of Nigerian Statutes* (Snaap Press Nigeria Ltd Enugu, 2019) 7

¹⁰⁹ See *Vacher & Sons Ltd v London Society* (1913) AC 107; *Re: Whykes* (1961) Ch. 299; *Okeke v A-G, Anambra State* (1992) 1NWLR (Pt. 215) 60; *Jones v Sherrington* (1908) 2 KB 539, 547; *Jeremiah Ambler and Amp Sons Ltd v Bradford Corporation* (1902) 2 Ch. 585, 594; *Osawaru v Ezeiruka* (1978) LPELR-2781 (SC); *Ogbonna v AG Imo State* (1992) 1 NWLR (Pt. 220) 647; *AG Abia State v AG Federation* (2005) 265; *AG Ondo State v AG Ekiti State* (2001) FWLR (Pt.79)1431, 1472-1473. *Skye Bank Plc v Iwu* (2017) 16

¹¹⁰ (1986) LPELR-764(SC) NWLR (Pt.1590) 24

meaning of the provisions of the law, it is to the section construed that the interpreter should first seek assistance. Where the meaning of the words used in the section are clear and unambiguous that meaning governs. Resort is only to be had to the long title to resolve ambiguity. It is not permissible to look at the scope of the long title to modify the interpretation of the plain words of the section.

Furthermore, in *Skye Bank Plc v Iwu*¹¹¹ and *Coca-Cola (Nig) Ltd v Akinsanya*¹¹² the long title of the Third Alteration of the Constitution was used by the court in construing the provisions of Sec. 240, 243(2)(3) and (4) of the Constitution of the Federal Republic of Nigeria (as amended).¹¹³ Therefore, in line with the judicial authorities referenced above, using the long title of the Child Rights Act¹¹⁴ in construing the general purpose of the Act, the object of, which is deducible from the long title, as “An Act to Provide and Protect the Rights of a Nigerian Child; and Other Related Matters.” As opposed to issues relating to statutory marriage to interpret the intention of the legislature is not with respect appropriate. It is submitted that the object of the Child Right Act is primarily the provision for and the protection of the rights of the Nigerian child, and every other matter relating to the aforesaid provision and protection of the child. On the contrary, the long title to the Marriage Act¹¹⁵ described the statute as “An Act to make provisions for the celebration of marriage.” From the description provided by the legislature, it clear that the provisions of the Marriage Act were legislated to make adequate provision for the celebration of statutory marriages in Nigeria, while on the other hand, the Child Rights Act¹¹⁶ provisions were specifically enacted to make provisions for the protection of the rights of every Nigeria child. To that extend, it is submitted that the provision of Sec. 22 of the Child Rights Act cannot be supplanted to cure the defect occasion by the lack of definition of “marriageable age” in the Marriage Act.

Prohibited degree of consanguinity and affinity

The general rule is that parties to a statutory marriage must not be within the prohibited degree of consanguinity and affinity¹¹⁷ by virtue of Sec.11(1)(c) of the Marriage Act,¹¹⁸ the Registrar shall not issue his certificate except that parties satisfied the Registrar “that there is not any impediment of kindred or affinity or any other lawful hindrance to the marriage. In *Mmaju & Anor v Ikwuka*¹¹⁹ the Court of Appeal Per Rita Nosakhare Pemu, JCA define the term “kindred” as follows.

The term ‘kindred’ as a noun connotes affinity, closeness to somebody based on something other than blood relationship. Black’s law Dictionary 7th Edition defines it as one’s relatives, as in kin, or family relationship as in kinship. It also connotes relative by blood, marriage, though normally, by blood only.

Also, the Court of Appeal in *Ahiakwo & Ors v Okpor & Ors*¹²⁰ also define “kindred” as follows:

The case of *Nwaigwe v Okere* [2008] 13 NWLR (Pt.1105) 445 at 478 explained that kindred is a family relationship. It could also mean generally a people belonging to the

¹¹¹ (2017) 16 NWLR (Pt. 1590) 24.

¹¹² (2017) 17 NWLR (Pt.1593) 74.

¹¹³ The Constitution of the Federal Republic of Nigeria (as amended) Cap. C 23, Laws of the Federation of Nigeria 2004.

¹¹⁴ The Child Rights Act 2003.

¹¹⁵ Marriage Act. Cap. C6, Laws of the Federation of Nigeria 2004.

¹¹⁶ Child Rights Act, 2003.

¹¹⁷ EI, Nwogugu, *Family Law in Nigeria* (Revised Edn, Foludex Press Ltd, Ibadan 2006) 24

¹¹⁸ Marriage Act. Cap. C6, Laws of the Federation of Nigeria 2004.

¹¹⁹ (2018) LPELR-44141(CA)

¹²⁰ (2022) LPELR-57460(CA)

same group by blood or consanguinity. It also could mean next of kin. It conveys the meaning of family relationship by blood or consanguinity.

Section 3(1)(b) of the Matrimonial Causes Act¹²¹ provides that “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 -subsection (b) the parties are within the prohibited degree of consanguinity or subject to section 4 of this Act, of affinity.”¹²² However, an exception exist in relation to affinity as provide under section 4 of the Matrimonial Causes Act.¹²³ Sec. 4(1) provides that “where two persons who are within the prohibited degree of affinity wish to marry each other, they may apply in written to a judge for permission to do so” subsection 2 further provides that “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.” Once the permission sought by the parties is granted, then the consequence is as provided by subsection 3, “the validity of their marriage shall not be affected by the fact that they are within the prohibited degree of affinity.” It must be stressed that before the High Court can validly exercise these powers, the conditions precedent to the exercise of such powers must be fulfilled as provided under Sec.4(4) and 4(5) of the Matrimonial Causes Act.¹²⁴

It is imperative to make a distinction concerning the rule applicable to marriages contracted before the promulgation of the Matrimonial Causes Act in 1970¹²⁵. Prior to the promulgation of the of the Matrimonial Causes Act, the prohibited degrees of Marriage were dealt with in Sec.33(1) of the Marriage Act. This section provides that:

A marriage may be lawfully celebrated under this Ordinance between a man and sister or niece of his deceased wife, but save as aforesaid, no marriage in Nigeria shall be valid which, if celebrated in England, would be null and void on the ground of kindred or affinity...¹²⁶

The Matrimonial Causes Act currently in operation provides a full list of persons that falls within the prohibited degree of affinity or consanguinity, which now applies to all marriages in Nigeria celebrated after 17th March 1970.¹²⁷

Neither party must be already married

The monogamous nature of statutory marriage makes it imperative that parties who intend to marry under the Marriage Act must possess single status. In other words, neither of the party must be already married, either under customary law or under the Act. By Sec. 3(1)(a) of the Matrimonial Causes Act¹²⁸, where either of the parties to a marriage is at the time of its celebration lawfully married to some other person such marriage will be null and void.¹²⁹ Thus, a party to a subsisting statutory or customary-law

¹²¹ Matrimonial Causes Act. Cap C7 Laws of the Federation of Nigeria 2004.

¹²² By virtue, Sec.3(2) of the Matrimonial Causes Act, Cap. M7, Laws of the Federation of Nigeria 2004, provides that “the prohibited degree of consanguinity and affinity respectively on the commencement of this Act shall be those set out in the First Schedule of this Act, and none other”. For further reading, see EI, Nwogugu, *Family Law in Nigeria* (Revised Edn, Foludex Press Ltd, Ibadan 2006) 24.

¹²³ Matrimonial Causes Act. Cap C7 Laws of the Federation of Nigeria 2004.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ This section has been repealed by Section 8 and 115(1)(d) of the Matrimonial Causes Act. Cap. M7 Laws of the Federation of Nigeria 2004. See the case of *Osamwonyi v Osamwonyi* (1972) LPELR-2789 (SC)

¹²⁷ See Schedule 1 of the Matrimonial Causes Act. Cap. M7 Laws of the Federation of Nigeria 2004.

¹²⁸ Matrimonial Causes Act. Cap. M7 Laws of the Federation of Nigeria 2004

¹²⁹ The first situation is where a customary law marriage precedes a statutory marriage with a different person. See Sec. 33(1) of the Marriage Act.

marriage lacks the capacity to enter into another statutory marriage with another person during the pendency of that marriage. In *Nebuwa v Nnenna*¹³⁰ the court, when it considers whether a person who is married under the Marriage Act can contract a valid marriage under native law and custom held as follows:

The union in marriage between the Appellant and her deceased husband Dr John Ikechukwu Nebuwa was a marriage or union contracted under the Marriage Act, which till death do us part, does not permit the parties to it, to contract any other marriage whether Statutory or under Native law and custom as the respondent purportedly did. Such subsequent marriage is of course, null and void. The purported marriage of the respondent to Dr J.I. Nebuwa, now late is a farce and the trial Court rightly declared it to be a nullity.

Similarly in *Nola & Ors v Graham-Douglas & Anor*¹³¹ the Court of Appeal Per Isaiah Olufemi Akeju JCA held thus, when it considered whether a statutory marriage contracted during the existence of marriage under customary law between either of the parties to the statutory marriage and a third party is valid.

...Section 33 (1) of the Marriage Act which provides that "No Marriage in Nigeria shall be valid where either of the parties thereto at the times of the celebration of such marriage is married under Customary law to any person other than the person with whom such marriage is had." His Lordship then stated that: "The above provision is very clear, it gives due respect and credence to a pre-existing customary marriage. It provides no dichotomy between a marriage under the Act and under Customary Law in the sense of one being main and the other minor... In view of the clear provision of Section 33 (1) of the Marriage Act and having regard to the fact that there was an existing customary Iya marriage between the late Chief Donald Graham-Douglas and the late Mrs. Gladys Claudiana Graham-Douglas, it is very clear that the marriage between the late Chief Donald Graham-Douglas and the 2nd defendant was invalid. That being the case, it follows that the 2nd defendant was in law, not the wife of the late Chief Donald Graham-Douglas and therefore cannot be described as the sole surviving wife of the late Chief Donald Graham-Douglas...

There are plethora of authorities to effect that such parties lack the necessary capacity to marry any other person during the pendency of the statutory marriage.¹³² Thus, non-observance of this rule makes the subsequent marriage void, and it also constitute an offence punishable by a term of imprisonment.¹³³ However, the same parties to a customary law marriage may contract a subsequent and valid statutory marriage.¹³⁴ Nwogugu¹³⁵ listed persons who may be parties to valid statutory marriage in Nigeria to includes the following:

- (i) Persons who are not married to a third party, either under the Marriage Act or under the customary law;
- (ii) Persons who having been previously married under the Marriage Act, have obtained valid decree of divorce and

¹³⁰ (2018) LPELR-45097 (CA).

¹³¹ (2019) LPELR-48285(CA) 14 - 16 Paras E - A

¹³² This issue has been exhaustively dealt with in the introduction of this research. See also *Mgbodu v Mgbodu* (2018) LPELR-43770 (CA); *Jadesimi v Okotie -Eboh & Ors* (1996) LPELR- 1590 (SC)

¹³³ See Sec. 35 and 48 of the Marriage Act, which prescribed a term of 5 years imprisonment and Sec. 370 of the Criminal Code, which also prescribed a term of 7years imprisonment.

¹³⁴ See Sec. 33(1) of the Marriage Act. Cap. C6, Laws of the Federation of Nigeria 2004. See the case of *Osamwonyi v Osamwonyi* (1972) LPELR-2789 (SC).

¹³⁵ EI, Nwogugu, *Family Law in Nigeria* (Revised Edn, Foludex Press Ltd, Ibadan 2006) 25.

