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MARRIAGE UNDER THE ACT, DIVORCE AND MATERIMONIAL PROPERTY: AN OVERVIEW OF NIGERIA'S PROCEDURAL LAWS.

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Abstract
This work is on marriage under the Act, divorce and matrimonial property, and overview of Nigeria procedural laws. This work examined the essential and complex part of laws that regulates or guides dissolution of marriage under the Act in Nigeria, and driven primary by efforts to guide parties in pursuit of dissolution of marriage or divorce and provision of our various instant laws and courts decisions that ensures your interest is protected. This paper adopts the qualitative research methods and utilizes extant Nigeria laws regulating divorce cum dissolution of marriage under the Act and other relevant enabling laws in the analysis. The theoretical framework employed by this paper is "irretrievable Breakdown (No fault) and faulty theory and the social exchange theory. These theories provide opportunities or measures to overcome mistakes in the pursuit for matrimonial property and the children of the marriage.
Keywords: *Divorce, Matrimonial Property, Marriage Under The Act, Dissolution of Marriage, Court Decisions, Instant Laws.*

Introduction
Divorce which entails separation of matrimonial marriage or dissolution of marriage between couples or spouses particularly under the Act is sui generis in law. This means that the laws and the rules applicable in its proceedings are particular to the matrimonial causes Act and Rules and the marriage Act. Dissolution of marriage or divorce often snowballs into claims to matrimonial property and custody to the children of the marriage if any. A spouse who is dissatisfied with a marriage and intends to quit the marriage approaches the court with a petition requesting the dissolution of the marriage. The court considers the petition and determine if the marriage can be dissolved.

The determination by the court is governed by section 15 of the matrimonial causes Act. This process can be contested if one spouse disagrees with the terms or uncontested if both spouses agree to the terms. Where it is contested, the court moves for trial to resolve the issues. The decisions of the court is always influenced by either, the grounds for divorce, division of assets, child custody and support, maintenance or alimony.

Understanding The Concepts
Divorce or Dissolution of marriage is the process whereby an end is put to a legal union between a man and a woman by the court of law. The matrimonial causes Act primarily governs this process in Nigeria; see, section 15 of MCA. The only ground for the dissolution of marriage in Nigeria is that the marriage has broken down irretrievably. A marriage in Nigeria can be dissolved without a divorce through a process called judicial separation. This allows couples to live apart and their post-marriage issues (like child custody and support) resolved, even if they remained legally married. The primarily difference

between divorce and dissolution of marriage is whether or not the parties are alleging fault of the other spouse for terminating the marriage. The issues of divorce and the major grounds upon which is raised are provided for in section 15 of the matrimonial causes Act. Divorce is a legal dissolution of a marriage by a court or other competent body, to sever the marital relationship with (a spouse) by means of a judgment or decree of divorce.

Matrimonial Property

This refers to assets acquired during the marriage regardless of who acquired them, and includes things like homes, vehicles and investment in Nigeria, the matrimonial causes Act, guides the court in its discretions in settling matrimonial property upon divorce or separation, considering what is just and equitable. The court discretions are guided by section 72 of the matrimonial causes Act and Rules. A funny review of the laws guiding the claims on matrimonial property is that (1) where there is a document of title in favour of one party to the marriage, that property is lost as a matrimonial property (2) where a party is insisting that the property in issues is jointly owned, that party is responsible for producing evidence to the effect that both parties contributed adequately to the acquisition of the said property, whether financially or otherwise (3) oral evidence, even, about the parties private arrangements cannot be allowed to contradict the content of documents of title, Chinelo Immaculate Jane Ugwu (2021) appraisal of the legal and institutional framework for sustainable environmental, management in Nigeria.

Statutory Marriage:

In Nigeria, a statutory marriage popularly known as court marriage or marriage under the Act, is a monogamous union between one man and one woman, governed by the marriage Act. It's a legally recognized marriage celebrated under the provisions of the marriage Act.

Major characteristics of a statutory marriage are as follows;

1) **Monogamous:** A man can only be married to one woman and a woman can only be married to one at a time.
2) **Legal Framework:** It is governed by the marriage Act and other relevant laws.
3) **Registration:** Marriages ceremonies are typically performed at the marriage Registry, a licensed place of worship or other licensed public place.
4) **Celebration:** The ceremony must be conducted in the presence of two witnesses and before the Registrar.
5) **Requirement:** Certain conditions must be met, including residency requirements and age (21 years or parental consent for those under 21).

Necessary points about statutory marriages in Nigeria are as follows:

1) **Procedures:** A couple must notify the Registrar of their intent to marry, fulfill certain requirements and obtain a certificate of notice before the marriage can take place.
2) **Dissolution:** Statutory marriages can be dissolved by a court decree, requiring proof of irretrievable breakdown of the marriage.
3) **Customary Marriages:** While statutory marriages are recognized as legally binding, it's common for couples to also enter into customary marriages beforehand, creating a double-decker" marriage.
4) **Double Decker Marriages**: The legal status of a customary marriage in relation to a subsequent statutory marriage is a complex issue with varying legal interpretation.
5) **Bigamy:** It's illegal to contract a statutory marriage while already married to someone else under the same system, as this constitutes bigamy. (https://nigeria.action4justice).