- (iii) In the case of a subsisting customary -law marriage, the parties there to, so long as the subsisting statutory marriage is between them. If the subsequent marriage is between one of the parties to the customary- law marriage and a third party, then it is illegal. However, if a man is married to several wives under customary law, he may contract a valid statutory marriage with one of his customary-law wives, or with a third party, so long as he first obtains the dissolution of the other marriages ¹³⁶

Consent of the parties

In *Nsugbe v Okobi & Anor*,¹³⁷ the learned jurist and Justice of the Court of Appeal Ugochukwu Anthony Ogakwu JCA define the word “consent” thus:

The BLACK’S LAW Dictionary Sixth (Centennial) Edition defines ‘consent’ as ‘A concurrence of wills. Voluntarily yielding the will to the proposition of another, acquiescence or compliance therewith, agreement, approval permission; the act or result of coming into harmony or accord. Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. It means voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another. It supposes a physical power to act, a moral power of acting and a serious, determined and free use of these powers. Consent is implied in every agreement. It is an act unclouded by fraud, duress or sometimes, even mistake. Willingness in fact that an act or an invasion of an interest shall take place.

In relation to monogamous marriage, where the consent of one party to the marriage was obtained by fraud or duress, the marriage will be void because it lacks the true consent of the party as provided by Sec.3(1)(d)(i) of the Matrimonial Causes Act.¹³⁸ Thus, the voluntary consent of the parties is a prerequisite for the celebration of the statutory marriage.¹³⁹ Fraud and duress can vitiate consent to contract a marriage under the Act. Fraud implies some dishonest misrepresentation by a part to the marriage by which the consent of the other was obtained.¹⁴⁰ For example, the consent could have been obtained by fraudulent misrepresentation as to material fact, like existence of a subsisting customary law marriage to a third party.

Parental consent

The important of parental consent in relation to contracting statutory marriage is emphasised by the provisions of Sec. 18 of the Marriage Act.¹⁴¹ Where either of the parties has attained the age of twenty-one years. The section makes it imperative where either party to a statutory marriage, not being a widow or a widower, is under twenty-one years of age, he or she must obtain the written consent of the father. But if the father is dead or of unsound mind or absent from Nigeria, the mother may give the necessary consent. But where both parents are dead or are of unsound mind or absent from Nigeria, the guardian of the minor can give the consent. Also, Sec. 19 of the Marriage Act further provides that the written consent is to be signed by the person giving it. If the parent or the guardian cannot write or is an illiterate, he may affix his mark to the document in the presence of a high court judge, or a magistrate, or a registrar, or person of similar status.¹⁴² Finally, by Sec. 20, if there is no parent or guardian of such party residing in Nigeria and capable of consenting to the marriage then the consent may be given by a state governor, or a high court judge, or any officer of or above the grade of assistant secretary in

¹³⁶ Ibid.

¹³⁷ (2012) LPELR-24481(CA)

¹³⁸ Matrimonial Causes Act. Cap. M7 Laws of the Federation of Nigeria 2004.

¹³⁹ EI, Nwogugu, *Family Law in Nigeria* (Revised Edn, Foludex Press Ltd, Ibadan 2006) 26.

¹⁴⁰ Ibid 136.

¹⁴¹ Marriage Act. Cap. C6, Laws of the Federation of Nigeria 2004.

¹⁴² Ibid.

the civil service.¹⁴³ The Marriage Act, by virtue of Sec. 33(2)(a)-(d) listed circumstances which will invalidate any marriage conducted under the Act. It important to stress that lack of parental consent is not one of them.¹⁴⁴ However, it constitutes an offence under Sec. 48 of the Act punishable with two years' imprisonment for any person fully aware of the absence of such consent to marry or to assist or procure any other person to marry the minor.

Sanity

It is necessary that parties to statutory are sane. Where one of the parties to the intended marriage is insane, and mentally incapable to understand the nature of the marriage contract, then the marriage will be void *ab initio* as provided by Sec. 3(1)(d)(iii) of the Matrimonial Causes Act.¹⁴⁵

Formal validity of marriage

For a statutory marriage to be valid in Nigeria, the parties to the intended marriage must complied with certain preliminary formalities as required by law to guarantee a seamless registration of marriages in the country. Toward this end, the Marriage Act empowered the Head of State to divide the country into marriage districts.¹⁴⁶ For each district, there is appointed a registrar of the marriages. Apart from the marriage registrar, there is a principal marriage registrar.¹⁴⁷ Every marriage registrar and the principal registrar have offices at the place appointed by the appropriate central or state commissioner.¹⁴⁸ Most marriage registries are located at the local government council headquarters in the country.

Notice of marriages

One of the preliminary steps to be taken by persons who intended to contract statutory marriage in accordance with the Act is complete and sign a notice of the marriage in the prescribed form.¹⁴⁹ This form can be filled by either of the parties to the intended marriage. By Sec. 9 of the Marriage Act, this form is supplied gratuitously on application to the registrar of every marriage district. On completion, the form is lodged with the registrar of the district where the marriage is intended to be held. Upon receipt of the notice, the registrar is under a legal obligation to enter the details in the Marriage Notice Book. Thereafter, the notice is then displayed on the outer door or public notice board at the registrar's office and should remain so displayed until the registrar's certificate is granted or three months has elapsed. by virtue of Sec. 10 of the Marriage Act, inspection of the Marriage Notice Book is open to the public during office hours without a fee.

Registrar's certificate

The important of the Registrar's Certificate in relation to contacting of statutory marriage cannot over emphasised. Sec. 11(1) of the Marriage Act provides that "The registrar, at any time after 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 thereupon issue his certificate as in Form C in the First Schedule." However, before the registrar issues his certificate, he must be satisfied by affidavit of the applicant that:

- (a) that one of the parties has been resident within the district in which the marriage is intended to be celebrated at least fifteen days preceding the granting of the certificate;
- (b) that each of the parties to the intended marriage (not being a widower or widow) is

¹⁴³ Ibid.

¹⁴⁴ See the case of *Agbo v Udo* (1942) 18 NLR 152.

¹⁴⁵ Matrimonial Causes Act. Cap. M7 Laws of the Federation of Nigeria 2004.

¹⁴⁶Section. 3 of the Marriage Act. Cap M6. Laws of the Federation of Nigeria 2004.

¹⁴⁷ Section. 4 of the Marriage Act. Cap. M6 Law of the Federation of Nigeria 2004.

¹⁴⁸ Section 5 of the Marriage Act. Cap. M6 Law of the Federation of Nigeria 2004.

¹⁴⁹ Section 7 and 8 of the Marriage Act and Form A First Schedule. However, where the applicant is an illiterate, then the appropriate form is Form B First schedule.

twenty-one years old, or that if he or she is under that age, the consent hereinafter made requisite has been obtained in writing and is annexed to such affidavit;

- (c) that there is not any impediment of kindred or affinity, or any other lawful hindrance to the marriage;
- (d) 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.¹⁵⁰

The affidavit must be sworn before a registrar, or an administrative officer, or a recognised minister of religion.¹⁵¹ The procedure to be followed by the registrar in taking the affidavit are explained in Sec. 11(3) and (4) of the Marriage Act. It must be stressed that the marriage must take place within three months from the date of the notice. By Sec. 12 of the Marriage Act, failure to comply with the provisions make the notice and the subsequent procedures void, and if the parties are still desirous of contracting a statutory marriage, they must repeat the processes again.¹⁵²

The Minister's licence

The law makes provisions for the procedures highlighted above to be circumvented by the issuance of special licence. By virtue of Sec. 13 of the Marriage Act, the Minister upon proof being made to him by affidavit that there is no lawful impediment to the proposed marriage may dispense with the given of notice and the issue of the registrar's certificate. He may, must be satisfied that there is no lawful impediment to the proposed marriage and that the necessary consent, if any, to the proposed marriage has been obtained, grant his own licence to the applicant. The special licence will authorize the celebration of the marriage between the parties named therein by a registrar or a recognized minister of a religious denomination or body.¹⁵³ In *Obiozor v Nnamua*¹⁵⁴ the Court of Appeal Per Emmanuel Akomaye Agim JCA, held thus when the court considered the issue whether failure to obtain a certificate / licence from a registrar / minister would render a marriage void.

In the absence of evidence that the registrar's certificate or a minister's licence was obtained and delivered to A. F.D Mgbemena before he celebrated the marriage or that the omission to obtain it was not wilful or knowingly, the ceremony of marriage, even if it is proved to have held, will be void. S.13 of the Marriage Act provides that – 'The Minister upon proof being made to him by affidavit that there is no lawful impediment to the proposed marriage, and that the necessary consent, if any to such marriage has been obtained, may if he think fit, dispense with the giving of notice and with the issue of the certificate of the registrar, and may grant his licence, which shall be in according to Form D in the First Schedule, authorizing the celebration of a marriage between the parties named in such licence by a registrar, or by a recognized minister of some religious denomination or body.' S 22 of the Marriage Act provides that – 'A minister shall not celebrate any marriage if he knows of any just impediment to such marriage, not until the parties delivers to him the registrar's certificate or the licence issued under Section 13 of the Act.' S 33(2)(c) and (3) of the Marriage Act provides that – 'A marriage shall be null and void if both parties knowingly and wilfully acquiesce in its celebration without a registrar's certificate of notice or licence issued under Section 13 of this Act duly issued.

¹⁵⁰ See generally the provisions of Sections 11(1) (2) (3)(4) of the Marriage Act. Cap M6. Laws of the Federation of Nigeria 2004.

¹⁵¹ Section 11(2).

¹⁵² See EI, Nwogugu, *Family Law in Nigeria* (Revised Edn, Foludex Press Ltd, Ibadan 2006) 29, for the significant of the Registrar Certificate.

¹⁵³ For further reading see EI, Nwogugu, *Family Law in Nigeria* (Revised Edn, Foludex Press Ltd, Ibadan 2006) 29

¹⁵⁴ (2014) LPELR-23041(CA)

See also, the case of *Anyaegebunam v Anyaegebunam*¹⁵⁵ where the Supreme Court considered amongst other factors, on whom the burden of proving the existence of a statutory marriage rest. It is submitted that when the provision of Sec.32 of the Marriage Act is read in conjunction with the general provisions of Sec.86 of the Matrimonial Causes Act¹⁵⁶ dealing with proof of the existence of a statutory marriage, the burden of proof rest on the petitioner.

Caveat

By the provisions of Sec.14 (1) of the Marriage Act, any person whose consent to a marriage is required, or who may know of any just cause why the marriage should not take place, may enter a caveat against the issue of the registrar's certificate, by writing at any time before the issue thereof the word "Forbidden", opposite to the entry of the notice in the marriage notice book, and appending thereto his name and place of abode, and the grounds upon which he claims to forbid the issue of the certificate, and the registrar shall not issue his certificate until such caveat shall be removed as hereinafter is provided. Sub section 2 of the same section provides that "In the case of an illiterate person, such caveat shall be entered on his behalf in the Marriage Notice Book by the registrar on the verbal notice of such person. It is important to note that once a caveat has been entered by any person, the registrar is required by law to refer the matter to a judge of the High Court of the state. The law empowers the judge to summon the parties to intended marriage and the person who entered the caveat to appear before him.

An opportunity is given to the caveator to justify his grounds for objecting to the issue of the registrar's certificate. The judge must hear the matter and determine same in a summary manner, but subject to the rights of appeal to the Supreme Court. Where the judge decides that the caveator is unable to justify the caveat, he may remove the caveat by cancelling the word "Forbidden" in the Marriage Notice Book. He then writes below the entry and cancellation the words 'Cancelled by the Order of the High Court' and signs his name there. These procedures are as contained in Sec. 15 and 16 of the Marriage Act was validated by the Supreme Court Per Adetokunbo Adegboyega Ademola JSC (of blessed memory) in the case of *Awobokun & Anor v Adeyemi*¹⁵⁷ thus: "These two Sections set out the procedure to be adopted by the court after a caveat had been entered for the purpose of hearing the complaint and for the removal of the caveat or otherwise." On the duty placed on the judge by Sec. 16 of the Marriage Act, the court through Ademola JSC further held that:

We are of the view that once a caveat is entered the purpose is that it must be pursued so as to ensure that the parties to the proposed marriage may be free once and for all to celebrate the marriage or be forbidden to marry...the order made by the learned Chief Justice that 'the caveat is hereby cancelled' is in our view inappropriate. The proper order would be to cancel the word 'Forbidden' already made by the register and for the Chief Justice to sign his name thereto as provided by Section 16. Before this order could be made, it was the duty of the learned Chief Justice to effect the presence of the parties and to deal with the matter summarily as enjoined by Section 15 of the Act. A summary trial in this case may only involve asking questions of the caveatrix by the judge so that the reasons or grounds for the filing the caveat might be explained.

Thus, from the case law authority referenced above, a judge has a legal duty to ensure that the proper procedure as required by the law is followed before a caveat can be successfully removed from the Marriage Notice Book.

Mode of contracting statutory marriage

Parties to an intending statutory marriage, after obtaining the registrar certificate or the special licence could marry in one of two different ways.¹⁵⁸ Thus, parties could either decide to celebrate their

¹⁵⁵ (1973) ALL NLR 320.

¹⁵⁶ Matrimonial Causes Act. Cap. M7 Laws of the Federation of Nigeria 2004.

¹⁵⁷ (1970) LPELR-648 (SC).

¹⁵⁸ EI, Nwogugu, *Family Law in Nigeria* (Revised Ed, Foludex Press Ltd, Ibadan 2006) 31

marriage in a registrar's office, at the marriage registry, in a diplomatic mission abroad, or in a licence place of worship within the country.

Marriage in a registrar's office

After the issuance of a Registrar Certificate under Sec. 11, or of a licence under Sec. 13 of Marriage Act, the parties may, if they think fit, contract a marriage before a registrar, in the presence of two witnesses in his office, with open doors, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, and in the following manner- The registrar, after production to him of the certificate or licence, shall, either directly or through an interpreter, address the parties thus: "Do I understand that you, A.B., and you, C.D., come here for the purpose of becoming man and wife?" If the parties answer in the affirmative, he shall proceed thus; "Know ye that, by the public taking of each other as man and wife in my presence and in the presence of the persons now here, and by the subsequent attestation thereof by signing your names to that effect, you become legally married to each other, although no other rite of a civil or religious nature shall take place, and that this marriage cannot be dissolved during your lifetime, except by a valid judgment of divorce; and if either of you before the death of the other shall contract another marriage while this remain undissolved you will be guilty of bigamy, and liable to punishment for that offence." Each of the parties shall then say to the other "I call upon all persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wife (or husband).¹⁵⁹ It is instructive to emphasize that contracting a statutory marriage in a registrar's office is valid without the need for any civil or religious rites. Also, the marriage cannot be dissolved during the lifetime of the parties, except by a decree of a court of competent jurisdiction, and finally it is an offence of bigamy for a party to the marriage to contract another marriage during the subsistence of the first one.¹⁶⁰ In *Okafor & Ors v Okafor & Anor*,¹⁶¹ the Court of Appeal resolved the issue of whether a person who is married under the marriage Act can contract a valid marriage under native law and custom thus:

...this Court found as a fact that the late Chief Clement Okafor contracted a statutory marriage with the 1st plaintiff on the 30th December 1967. The implication of this is that late Chief Clement Okafor was incapable legally speaking of contracting another marriage with another woman during the subsistence of his statutory marriage to the 1st plaintiff. Any subsequent alleged marriage, customary or otherwise between late Chief Clement Okafor and other woman during his statutory marriage to the 1st plaintiff was rendered invalid by operation of law. From whatever angle this is considered, there is no basis from which a customary law marriage between that 1st appellant and the late Chief Clement Okafor can be inferred.

Marriage in a licenced place of worship

Section 6 of the extant law¹⁶² provides that "The Minister may license any place of public worship to be a place for the celebration of marriage and may at any time cancel such licence; in either case he shall give notice thereof in the Federal Gazette". The Marriage Act further acknowledges and give validity to marriage contracted in a licenced place of worship by declaring in Sec. 33 (2) that "A marriage shall be null and void if both parties knowingly and wilfully acquiesce in its celebration: - (2) in any place other than the office of the registrar of marriage or a licenced place of worship (except where authorised by the licence issued under section 13 of this Act)..."¹⁶³ Also, Sec. 21 of the Marriage Act

¹⁵⁹ See generally, the provision of Section 27 of the Marriage Act, Cap. M6 Laws of the Federation of Nigeria 2004.

¹⁶⁰ See EI, Nwogugu, *Family Law in Nigeria* (Revised Ed, Foludex Press Ltd, Ibadan 2006) 34. See also the case of *Chukwu & Ors v Chukwu & Ors* (2016) LPELR- 40553 (CA).

¹⁶¹ (2022) LPELR-59136 (CA).

¹⁶² Marriage Act. Cap M6. Laws of the Federation of Nigeria 2004.

¹⁶³ The licence referred to in section 13 of the Act is what EI, Nwogugu, referred to "special licence" in his book titled *Family Law in Nigeria* (Revised Ed, Foludex Press Ltd, Ibadan 2006) 29. See the case of *Obiozor v Nnamua*

provides that "Marriage may be celebrated in any license place of worship by any recognised minister of the Church, denomination or body to which such place of worship belongs, and according to the rites or usages of the marriage observed in such church, denomination or body. In *AG of the Federation and Minister for Justice v Eti-Osa LGA, Lagos & Ors*¹⁶⁴ the Court Per Abubakar Sadiq Umar, JCA (Pp 20 - 24 Paras F - A) held as follows:

In Suit No: FHC/L/870/2002, the Applicants sought the intervention of the Court for the purposes of ascertaining the proper fora for the celebration of marriages. The Court in its judgment made the following findings: "In conclusion therefore, lawful bodies or authorities which can celebrate or contract marriages for intending persons who are desirous of getting married as husbands and wives are: 1. Registrars in places designated as an office 2. Recognized ministers of religion in a licensed place of worship. 3. Marriages contracted under the licence granted by the Director-General Ministry of Internal affairs, Director-General of a State Government in charge of marriages, any officer in the aforementioned ministries and of course, the minister of Internal Affairs. As regards registration of marriages only, this is within the exclusive authority of the registrar within the marriage district (Local Government) in accordance with the provision of Section 30 (1) of the Marriage Act and Section 7 (5) of the Constitution of the Federal Republic of Nigeria 1999; and paragraph (i) of the Fourth Schedule of the same constitution." It is my considered view that the pronouncement of the Court in FHC/L/870/2002 as reproduced supra does not confer either the 1st to 4th Respondents or the 5th Respondents with the exclusive rights to conduct, celebrate or contract marriages. Any allusion to exclusive rights to conduct marriages by the Appellant, the 1st to 4th or 5th Respondents is not only inconsistent with the decision in Suit No: FHC/L/870/2002 but also at variance with the extant provision of the Marriage Act and the subsidiary legislations enacted thereto.

The Court of Appeal in this judgment clearly shows that the right to conduct statutory marriages in Nigeria are not the exclusive preservation of the local Government Councils. This case further supports the proposition that Local Government Marriage Registries in the country do not have the exclusive powers to conduct, celebrate and register statutory marriages.

It is imperative to distinguish between marriage in a licence place of worship, church marriage and church blessing. In *Agbakoba v AG Federation & Anor*¹⁶⁵ the Court of Appeal Per Onyekachi Aja Otisi, JCA held as follows when the court examine the position of the law on church marriage and marriages conducted in a licensed place of worship thus:

The depositions of the Appellant reveal that he is a devout Christian of the Catholic denomination. Also revealed is the fact that, he and his wife decided to cement their union in the Catholic Church, and under the Marriage Act. If they decided to simply opt for a marriage in the Catholic Church, with divine blessings pronounced on them, that would suffice as a marriage under the Catholic Church. They would be recognised as a married couple within the tenets of the Catholic Church, and all benefits accruing, as well as any rules governing such marriages, shall bind them. I do not see any provisions in the Marriage Act that pronounce a marriage contracted in accordance with the Catholic Church marriage rites as invalid. The Marriage Act has no connection with the Catholic Church marriage rites. These marriages are on two parallel lines. Thus, while such marriage celebrated within the Catholic Church, without compliance with the Marriage Act, may be recognized as a valid marriage within the Catholic Church, it will not be recognized as a statutory marriage. See *Nwangwu v Ubani* (supra); *Anyaegebunam v Anyaegebunam* (supra). The depositions of the Appellant demonstrate that he and his wife took the decision to wed under the Act but in a Catholic Church, duly licensed under the Act. That way, they

(2014) LPELR-23041(CA).

¹⁶⁴ (2023) LPELR-60827(CA)

¹⁶⁵ (2021) LPELR-55906(CA) (Pp 47 - 48 Paras A - C)

received both divine blessings pronounced upon their union and a statutory marriage in one full swoop. I see no compulsion revealed here. As a result of this decision to wed under the Act and under the umbrella of the Catholic faith, matters of divorce, which I must add, the Appellant did not state he was contemplating, would be governed by the Act.

The Court further held concerning the validity of a faith-based marriage or customary marriage as follows:

I will again emphasize that a faith-based marriage or a traditional or customary marriage is not, on its own, invalid. It is recognized as a marriage, within the tenets of that particular faith or tradition or custom. However, it will not be recognized as a statutory marriage under the Act. It is the couple that takes the decision of how they wish to be joined. There was, therefore, no State intervention in the decision of the Appellant and his wife to take the step they did to cement their union.

The legal implication of the above quotation concerning the validity of a faith-based marriage is that not every marriage conducted in a licence place of worship that qualifies as statutory marriage. The test for validity lies in the compliance with the provisions of the Marriage Act.¹⁶⁶ It is important to emphasise that there must be due compliance with the provisions of Sec. 21-26 of the Act. Under Section 21 - 26 of the Marriage Act, a marriage in *facie ecclesiae*, a marriage celebrated or solemnized in a church service is a marriage under the Act irrespective of what other sacramental significance and value the adherents of the said church may wish to attach to such celebration.¹⁶⁷ Once it is established that the marriage lacks compliance with the Act, even though conducted in a licence place of worship, the marriage is at best a church marriage. In *Obiekwe v. Obiekwe*¹⁶⁸ Palmer J held concerning the validity of "Church Marriage" in Nigeria. "A good deal has been said about "Church Marriage" Or "marriage under Roman Catholic Law". So far as the law of Nigeria is concerned, there is only one form of monogamous marriage, and that is marriage under the Ordinances. Legally a marriage in a church (of any denomination) is either a marriage under the ordinance or it is nothing".

In *Patience Nwanyinwa Afonne v. Emmanuel Chidi Afonne* ¹⁶⁹ Oputa J. (as he then was) posit on the history of church marriage under the marriage Act thus:

The history of marriage and marriage celebrations is very closely bound up with the church, with ecclesiastical or cannon law and with church rites. Under the cannon law and before the Reformation and the break with Rome, marriages in Christian countries were usually celebrated by a service in a church. This was known as a celebration in *facie ecclesiae*. The civil laws of many Christian countries retain this aspect of marriage and marriage celebrations. Under Section 21 of our Marriage Act (Cap. 115 of 1958)'. "Marriage may be celebrated in any licensed place of worship by any recognized minister of the church ... To which such a place of worship belongs, and according to the rites and usages of marriage observed be celebrated with open door between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and in the officiating presence of two or more witnesses besides the minister.

Some judicial authorities tends to suggest that once that marriage is conducted in licence place of worship by any recognised minister of the church, denomination or body to which such place of worship belongs, and in accordance with the rites or usages of the marriage observed in such church, denomination or body, the marriage will qualify as a statutory marriage under the Act. In *Akuwudike v.*

¹⁶⁶ See generally the provisions of section 11 of the Marriage Act. Cap M6. Laws of the Federation of Nigeria 2004.

¹⁶⁷ *Motoh v Motoh* (2010) LPELR-8643(CA)

¹⁶⁸ (1963) 7 ENLR 196.

¹⁶⁹ (1975) 5 ECSLR 159 at 162 -163

*Akuwudike*¹⁷⁰ Idigbe J. held that:

..if the particular Roman Catholic Church (as in the instant case) was licensed under the Ordinance Cap. 115 for the performance of marriages, it is my view that marriages performed in such a place - in accordance with any particular usage of that Church must (unless invalid within the provisions of Section 33 (2) (Cap. 115) be presumed valid under the Ordinance it was intention of the parties to go through a form of Church marriage recognized by the ordinance; provided it was celebrated "with open doors between the hours of eight o'clock in the forenoon and six o'clock in the afternoon and in the presence of two or more witnesses besides the officiating minister". See Section 21 of Cap 115.

Also, in *Onwudinjoh v Onwudinjoh*¹⁷¹ where the validity of the marriage between Jeremiah and Agnes was in issue. Agnes deposed to an affidavit that she was married to Jeremiah in a church in Markudi under the Act in 1926. It was admitted in evidence that the bans of marriage were published, and the parties went through a form of marriage. On the bases of this marriage, it was contented on her behalf that Jeremiah lacks the capacity to marry Chinelo under customary law as prohibited by Sec. 35 of the Marriage Act. However, it was the contented by the children of Chinelo that the religious ceremony did not meet the standard to qualify as a statutory marriage. They further contented that there was no proof that the church was licenced to conduct statutory marriage, that the registrar certificate was obtained as provided by the law and that the requirement of the Act was complied with. Despite the doubts raised by the defence, Ainley, CJ held that by reason of Section 35 of the Marriage Act, Jeremiah was incapable of contracting a valid marriage under customary law with Chinelo.

It is submitted that the position as conversed in these cases, with respect runs contrary the clear provisions of Sec.22 of the Mariage Act. The section provides that "A minister shall not celebrate any marriage if he knows of any just impediment to such marriage, nor until the parties deliver to him the registrar's certificate or licence issued under section13 of this Act". Also, the provision of section 33(2)(C) of the Act is apt on the necessity for the parties to obtain the registrar's certificate. Sec. 33(2) provides that "A marriage shall be null and void if both parties knowingly and wilfully acquiesce in its celebration." Subsection(2)(c) provides that "without a registrar's certificate of notice or licence issued under section 13 of this Act duly issued." The Act criminalises the conduct of any minister that refuses to comply with the aforesaid sections. Section 42 of the Act provides that "whoever perform or witnesses as a marriage officer the ceremony of marriage, knowing that he is not duly qualified so to do, or that any of the matters required by law for the ceremony, the validity of such marriage has not happened or been performed, so that the marriage is void or unlawful on any ground shall be liable to imprisonment for five years." According to Nwogugu. "It is a matter for great concern that religious bodies in Nigeria are often very eager to celebrate marriages according to their respective rites even when the place of celebration is not licenced for marriage under the Act.¹⁷² This kind of conduct is worrisome as it affect the sanctity of marriage thereby negatively impacting the stability of the marriage institution.

Sanctity of marriage

Sanctity of marriage under Nigerian law can be understood as the legal and societal commitment to uphold, protect, and preserve the institution of marriage, thereby ensuring its validity, integrity, and the rights and obligations arising from it as can be deduced from statutory provisions and judicial precedents. This concept is underpinned by several key principles and legal requirements. However, as it concerns statutory marriage the extant law recognises the validity of the statutory marriage with its own set of rules and implications as opposed to marriages contacted under native law and custom, thereby establishing the legal framework for what constitutes a legally "sanctified" union. As stated earlier in this research, statutory marriages are monogamous in nature. This proposition of the law has

¹⁷⁰ (1963) 7 ENLR 5 at 6 – 7. See also *Obiekwe v. Obiekwe* (1963) 7 ENLR 196.

¹⁷¹ (1959) II ERNLR 1.

¹⁷² E.I. Nwogugu, *Family Law in Nigeria* (Revised Ed, Foludex Press Ltd, Ibadan 2006) 35.

been affirmed by the apex court in *Chinweze & Anor v. Masi & Anor*¹⁷³. Also, there is the need to adhere to strict validity requirements and prohibitions. Thus, the law sets clear boundaries for what constitutes a valid marriage, thereby safeguarding its sanctity.

Offences and penalties

The provisions of Section 39 to 48 of the Marriage Act represent the core of this research. These sections provide for the criminalisation and punishment for acts enumerated therein. They are enshrined with a view to sustaining the sanctity of the marriage institution. They are imperative for societal cohesion, social or psychological security of the children of the marriage, and the parties to the marriage. This is achieved by ensuring that the marriage institution is sustained and protected from acts that will trivialise the institution because of the conduct of the parties to the marriage. As a result, the courts are expected to judiciously and judicially play a role in maintaining the sanctity of the marriage institution. Towards this end, the Marriage Act from Sec. 39 to 48 makes elaborate provisions for offences and punishment aimed at preserving the sanctity of statutory marriage in Nigeria. These sections are extensively discussed below.

Marriage with a person previously married

Section 39 of the Marriage Act forbid and criminalised an unmarried person from marrying any person he or she knows to be married under the Act. The statute provides for a term of five years imprisonment for the offence. The section provides thus: "Whoever, being unmarried, goes through the ceremony of marriage under this Act with a person whom he or she knows to be married to another person, shall be liable to imprisonment for five years."

It is submitted that the legal implications of Sec. 39 of the Act are significant and multifaceted. It basically revolving around the criminal liability of the parties involved and the validity of the purported marriage. The first issue for consideration is the criminal liability of the unmarried party. The section imposes criminal liability on the person who is unmarried but knowingly participates in a marriage ceremony under the Act with someone they know to be already married to another person. Such an individual is liable to imprisonment for five years. This provision serves as a deterrent against individuals who, despite being legally free, conspire to undermine the monogamous nature of statutory marriage and compromising the sanctity of the marriage institution by marrying an already married person under the Act.

The second issue for consideration is the invalidity status of the subsequent marriage. Although Sec. 39 of the Act specifically outlines the criminal penalty for the unmarried party, the underlying principle of the Act is that marriages contracted under its provisions are monogamous in nature. This principle has been enshrined in plethora of cases. The Apex Court in *Amobi v. Nzegwu & Ors*¹⁷⁴ defined "marriage under the Marriage Act" as "the voluntary union for life of one man and one woman to the exclusion of all others." This principle means that a person who is already validly married under the Act is under a legal disability and he cannot legally be capable of contracting another valid marriage during the subsistence of the first marriage. In the same vein, the Court of Appeal, in *Okafor & Ors v. Okafor & Anor*¹⁷⁵ affirmed this notoriously established principle of the law by positing that a person who has contracted a statutory marriage is "incapable legally speaking of contracting another marriage with another woman during the subsistence of his statutory marriage." Consequently, any subsequent alleged marriage, whether statutory or under native law and custom, contracted while a statutory marriage subsists, is therefore void *ab initio*. This position is further reinforced by Sec. 35 of the Act¹⁷⁶, which explicitly states that "Any person who is married under this Act... shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law." By extension, they are also incapable of contracting another valid statutory marriage.

¹⁷³ (1989) LPELR-851(SC) see also the case of *Obiozor v. Nnamua* (2014) LPELR-23041(CA).

¹⁷⁴ (2013) LPELR-21863(SC)

¹⁷⁵ (2022) LPELR-59136(CA)

¹⁷⁶ Marriage Act, Cap M6. Laws of the Federation of Nigeria 2004.

The third issue for consideration is the implied offence of bigamy for the party that is already married. It is submitted that although Sec.39 of the Act focuses on the unmarried party, however the scenario it describes inherently involves the already married person attempting to contract a second statutory marriage while their first marriage is still subsisting. This act constitutes bigamy under the Act, and under Sec. 370 of the Criminal Code.¹⁷⁷ The section provides that “Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, is guilty of a felony, and is liable to imprisonment for seven years.”

¹⁷⁸ In *R v Princewill*¹⁷⁹ Reed L.J held that “...However after considering the authorities I interpret section 370 of the Criminal Code as follows: there must be a husband and a wife living and one of them must ‘marry’ so that the second ‘marriage’ is void by reason of its taking place during the life of such husband and wife...”¹⁸⁰ It is submitted that before a conviction under this section can be obtained, it must be proved beyond reasonable doubt that the first marriage is a marriage under the Act (monogamous); valid and subsisting at the time of the second marriage and it has not been terminated by death of one of the parties. On a proper interpretation of Sec. 39 of the Act, it appears that the Act did not detail the specific penalty for bigamy as it concerns the already married person. However, it is submitted that the principle established in *Okafor & Ors* ¹⁸¹(Supra) concerning the legal incapacity of such a person underscores the illegality of their action.

The fourth issue for consideration is the implication of the provision of Sec. 39 of the Marriage Act on Inheritance and the Administration of Estate. It is submitted that a valid statutory marriage has significant implications for the administration and distribution of a deceased person's estate, potentially overriding customary law in certain circumstances¹⁸² However, in *Mohammed & Ors v. Mohammed & Anor* ¹⁸³ the Court of Appeal adopted a different position because of the exception contained in

¹⁷⁷ See the Criminal Code Cap C38 Laws of the Federation of Nigeria 2004.

¹⁷⁸ This section also provides an exception to its application thus: This section does not extend to any person whose marriage with such husband or wife has been dissolved or declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time. The reference of seven years here is instructive. One of the facts that a Petitioner must establish under Section 15(2) of the Matrimonial Cause Act Cap M7 Laws of the Federation of Nigeria 2004 to be entitled to a decree of the dissolution of the marriage, on the ground that the marriage has broken down irretrievably under section 15(2)(h) is “that the other party to the marriage has been absent from the petitioner for such time and in such circumstance as to provide reasonable grounds for presuming that he or she is dead. In *Adesoji v. Ajetomobi* (2024) LPELR-61757(CA), the Court of Appeal Per Onyekachi Aja Otisi, JCA (Pp 9 - 10 Paras D - A) held that “A statutory marriage may be dissolved on account of the fact that the petitioner alleges that the marriage has broken down irretrievably if, but only if, the petitioner satisfies the Court of one or more of the stated facts set out in Section 15(2)(a) - (h) of the Matrimonial Causes Act, 1970”

¹⁷⁹ (1963) N.R.N.L.R 54.

¹⁸⁰ Ibid at page 56. See also *R v Inyang* (1931) 10 N.L.R. 33 and *Nwamkpele v Nwamkpele* (1973) 3 UILR 84.

¹⁸¹ See footnote 172 above.

¹⁸² There are exceptions to this general principle. One of the exceptions relates to interstate succession involving a person who contracted a valid statutory marriage but dies interstate. Resolving the issue of the applicable laws that will govern the administration of his estate, depends on whether it is the Administration of Estate law of the State that would be applied or the deceased customary law. For further reading, see I.E. Sagay, *Nigerian Law of Succession Principles, Cases, Statutes and Commentaries* (1st ed. 2006, Malthouse Press Limited) at 73. And P.O. Itua, “Legitimacy, legitimation and succession in Nigeria: An appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended on the right of inheritance” in *Journal of Law and Conflict Resolution* Vol. 4(3) PP. 31-44, March 2012. Available online at <http://www.academicjournals.org/JLCR> (last Accessed 4th May 2026).

¹⁸³ (2024) LPELR-62831(CA).

Section 1 (1)(a) and (b) of the Administration of Estate Law of Kwara State. The Court Per Muhammed Lawal Shuaibu, JCA (Pp 18 - 22 Paras C - B) held as follows:

Section 1(1) (a) and (b) of the extant Administration of Estates Law of Kwara State provides an exception as follows: 1. "This law shall not apply: - (a) to death occurring before its commencement unless otherwise, provided (b) the estate of deceased person, the administration of which is governed by Islamic Law." The above clearly exempted the application of the said Administration of Estate Law to a person whose estate is governed by Islamic Law as same applies strictly to Customary Law. It is to be noted that the function of a Court of law is to interpret the provisions of the statutes in the clear term of the words contained in it as it has no jurisdiction to import into statutes words which are not used therein.

It is further submitted that if the subsequent marriage is rendered invalid due to the operation of Sec. 39 and the general principles of the Act, the party to such an invalid marriage would not be recognized as a legal spouse or widow/widower for the purposes of inheritance or other matrimonial rights because in the eyes of the law, no marriage existed. In *Oghoyone v Oghoyone*¹⁸⁴ the Court of Appeal Per Olabode Rhodes-Vivour, JCA (As he then was) held thus: "Section 69 states that "marriage" includes a purported marriage that is void. A void marriage is a marriage that produces no legal consequences. That is to say it is a marriage that never took place. See Section 3(1) of the Matrimonial Cause Act. A void marriage is still a marriage by the provisions of Section 69 supra"¹⁸⁵ it is important to add that Sec.3(1)(a) of the Matrimonial Causes Act provides that " Subject to the provision 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.." Thus, the interpretation of Sec. 39 of the Act can lead to complex legal disputes regarding succession and property rights.

In summary, it is submitted that Sec. 39 of the Act serves as a critical provision that criminalizes the act of an unmarried person knowingly entering a statutory marriage with an already married person. Its implications extend beyond the direct criminal penalty to include the fundamental invalidity of such a subsequent marriage, the legal incapacity of the already married party, and significant consequences for matrimonial rights, including inheritance.

Marking false declaration for marriage

A careful reading of the provision of Sec. 40 of the Marriage Act reveals that the criminal offence is directed at a specific class of offenders. The section establishes a criminal offense related to the provision of false information for the purpose of marriage.¹⁸⁶ Its legal effect is to impose penal sanctions on individuals who make false statements or declarations in documents required for a statutory marriage. The legal effect of Sec. 40 aforesaid are as follows. The section makes it a criminal offense for a person to declare, enter, certify, or state any material matter which is false in any affidavit, declaration, certificate, license, document, or statement required by law for the purposes of a marriage.¹⁸⁷ The essence of this provision is to safeguard the integrity of the marriage registration process and prevent marriages from being contracted based on fraudulent information.

Thus, to constitute an offence, the following elements must be present. The act must involve a declaration, entry, certification, or statement, which must be made in a document or instrument legally

¹⁸⁴ (2010) LPELR-4689(CA) (Pp 11 - 11 Paras D - F)

¹⁸⁵ Section 69 of the Matrimonial Cause Act deals with the interpretation of "marriage", etc. in the application as it concerns Part IV of the Act dealing with Maintenance, Custody and Settlements

¹⁸⁶ See generally the provisions of section 7 and 11 of the Marriage Act, Cap M7 Laws of the Federation of Nigeria 2004.

¹⁸⁷ This information is usually provided in the section of the Act dealing with preliminaries to marriage. See Section 7, and 8 of the Marriage Act and the Form A First Schedule, and where the applicant is an illiterate, the Form is Form B First Schedule.

required for the purposes of a marriage.¹⁸⁸ Also, the information declared, entered, certified, or stated must be "material" and false. A "material matter" would typically refer to information crucial to the validity or legality of the marriage, such as marital status, age, consent, or identity. As stated earlier, the section distinguishes between two levels of culpability, each attracting a different penalty. The first category refers to persons who negligently makes a false material statement without having taken reasonable means to ascertain its truth or falsity, they are liable to imprisonment for one year. This implies a duty of care on the applicant to verify the information being provided for marriage purposes. The second category deals with persons making false material statement knowing that such matter is false, they are liable to imprisonment for five years. This higher penalty reflects the more serious nature of intentionally providing false information.

This provision serves as a deterrent against individuals attempting to procure a Registrar's Certificate¹⁸⁹, Minister's license¹⁹⁰ or Marriage Certificate through deceit or misrepresentation.¹⁹¹ Therefore, by imposing criminal liability, the law seeks to ensure that all information provided during the marriage registration process is truthful and accurate so that the integrity of the marriage system can be preserved.

False pretence of impediment to marriage

Section 41 of the Act¹⁹² create an offence for that punishes any person who prevent a marriage by making false pretences regarding consent or legal impediment, knowing such pretence to be false or without having reason to believe it to be true. A term of imprisonment of two years is provided by the Act. It is submitted that any action to attract punishment under this section, the action must relate to taken steps such as Pretending that one's consent to the marriage is required by law when it is not; pretending that any person whose consent is legally required does not consent and finally pretending that there is a legal impediment to the performance of the marriage, whereas non exist in law. To establish culpability, the person must act with the knowledge that the pretence is false or without having a reasonable belief in its truth. It submitted that when words use in a statute are clear and unambiguous, the literal rule of interpretation is employed.¹⁹³ In relation to the provision of Sec.41 of the Act it is submitted that the true intention of the legislature can be inferred by applying the literal rule of interpretation.

Unlawfully performing marriages ceremonies

Section 42 of the Marriage Act makes it an offence for persons involved in the performance or witnessing of a marriage under specific unlawful circumstances which the Act specifically prohibits. Thus, any person who performs or witnesses a marriage ceremony as a marriage officer, knowing that they are not duly qualified to do so,¹⁹⁴ or knowing that any legal requirement for the validity of such marriage has not been met,¹⁹⁵ thereby rendering the marriage void or unlawful¹⁹⁶, shall be liable to imprisonment for five years. It submitted that for culpability to arise, the person or persons must possess knowledge of either their lack of due qualification to perform or witness the marriage as a

¹⁸⁸ The requirement for obtaining the Registrar Certificate under Section 11(1) of the Marriage Act.

¹⁸⁹ See generally the provisions of Section 11 of the Marriage Act.

¹⁹⁰ See the provision of Section 13 of the Marriage Act.

¹⁹¹ Parties who are desperate might result to providing false information by misrepresenting fact in order to circumvent the provision of Section 22 of the Marriage Act.

¹⁹² Marriage Act Cap M6 Laws of the Federation of Nigeria 2004.

¹⁹³ See the case of *FRN v Uwakwem & Ors* (2025LPELR-81328(SC)).

¹⁹⁴ See Section 33(2)(d) of the Marriage Act Cap M6 Law of the Federation of Nigeria 2004

¹⁹⁵ See Section 33(2)(c) of the Marriage Act Cap M6 Law of the Federation of Nigeria 2004

¹⁹⁶ See generally the provisions of Section 33(2) of the Marriage Act Cap M6 Laws of the Federation of Nigeria 2004.

marriage officer and the non-fulfilment of any matter required by law for the validity of the marriage,¹⁹⁷ which consequently makes the marriage void or unlawful. It is further submitted that the words of the section are plain and unambiguous that admit for the adoption of the literal rule of interpretation.

Wilful neglect of duty to fill up or transmit certificate of marriage

Section 43 of the Marriage Act primarily imposes criminal liability for a specific failure of duty. By the provisions of Sec. 25 of the Marriage Act, “a minister or the officiating minister shall fill up in duplicate a marriage certificate with the particulars required by Form E and state also and enter in the counterfoil the number of the certificate, the date of the marriage, names of the parties, and the names of the witnesses”. Thus Sec. 43 stipulate that any person who is under a duty to fill up the certificate of a marriage celebrated by them, or its counterfoil, or to transmit the same to the registrar of marriages, and wilfully fails to perform such duty, shall be liable to imprisonment for two years. This section criminalises the wilful failure to properly complete and transmit marriage certificates, making such an omission punishable by a term of imprisonment for two years. It submitted that the essence of the criminalisation of failure to fill and transmit marriage certificate has a wider implication in relation to the statutory marriage. It is important to distinguish the specific implication of Section 43 from the broader legal implications of contracting a marriage under the Marriage Act. While these broader implications do not stem directly from the provisions of Section 43, but from the fundamental aspects of statutory marriages as has been highlighted by case law. For the avoidance of doubt, a marriage contracted under the Marriage Act is strictly monogamous in nature.¹⁹⁸ This means that during the subsistence of such a marriage, neither party can legally contract another marriage with a different person, whether under customary law or any other form.¹⁹⁹ Any attempt to contract any other form of marriage during the pendency of the statutory marriage will be void. In *Okafor & Ors v Okafor & Ors*²⁰⁰ the Court of Appeal Per Patricia Ajuma Mahmoud JCA held as follows:

...this Court found as a fact that the late Chief Clement Okafor contracted a statutory marriage with the 1st plaintiff on the 30th December, 1967. The implication of this is that late Chief Clement Okafor was incapable legally speaking of contracting another marriage with another woman during the subsistence of his statutory marriage to the 1st plaintiff. Any subsequent alleged marriage, customary or otherwise between late Chief Clement Okafor and any other woman during his statutory marriage to the 1st plaintiff was rendered invalid by operation of law.

Furthermore, in relation to intestate succession, the law is settled that when a person who married under the Marriage Act dies intestate, the administration and distribution of their intestate estate will be governed by the Administration of Estate law/ the English law of intestacy where applicable, except where its operation is expressly excluded²⁰¹ and not the deceased customary law²⁰². The wife of the statutory marriage and the children of that marriage are exclusively entitled to inherit the deceased's

¹⁹⁷ See generally the provisions of Sections 7, 8, 11(1) and 13 of the Marriage Act Cap M6 Laws of the Federation of Nigeria 2004.

¹⁹⁸ See the case of *Obi & Ors v Bosah & Ors* (2019) LPELR-47243(CA)

¹⁹⁹ See Section 33(1); Section 46 and Section 47 of the Marriage Act Cap M6 Laws of the Federation of Nigeria 2004

²⁰⁰ (2022) LPELR-59136(CA) (Pp14-14 Paras A-E)

²⁰¹ See *Mohammed & Ors v. Mohammed & Anor* (2024) LPELR-62831(CA).

²⁰² See P.O. Itua, “Legitimacy, legitimation and succession in Nigeria: An appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended on the right of inheritance” in *Journal of Law and Conflict Resolution* Vol. 4(3) PP. 31-44, March 2012. Available online at <http://www.academicjournals.org/JLCR> (last Accessed 4th May 2026).

estate.²⁰³

Personation in marriage

Section 44 of the Marriage Act provides that “whoever personates any other person in marriage, or marries under a false name or description, with intent to deceive the other party to the marriage, shall be liable to imprisonment for five years.” It is submitted that the clear meaning of the section does not admit of complex interpretation. It is further submitted that under the provisions of Sec. 33(2)(b) of the Act any marriage contracted under a false name is void. In this regard, it is important to draw a distinction between the provisions of Sec. 33(2)(b) and the Sec. 44. While under Sec. 33(2)(b) both parties must “knowingly and willingly” acquiesce to the celebration of the marriage under a false name, on the other hand, Sec. 44 prohibit any person from personating “any other person in a marriage, or marries under a false name or description, with intent to deceive the other party to the marriage”. In the English case of *Militante v Ogumwonoju*²⁰⁴ the petitioner believing the respondent to Richard Ogumwonoju married him, when in fact he was Anthony Osimen, an illegal immigrant. The action brought was founded on a declaration for the decree of nullity of marriage, and the action succeeded on that ground. In Nigeria, this action would have succeeded under Sec. 44, and the respondent would have be liable for a term of 5 years imprisonment.

Fictitious marriage

Section 45 of the Marriage Act seek to offer protection to a party to the marriage from the other party who “knowingly go through the marriage ceremony when he or she is aware that is *void ab initio*²⁰⁵. Thus, the conduct of the party at fault constitutes an offence punishable with 5years imprisonment. It submitted that where either of the party is aware of any material fact that would render the ceremony void, such as subsisting marriage, within the prohibited degree of consanguinity and affinity²⁰⁶ will automatically activate the provision of Sec. 45 of the Act against the offender.

Contracting marriage by native law when already married by the Act

Section 46 of the Marriage Act criminalised any act that has been forbidden under the provision of section 35 of the Act. By Sec. 46 the Act provides that “whoever contract a marriage under the provision of this Act, or any modification or re-enactment thereof, being at the time married in accordance with customary law to any person other than the person with whom such marriage is contracted, shall be liable for imprisonment for five years”. Section 35 provides that “Any person who is married under the Act, or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law, but save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any customary, or in any manner apply to marriage so contracted.” Also, Sec. 33(1) of the Marriage Act equally provides that “No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is held.” Thus, it is submitted that what the law prohibit is a situation where a person who is married under customary law decides to contract a statutory marriage with a third party other than the person to who the customary law marriage was contracted or vice versa. In *Mgbodu v Mgbodu*²⁰⁷ the Court held that:

...what Section 35 simply means is that any marriage celebrated in accordance with

²⁰³ See the case of Mohammed &Ors v Mohammed & Anor (2024) LPELR-62831(CA) and *Ikeh & Ors v Ikeh & Anor* (2022) LPELR-59144(CA).

²⁰⁴ (1993) 2 FCR 355.

²⁰⁵ See the provisions of section 33(1) and (2) of the Marriage Act Cap M6 Laws of the Federation of Nigeria 2004

²⁰⁶ Section 3(1)(b) of the Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria 2004. See also the provisions of section 35 of the Marriage Act Cap M6 Laws of the Federation of Nigeria 2004.

²⁰⁷ (2018) LPELR-43770(CA).

customary law shall be valid notwithstanding anything contained in the Marriage Act EXCEPT where it is invalid by reason of the existence of a Statutory marriage before the said customary marriage. In other words, the only condition that can invalidate an otherwise proper marriage conducted in accordance with customary law is when one of the parties to the customary marriage was at the time the customary marriage was conducted, married to another person under the Marriage Act and the marriage was still subsisting. Let me say that while a subsequent Statutory marriage by or to a person who is either married under the Act or in accordance with Customary law is forbidden, subsequent marriage under the Act or in accordance with Native law and Custom is not forbidden under any law where the parties remain the same. In other words, where Mr. A marries Mrs. A in accordance with Native law and custom, they can proceed to conduct another marriage under the Act if they so wish and vice versa. However, during the pendency of either a marriage in accordance with Native law and custom or a marriage under the Act, Mr. A or Mrs. A cannot validly conduct any marriage with another person under the Act. This is the position of the law as provided in Section 33 (1) of the Marriage Act...²⁰⁸

It submitted that the provision of Sec.35 of the Marriage Act effectively preserved the validity of customary law marriages²⁰⁹

Contracting marriage under the Act when already married by native law

The provisions of Sec. 47 and Sec.46 of the Marriage Act appears to be similar, but they are distinguishable in relation to their legal consequences. Sec.47 of the Act expressly provides that: "Whoever, having contracted marriage under this Act, or any modification or re-enactment thereof, or under any enactment repealed by this Act, during the continuance of such marriage contracts a marriage in accordance with customary law, shall be liable to imprisonment for five years." This provision criminalises and provides a term of punishment for five years for any person who, having validly contracted a statutory marriage in accordance with Act,²¹⁰ subsequently contracts a customary marriage while the statutory marriage is still subsisting. The Supreme Court in *Kuforiji & Anor v. V.Y.B (Nig) Ltd*²¹¹ stated that "Section 48 of the Marriage Act makes it an offence for 1st defendant/appellant to pass through the ceremony of customary marriage while the monogamous marriage exists." In *Obiozor v Nnamua*²¹² the Court of Appeal Per Emmanuel Akomaye Agim JCA held as follows: "... under Nigerian law, a marriage can be either a marriage under the Marriage Act or customary law marriage. This is obvious from the tenor of the Marriage Act."

Also, by Sec.7 of the Same Sex Marriage (Prohibition) Act²¹³ marriage in Nigeria means a legal union entered into between persons of opposite sex in accordance with the Marriage Act, Islamic law, or customary law. It submitted that this section reinforced the Monogamy status of statutory marriages contracted under the Marriage Act in Nigeria. In *Agbakoba v. A-G, Federation & Anor*²¹⁴ the court held that statutory marriage in Nigeria is described and governed by the Marriage Act, and the Matrimonial Causes Act. Thus, Sec 47 of the Act serves to protect the sanctity and exclusivity of this monogamous union by criminalising any attempt to contract a polygamous customary marriage during its

²⁰⁸ Per Helen Moronkeji Ogunwumiju at 7 - 9 Paras B – D. See also the case of *Abeja v Agbeja* (1985) 3NWLR (Pt.11) 11.

²⁰⁹ *Mgbodu v Mgbodu* (2018) LPELR-43770(CA).

²¹⁰ See section 34 of the Marriage Act Cap M6 Laws of the Federation of Nigeria 2004.

²¹¹ (1981) LPELR-1716(SC). See also the case of *Motoh v. Motoh* (2010) LPELR-8643(CA), the court held that "any person who contracted a marriage under the Ordinance shall be incapable of contracting a valid marriage under any native law or custom,"

²¹² (2014) LPELR-23041(CA) (Pp 80-80 Paras A-C)

²¹³ Same Sex Marriage (Prohibition) Act 2013

²¹⁴ (2021) LPELR-55906(CA),

continuance. It is important to distinguish between the various forms of marriages recognised in Nigeria. Thus, the law recognises apart from statutory marriage, marriages contracted under native law and custom which also include Islamic marriages.

Furthermore, it is submitted that Sec. 47 specifically targets the conflict that arises when a customary marriage is contracted after a statutory one. This is distinct from the common practice, acknowledged by the Supreme Court in celebrated case of *Jadesimi v. Okotie-Eboh & Ors*²¹⁵ where Uwais JSC (As he then was) held that "most people in Nigeria who contract marriages under the Marriage Act, undergo a form of customary marriage earlier as a matter of practice and adherence to the custom of their forefathers."²¹⁶ It is further submitted that Sec. 47 does not prohibit a statutory marriage following a customary marriage; rather, it prohibits the reverse sequence. The section establishes a clear legal barrier against bigamy under customary law for individuals already bound by a statutory marriage, reinforcing the monogamous character of such unions through criminal sanctions. It is imperative to state that the mischief that this section seek to prevent is bigamy, where a party to a valid statutory marriage attempts to enter into a polygamous union by contracting a customary law marriage with a different person. In *Tongo v Tongo*²¹⁷ the court referred to section 47 of the Marriage Act in the context of "wilful wrongdoing constituting a crime" thus reinforcing the understanding that it addresses unlawful conduct by one spouse in contracting a subsequent marriage.²¹⁸ Consequently, the prohibition and punishment under Sec.47 applies to one of the parties to a subsisting statutory marriage who contract a subsequent customary marriage with a third party while the statutory marriage remains valid and subsisting. Attempting to advance the argument by applying the prohibition to the same parties that contracted the statutory marriage will be legally superfluous and would not constitute the criminal offence of bigamy contemplated by Sec. 47 of the Act.

Marrying a minor without prescribed consent

Section 48 of the Marriage Act provides that "Whoever, knowing that the written consent required by this Act has not been obtained, shall marry or assist or procure any other person to marry a minor under the age of twenty-one years, not being a widow or widower, shall be liable to imprisonment for two years." It is submitted that this section criminalises the marriage of a minor. Although there is no provision in the Marriage Act where marriageable age is defined,²¹⁹ it is submitted that by implication, that age is twenty-one years. Thus, the criminal element of the offence is committed when a person marries a minor under twenty-one years, who is not a widow or widower, assisting another person to marry a minor and procuring another person to marry such a minor. It is submitted that a crucial element for the commission of the offence is "knowing that the written consent required by this Act has not been obtained." This means that the perpetrator must be aware that the necessary legal consent for the minor's marriage is absent but nevertheless went ahead with its celebration. However, the section specifically protects minors under the age of twenty-one years, who are already widows or widowers and those whose parents grant the required consent.²²⁰

Mechanism for the protection of the sanctity of statutory marriage

The Marriage Act incorporates several mechanisms designed to protect the sanctity of marriage in Nigeria. The Act establishes framework for the protection of monogamous unions by ensuring that

²¹⁵ (1996) LPELR-1590(SC),

²¹⁶ See footnote 12 above.

²¹⁷ (2020) LPELR-52244(CA)

²¹⁸ The Court of Appeal in *Etebu v Etebu* (2018) LPELR-46250(CA) while discussing section 3(1)(a) of the Matrimonial Causes Act, noted that the law "expressly prohibit and renders void polygamous marriage" where one party is already lawfully married to another person, which aligns with the spirit of section 47 of the Marriage Act.

²¹⁹ See also the provision of section 3(1)(e) of the Matrimonial Causes Act Cap M7 laws of the Federation of Nigeria 2004

²²⁰ See the case of *Agbo v Udo* (1947) 18 NLR 152.

marriages are contracted and solemnised according to its strict legal requirements. Failure to comply with these legal requirements are sanctioned as contained in sections 39 to 48 of the Act. These mechanisms are aimed at preventing fraudulent marriages, bigamy, and marriages contracted without proper consent or due process that will ultimately impact negativity on the sanctity of the marriage. It is submitted that the core principles underpinning these protections are evident in the following provisions and judicial authorities as interpreted by the courts.

A fundamental mechanism for protecting the sanctity of marriage under the Act is its strict adherence to the principle of monogamy and the prevention of bigamy. The Act explicitly invalidates marriages that violate this principle²²¹ Section 33(1) of the Act, unequivocally provides that "No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had." This provision directly prevents a person already married under customary law from contracting a valid statutory marriage with another person, thereby upholding the monogamous nature of statutory marriage. This principle was upheld by the Court of Appeal in the case of *Mgbodu v. Mgbodu* (Supra) by stating that a person already married under customary law cannot validly conduct any marriage with another person under the Act. Similarly, in *Agbakoba v. A-G, Federation & Anor* (Supra) the Court of Appeal held that statutory marriage governed by the Marriage Act and Matrimonial Causes Act is inherently a "monogamous marriage" as opposed to marriages under native law and custom.

Furthermore, the Act imposes strict requirements for valid solemnisation. The Act prescribes specific conditions for the celebration of marriages, and non-compliance with these conditions can render a marriage null and void, thereby ensuring that only properly constituted unions are recognised. Section 33(2) of the Act outlines several grounds upon which a marriage shall be null and void if both parties knowingly and wilfully acquiesce in its celebration. By illustration, Sec.33(2)(a) deals with the place for the celebration of the marriage. The Act provides that the marriages must be celebrated in the office of a registrar of marriages or a licensed place of worship, unless authorised by a special licence under Section 13 of the Act. The essence is to ensure that marriages are solemnised in officially recognised venues. Sec. 33(2)(b) forbid the solemnisation of marriage under a false name, or names that will invalidate the marriage.

Also, the Act sought to prevent deception and ensuring that the true identities of the parties are known. Sec.33(2)(c) deals with the registrar's certificate or licence as provided under section 11 and 13 of the Act. Thus, the absence of a duly issued registrar's certificate or licence under Section 13 of the Act renders the marriage void, ensuring proper administrative oversight and public notice. Sec.33(2)(d) focuses on the qualification of the officiating minister or officer. The subsection provides that the marriage must be celebrated by a recognised minister of a religious denomination or body, or a registrar of marriages. This ensures that the solemnisation is conducted by an authorised official. In *Minister of Interior v. Eti-Osa Local Government Lagos State & Ors* (Supra) the Court of Appeal stated that the regulations governing the celebration and contract of marriage are rooted in the Marriage Act, which identifies the proper forums for such celebrations. In relation to church marriage, the court in *Motoh v. Motoh* (Supra) further clarifies that church marriages are recognised under the provisions of Sections 21-26 of the Act, provided they adhere to the rites and usages of the respective church and are celebrated in a licensed place of worship. To qualify as statutory marriage, parties must comply with the requirements as provided in sections 11-13 of the Marriage Act.

Also, the Marriage Act by Sec.48 imposes a requirement for parental/guardian consent for minors to protect minors and to ensure that marriages are entered into with appropriate consent, the Act mandates specific approvals for underage parties. Sec.18 of the Act, stipulates that if either party to an intended marriage (not being a widower or widow) is under twenty-one years of age, the written consent of the father, or if unavailable, the mother, or if both are unavailable, the guardian, must be produced before a licence can be granted or a certificate issued. This mechanism ensures that minors are not coerced into marriage and that their welfare is considered.

²²¹ See the case of *Akinwunmi v Akinwunmi* (2018) LPELR-44770(CA) and the case of *Olowu v Olowu* (2018) LPELR-45371 (CA)

Similarly, Sec. 20 of the Act provides a safeguard where no parent or guardian resides in Nigeria capable of consenting to the marriage. In such cases, a Governor, a judge of the High Court, or an officer of or above the grade of assistant secretary may provide written consent, after being satisfied that the marriage is proper. This ensures that the consent requirement is not an absolute bar but can be met under specific, scrutinised conditions.

The Marriage Act also deals with the legal status and regulation of marriage in Nigeria. Towards this end, the Act establishes marriage as a legal status, and not a transient arrangement, thereby reinforcing its sanctity. This principle was further affirmed by the Court of Appeal in the case of *Ezeaku v. Okonkwo & Anor*²²² where the court highlighted that marriage is a status conferred by law to persons who have satisfied or complied with the necessary requirements. It is not a "toga to be put on or dropped at the will of a party at any point in time by mere affidavit," but is regulated by law, including the Marriage Act. This judicial pronouncement underscores the seriousness and permanence of statutory marriage, which contributes to its sanctity. Thus, the Marriage Act through the highlighted provisions protects the sanctity of marriage through its provisions enforcing monogamy, setting stringent requirements for the solemnisation and registration of marriages, mandating consent for minors, and establishing marriage as a legally binding status. These mechanisms collectively ensure that marriages under the Act are valid, properly constituted, and reflective of a serious, exclusive commitment. However, the problem has been that of enforcement of the provisions of Sec.39 to 48 of the Act. It is submitted that if offenders are adequately prosecuted and punished, this would help to meet one of the purposes of punishment discussed in this research. To achieve the objectives of the Act in relation to the protection of the sanctity of marriage, the following are recommended.

Recommendation

Learned authors and academic have expressed their displeasure with the current state of the Marriage Act.²²³ The first notable lacuna by Act in relation to the subject of this research is that the Act fails to provide or clearly articulate the legal consequences of same parties contracting a statutory marriage after been married under native law and custom or *vice versa*. Sec. 35 of the Act expressly preserved marriage contracted under customary law. However, the Act is silence on the legal consequences of parties contracting both statutory and native law marriages at the same time. This lacuna has generated debates as to whether both marriages co-exist, or whether the customary law marriage is suspended while the statutory marriage exist.²²⁴ Also, the provision of Sec. 47 of the Act appears to foreclose any person who is married under the Act from contracting a customary law marriage. The Act is also silence on whether parties who are married under Act, are forbidden from contracting customary law marriage after their prior statutory marriage. It is recommended that the Act in its present state should be amended to provide clarity on the status of the customary law marriage recognised by Sec. 35 of the Act. It is submitted that Sec. 47 of the Act should be amended to state that the prohibition and sanction does not apply to the same parties who are already married under the Act, because applying the prohibition to the same parties married under the Act will be legally superfluous and would not constitute the criminal offence of bigamy contemplated by Sec. 47 of the Act.

As noted earlier, one of the problems militating against the sanctity of statutory marriage in Nigeria is the lack of enforcement and prosecution of offenders. Amongst the listed offences in section 39- 48 of the Act is the offence of bigamy. Both Sec.39, 46 and 47 of the Act and Sec. 370 of the Criminal Code²²⁵ makes it an offence for a person married under the Act to contract another marriage with a third party either under the Act or under customary law. The Court of Appeal provided a case law definition of the offence of bigamy in the case of *Adeoye v Adeoye & Anor*²²⁶ stating "To get married

²²² (2011) LPELR-57009(CA)

²²³ See E.I. Nwogugu, *What is next in Nigerian Family law?* (2006 Nigerian Institute of Advance Legal Studies Lagos) p.6

²²⁴ See the case of *Jadesimi v Okotie-Eboh & Ors* (1996) LPELR-1590(SC).

²²⁵ Criminal Code Cap C38 Laws of the Federation of Nigeria 2004.

²²⁶ (2024) LPELR-62221(CA)

as a result of adultery whilst still in a contract of marriage with another person, clearly constitutes the offence of bigamy." This principle highlights the core element of bigamy which is the existence of a prior valid marriage and the subsequent solemnisation of another marriage by one of the parties to the subsisting marriage.

It is submitted that beyond its criminal implications, bigamy also renders the subsequent marriage void. Section 3(1)(a) of the Matrimonial Causes Act, explicitly states that a marriage is void if "either of the parties is, at the time of the marriage, lawfully married to some other person." in *Nebuwa v Nnenna*²²⁷ the Court declared the marriage null and void for contravening Sec 3(1)(a) of the Matrimonial Causes Act²²⁸ (same as section 33 of the Marriage Act). Although the court did not delve into the criminal charge of bigamy, but it however affirmed the void nature of the second marriage. Similarly, the Supreme Court in *Ugo v Ugo*²²⁹ acknowledged bigamy as a potential ground in civil proceedings, where it was raised as a basis for an objection, though the objection itself was overruled on other grounds.

Furthermore, it is submitted that one of the identifiable factors responsible for the low rate of prosecutions of bigamy is the standard and burden of proof required by the law. Since bigamy is a criminal offence, the standard of proof required is high, even when it is alleged in civil proceedings.²³⁰ The Apex Court in *Kuforiji & Anor v V.Y.B. (Nig) Ltd.*²³¹ held that "not only must the legal marriage and the unlawful marriage be strictly proved, the burden of proof of the offence alleged in the civil proceedings must be discharged in a manner no less than is required to convict in criminal trials." Thus, the prosecution (or the party alleging bigamy in civil proceedings must prove both the first valid marriage and the second unlawful marriage beyond a reasonable doubt. The Court also noted that while the offence might appear to be a "dead letter," it remains in the statute book and operational.

It is submitted that several decisions of court have clarified the type of evidence admissible to prove a marriage in bigamy proceedings. In *Onuh & Anor v. Ogbé*²³², *Fenu & Ors v. Bello & Ors*²³³ and *Okwusogu & Ors v. Okadigbo*²³⁴ the court consistently reiterated that opinion evidence, even from family members with special knowledge is not sufficient to prove a marriage in a prosecution for bigamy. Thus, the law requires strict proof of both marriages, typically through documentary evidence such as the tending of the marriage certificates as provided by Sec. 25 of the Marriage Act, direct and credible testimony. The Supreme Court in *Amobi v. Nzegwu & Ors*²³⁵ firmly established that bigamy is a criminal offence under the Marriage Act, requiring strict proof of both the subsisting and the subsequent marriages to grant a conviction, while the subsequent marriage is also rendered void by the Matrimonial Causes Act.

According to Nwogugu "in the long history of these provisions, less than ten prosecutions for bigamy

²²⁷ (2018) LPELR-45097(CA).

²²⁸ Matrimonial Causes Act Cap M7 Laws of the Federation of Nigeria 2004

²²⁹ (2017) LPELR-44809(SC)

²³⁰ In a civil suit, the standard of proving a crime is "proof beyond reasonable doubt." This a departure from the general standard of proof in civil cases, which is on the balance of probabilities or the preponderance of evidence. See section 134 and 135(1) of the Evidence Act 2011(as amended in 2023) see the case of *Suleiman v Globus Enterprises of (Nig) Ltd & Anor.* (2023) LPELR- 73219 (CA), *Olatunji & Ors v Ayeni* (2019) LPELR-48495(CA) and *Magaji v APC & Ors.* (2023) LPELR-60356(SC).

²³¹ (1981) LPELR-1716(SC)

²³² (2019) LPELR-48361(CA),

²³³ (2019) LPELR-47693(CA)

²³⁴ (2017) LPELR-42751(CA)

²³⁵ (2013) LPELR-21863(SC)

have been recorded in our legal history”²³⁶ Thus, the section appears to be more observed in breaches than in compliancy, because “a close survey of the society shows that the offence of bigamy is committed daily by a cross section of Nigerian society including persons holding high public offices, law enforcement officials and even members of the legal professions.”²³⁷ Several factors have been identified for this unsatisfactory situation. In Nigeria, cultural attitude exist that a spouse should not be seen to be responsible for the prosecution and imprisonment of the other or a family member. As a result, affected wives are most reluctant to report their offending husbands and would prefer to either tolerate the situation or leave the marriage.²³⁸ Also, there is the general laxity in the law enforcement in Nigeria particularly where influential or important personalities are involved.²³⁹ There exist a general reluctance in dissolving marriages which have broken down, with the result that a solution is often found in acquiring a new wife under customary law²⁴⁰. The provisions of Sec. 35 of the Marriage Act which recognises the existence of customary law marriages is most often abused. Parties marry under the Act because it is fashionable to do so, and most of them considered it “superior” to marriages under native law and custom without a prior deliberation of the obligations involved. However, once they encounter difficulties in the marriage, they natural feel entitled to exercise their rights under customary law by contracting customary law marriage without taken steps to dissolve the prior statutory marriage. Also, it has been observed that in most cases, the second marriage is contracted under customary law and the participating family members are unwilling to provide evidence in proof of the marriage thereby making prosecution difficult.

Despite the low numbers of prosecution, the courts have consistently affirmed the gravity of the of offence of bigamy and have established principles regarding its proof and consequences. The Supreme Court in the case of *Amobi v Nzegwu & Ors*²⁴¹ directly addressed the criminal aspect of bigamy under the Marriage Act. The Court held that contracting two marriages during the subsistence of a valid marriage constitutes a breach of Section 39 of the Marriage Act. It further stated that a person who commits such an act ought to be charged, tried, and convicted for bigamy under the said Act, especially where sufficient evidence has been provided. Because of the lack of prosecution and enforcement, the Apex Court directed the State Attorney-General and Commissioner for Justice/D.P.P. to act, underscoring the seriousness with which the judiciary views the offence. Similarly, the case of *Oni v Oni*²⁴² illustrates and reinforce the principle that bigamy is a subject of criminal complaints, as it referenced a pending criminal charge for bigamy before a Chief Judge. This confirms that bigamy is actively prosecuted as a criminal offence despite been committed under the provision of the Marriage Act. The position taken by the Apex Court in the case of *Amobi v Nzegwu & Ors* (supra) is commendable and recommended.

Finally, it is submitted that the offence of bigamy be retained in our statute books. It is common knowledge that once a man is given the freedom to move from monogamous marriage to polygamous union at well irrespective of the feeling of his partner, we would have undermined our legal system. It recommended that citizens should cultivate a culture of strict obedience and enforcement of the law. To achieve this, it is recommended that there must be effective enlightenment and education of women as to their legal rights.²⁴³

²³⁶ E.I. Nwogugu, *What is next in Nigerian Family law?* (2006 Nigerian Institute of Advance Legal Studies Lagos) p.12

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ (2013) LPELR-21863(SC)

²⁴² (2019) LPELR-48765(CA)

²⁴³ E.I. Nwogugu, *what is next in Nigerian Family law?* (Nigerian Institute of Advance Legal Studies Lagos 2006) p.22

Conclusion

This research has demonstrated the need to have an effective legal Mechanism for the protection of the sanctity of statutory marriage in Nigeria. It has effectively appraised the provisions of sections 39 to 48 of the Marriage Act. The research recommends the enforcement and prosecution of persons adjudged to have committed the various offences as provided under the aforesaid sections in order to enhance the protection of the sanctity of marriage in Nigeria. It is hoped that if the highlighted recommendations are implemented, the sanctity of statutory marriages in Nigeria will be restored and thus, positively impact towards the stability of statutory marriage in the country.

References

Books

- Abdulummin, A.O., "Religious and Customary Law in Nigeria" 25 *Emory International Law Review* 882.
- Ajuzie, C. and Osondu, *Modern Nigerian Family Law & Practice* (Printable Publishing Company, Lagos, 2012) 118.
- Black, H.C *Black Law Dictionary with Pronunciations* (6th (ed), West Publishing Co., 1990) 972.
- Campbell, H. and Black, H.A. *Black Law Dictionary with Pronunciations*, (6th ed, Centennial Edition (1891-1991) West Publishing Co, 1990) 1281.
- Doherty, O., *Criminal Procedure in Nigeria Law and Practice* (Blackstone Press Limited London 1990)
- Karibi-Whyte, A.G *Groundwork of Nigerian Criminal Law*. (Nigerian Law Publication Ltd, Lagos 1986) 76-77.
- Nwogugu, E.I., *Family Law in Nigeria*. Revised (ed), (Heinemann Educational Books (Nigeria) Plc 2006) 25.
- Nwogugu, E.I., *What is next in Nigerian Family law?* (Nigerian Institute of Advance Legal Studies Lagos 2006) p.12.
- Ocheja, T.O., "Dualism in the Law of Succession in Nigeria" a chapter in *Legal Pluralism in Africa: A compendium on Africa Customary Law* (Nigerian Institute of Advance Legal Studies Lagos 2012) 586.
- Ogbuinya, O.F., *Guidelines to Interpretation of Nigerian Statutes* (Snaap Press Nigeria Ltd Enugu, 2019) 7.
- Park, *Sources of Nigeria Law* (1963).
- Shahar, I., "Legal Pluralism and the Study of Shari 'a Courts" (2008) 5 *Islamic L & 'y* 112.
- Uduigwomen, A., *Studies in Philosophical Jurisprudence* (2nd ed, Calaber Jochrisam Publisher, 2005) 330.
- Zimring, F. and Hawkins, G. *Incapacitation: Penal Confinement and Restraint of Crime* (1st edn, Oxford University Press, New York, 1995).

Journals / Articles

- Anderson, JND "Relationship between Islamic and Customary law in Africa" in *Journal of African Administration* 1960 Available online at <<https://www.heinonline.org>>
- Boparal, H., "The Customary and Statutory Law of Marriage in Nigeria" African Indigenous Law proceeding of the workshop (7-9 August 1974) by institute of African studies, University of Nigeria Nsukka, ed. By Elias, Nwabara and Akpamgbo (Enugu 1975.) 530.

- Busari, JM “Shari’a as Customary Law? An Analytical Assessment from the Nigerian Constitution and Judicial Precedents in *AHKAM: Jurnal Ilmu Syariah* Vol.21 No.1 (2021) Available online at < <https://www.Journal.uinjkt.ac.id>>
- Idem, U.J and Udofia, N.E “Sentencing and Administration of Criminal Justice in Nigeria” *Donnish Journal of Law and Conflict Resolution* Vol. 4(1) January 2018 Available online at < <https://www.donnishjournal.org/djcr> > accessed 22nd March 2023.
- Ijalana, E.F., and Agbana, J.O., “A Critical Appraisal of the Concept of Double-Decker Marriage under the Nigerian Family Law” *Beijing Law Review* 2021, 12, 1163-1178 available online at <<https://www.scrip.org/journal/blr>>
- Itua, P.O., “Legitimacy, legitimation and succession in Nigeria: An appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) on the right of inheritance” in *Journal of Law and Conflict Resolution* Vol. 4(3) PP. 31-44, March 2012. Available online at <http://www.academicjournals.org/JLCR>.
- Morris, “The Development of Statutory Marriage Law in Twentieth Century British Colonial Africa”. *Journal of African Law* 23 (1979) 36-74.
- Oba, AA “Islamic law as customary law: the changing perspective in Nigeria”. *International and Comparative Law Quarterly* Vol, 51 No 4 (Oct. 2002) 817-850. Available online at <<https://www.jstor.org/stable/3663189>>
- Zabel, “The Legislative History of the Gold Coast and Nigerian Marriage Ordinance” *Journal of African Law* 13 (1969) 64.

Statutes

- Criminal Code Cap C38 Laws of the Federation of Nigeria 2004.
- English Matrimonial Causes Act, 1965.
- Evidence Act 2011(as amended in 2023).
- Interpretation Act, Cap 192. Laws of the Federation of Nigeria 1990.
- Marriage Ordinance No. 10 of 1863.
- Marriage Ordinance No. 18 of 1914, Cap. 115 Law of the Federation of Nigeria 1958.
- Marriage Act, Cap M6. Laws of the Federation of Nigeria 2004
- Matrimonial Causes Act. Cap M7 Laws of the Federation of Nigeria 2004.
- Marriage Ordinance No. 18 of 1914, Cap. 115 Law of the Federation of Nigeria 1958.
- Marriage Proclamation No 20 of 1900.
- Marriage Proclamation No. 1 of 1907 Laws of the Protectorate of Northern Nigeria 1910,
- Ordinance No. 14 of 1884.
- Ordinance No. 3 of 1863.
- Regional Court (Federal Jurisdiction) Act, 1958. Cap. 177 Laws of the Federation of Nigeria, 1958
- Same Sex Marriage (Prohibition) Act 2013
- The Child Rights Act 2003.
- The Constitution of the Federal Republic of Nigeria (as amended) Cap. C 23, Laws of the Federation of Nigeria 2004.

Internet Sources

- law Insider<<https://www.lawinsider.com>>

Legal Punishment *Stanford Encyclopaedia of Philosophy* <https://plato.stanford.edu/Archives>

Oxford Reference <<https://www.oxfordreference.com>>

Cases

Abeja v Agbeja (1985) 3NWLR (Pt.11) 11.

Adegbola v Folaranmi (1921) 3, N.L.R. 89.

Adeoye v Adeoye & Anor (2024) LPELR-62221(CA)

AG Abia State v AG Federation (2005) 265.

AG of the Federation and Minister for Justice v Eti-Osa LGA, Lagos & Ors (2023) LPELR-60827(CA)

AG Ondo State v AG Ekiti State (2001) FWLR (Pt.79)1431.

Agbakoba v AG Federation & Anor (2021) LPELR-55906(CA).

Agbo v Udo (1942) 18 NLR 152.

Ahiakwo & Ors v Okpor & Ors (2022) LPELR-57460(CA).

Akinwunmi v Akinwunmi (2018) LPELR-44770(CA)

Akuwudike v. Akuwudike (1963) 7 ENLR 5.

Ali v FRN (2016) LPELR-40472 (CA).

Amobi v Nzegwu & Ors (2013) LPELR-21863(SC).

Amoshima v State (2008) LPELR-4369(CA)

Anyaegebunam v Anyaegebunam (1973) ALL NLR 320.

Aoko v Fagbemi & Anor. [1961] All NLR 400.

Attorney-General v Awoyele (1952) 19 NLR 52.

Awobokun & Anor v Adeyemi (1970) LPELR-648 (SC).

Bello & Ors v AG Oyo State (1986) LPELR-764(SC)

Chinweze & Anor v Masi & Anor (1989) LPELR-851(SC).

Chukwu & Ors v Chukwu & Ors (2016) LPELR-40553(CA)

Coca-Cola (Nig) Ltd v Akinsanya (2017) 17 NWLR (Pt.1593) 74.

Dahiru v IGP (2022) LPELR -59049 (CA)

Ekpo v State (1982) 6 SC 120.

Elizabeth v FRN (2021) LPELR-54632(CA)

Etebu v Etebu (2018) LPELR-46250(CA)

Ezeaku v. Okonkwo & Anor (2011) LPELR-57009(CA).

Fenu & Ors v. Bello & Ors (2019) LPELR-47693(CA)

FRN v Uwakwem & Ors (2025) LPELR-81328(SC).

Hyde v Hyde (1886) LR 1 P&D 130, 133.

Ikeh & Ors v Ikeh & Anor (2022) LPELR-59144(CA).

Jadesimi v Okotie -Eboh & Ors (1996) LPELR- 1590 (SC).

Jeremiah Ambler and Amp Sons Ltd v Bradford Corporation (1902) 2 Ch. 585.

Jones v Sherrington (1908) 2 KB 53 at 547

Kalu v The State (1988) 11-12 S.C. 4.

Kuforiji & Anor v. V.Y.B (Nig) Ltd (1981) LPELR-1716(SC).

Magaji v APC & Ors. (2023) LPELR-60356(SC).

Maina v FRN (2022) LPELR-58942(CA);

Mgbodu v Mgbodu (2018) LPELR-43770 (CA).

Militante v Ogumwonoju (1993) 2 FCR 355.

Mmaju & Anor v Ikwuka (2018) LPELR-44141(CA).

Mohammed & Ors v. Mohammed & Anor (2024) LPELR-62831(CA).

Nebuwa v Nnenna (2018) LPELR-45097 (CA).

Nola & Ors v Graham-Douglas & Anor (2019) LPELR-48285(CA).

Nsugbe v Okobi & Anor (2012) LPELR-24481(CA)

Nwamkpele v Nwamkpele (1973) 3 UILR 84.

Obi & Ors v Bosah & Ors (2019) LPELR-47243(CA)

Obiekwe v. Obiekwe (1963) 7 ENLR 196.

Obiozor v Nnamua (2014) LPELR-23041(CA)

Ogbonna v AG Imo State (1992) 1 NWLR (Pt. 220) 647.

Oghoyone v Oghoyone (2010) LPELR-4689(CA).

Ojolade v State (2019) LPELR-48214(CA).

Okafor & Ors v Okafor & Anor (2022) LPELR-59136 (CA).

Okeke v A-G, Anambra State (1992) 1NWLR (Pt. 215) 60

Okwusogu & Ors v. Okadigbo (2017) LPELR-42751(CA)

Olatunji & Ors v Ayeni (2019) LPELR-48495(CA).

Olowu v Olowu (2018) LPELR-45371 (CA).

Onah v FRN (2017) LPELR- 43535 (CA)

Oni v Oni (2019) LPELR-48765(CA)

Onuh & Anor v. Ogbe (2019) LPELR-48361(CA),

Onwudinjoh v Onwudinjoh (1959) II ERNLR 1.

Onyebuchi v FRN (2022) LPELR-58156(CA)

Osamwonyi v Osamwonyi (1972) LPELR-2789 (SC)

Osawaru v Ezeiruka (1978) LPELR-2781 (SC)

Patience Nwanyinwa Afonne v. Emmanuel Chidi Afonne (1975) 5 ECSLR 159.

R v Inyang (1931) 10 N.L.R. 33.

R v Princewill (1963) N.R.N.L.R 54.

Re Whykes (1961) Ch. 299

Skye Bank Plc v Iwu (2017) 16 NWLR (Pt. 1590) 24.

State v Kalu [1998] 1NWLR (Pt.583) 531.

Suleiman v Globus Enterprises of (Nig) Ltd & Anor. (2023) LPELR- 73219 (CA).

Sunmonu v Sunmonu (2021) LPELR-56002 (CA)

Tongo v Tongo (2020) LPELR-52244(CA).

Undokwu v Onugha & Anor 7 ENLR 1.

Vacher & Sons Ltd v London Society (1913) AC 107.

Yakubu v FRN (2022) LPELR-57749 (CA)