Statement of Problem

Marriage under the Act, DIVORCE and matrimonial property is a complex issue though covered by various laws. Spouse finds it extremely difficult in the circumstances for

direction to explore, whenever the issues of divorce come into their thought. This difficult terrain and the direction to explore forms the problem of this study. This study detailed the step by step approach and the various laws that guides each approach in the event the thought of a divorce and matrimonial property came into mind.

Research Questions

This study raised three research questions as follows;

a) Matrimonial property when claims are made by parties, who gets what and why
b) A party who wishes for settlement of property, what does he demonstrate to the Court
c) What law guides divorce or dissolution of property under the Act in Nigeria.

Theoretical Framework

This study adopts the "Irretrievable Breakdown (N0-Fault) and faulty theory. These frameworks analysis whether a divorce is based on proving a matrimonial offense (like adultery or cruelty) or simply on mutual consent or objective collapse of the marriage.

This study also sees the social exchange theory as a way to evaluate resource distribution, division of assets and general relationship satisfaction (European centre research, training and development (ECRTD) uk:2026).

Methodology

This study employed qualitative method. The data utilized for the study were generated from secondary sources. Accordingly, textbooks, journals, conference papers, unpublished research works, precedents of courts and internet materials were used. The study used narrative analytical technique for the analysis of data. In this case, the information employed for the analysis in the study were meticulously extracted from the local chains of evidence presented in the journals, textbooks, conference papers, precedents of courts, internet sources, and other nondocumentary materials.

Matrimonial Property, When Claims are Made By Parties; Who Gets What and Why?
Section 72 of the Matrimonial Causes Act/Rules Provides as Follows;

1) The court may in proceedings under this Act, by order require the parties to the marriage, or either of them to make for the benefit of all or any of the parties to, and children of the marriage such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the court considers just as equitable in the circumstances of the case.

2) The court considers just and equitable with respect of the application for the benefit of all or any of the parties to, and the children of the marriage of the whole or part of property dealt with by ante-nuptial or post nuptial settlement on the parties to the marriage or either of them.

3) The power of the court to make orders of the kind referred to in this section shall not be exercised for the benefit of a child who has attained the age of twenty-one years unless the court is of opinion that there are special circumstances that justify the making of such an order for the benefit of that child.

The subject matter as provided for in section 72 of the matrimonial causes Act, was given a legal face in Aguolu V Aguolu (2025). That upon the dissolution of marriage, the court is to be guided in making decision to matrimonial properties by the following elements;

1. The financial and non financial contribution of the parties.
2. The need and welfare of any children of the marriage

It is necessary to clarify the position of 50-50 positions of parties in the claims for matrimonial properties under the Nigerians legal system. There is no provision of a 50-50 share of matrimonial properties in the entire matrimonial causes Act and Rules.

The law vest on the court with the discretion to reach a just outcome, based not on marital status alone, but on the demonstrable contributions (tangible or intangible) of each party to the marriage (Ubani M.O. SAN (MOU) (2025).

Dissolution of marriage and Matrimonial Property: The Way Forward.

The dissolution of marriage is governed by section 15 of MCA while settlement of property is governed by section 72 of same Act.

A party Who Wishes for Settlement of Property Must Demonstrates to the Court as Follows;

a) That the property is a matrimonial property.
b) What is his/her contribution to the acquisition of that property and
c) That it is fair, just and equitable to settle such properties.

It is our law that once a petition is filed for dissolution of marriage, then the Respondent to the suit can demand that the petitioner share equally everything he owns. It should be emphasized that matrimonial property is not limited to one party hence, the need to place material facts demonstrating the facts and circumstances surrounding the parties and the properties and why the Court should make an order for settlement of such property(ies) in a manner that is just, fair, and equitable, Akinbuwa Vs Akinbuwa (1998), held that "it must be mentioned that settlement of property has always been a thorny issue in matrimonial proceedings. The court went on to emphasize that where the wife went out to work and used her earnings to help run the household and buy children's cloths, while the husband saved. It might very well be the other way round.

The title to the family assets does not depend on the mere chance of which way round it was. It does not depend on how they happened to allocate their expenditure. The whole of their resources were expended for their joint benefit and the products should belong to them jointly. It belongs to them in equal shares. See Ulrich Vs Ulrich (1968). It is correct that contributions need to be financial as stated in the authority of KAFI VS KAFI (1986). It is required that for the appellant or petitioner to lay claim to what she referred to as matrimonial property, she would need to demonstrate such entitlement beyond merely being married to the Respondent.

Law Guiding Divorce or Dissolution Of Marriage Under The Act in Nigeria.

Rule of Evidence

Although the matrimonial causes actions are sui generis, the rule of evidence yet governs the procedures in matrimonial suits. Hence, the position of our law by virtue of section 131 of the evidence Act 2011 is that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he assets shall prove that those facts exist. Therefore, it behoves the petitioner or Appellant to present a convincing case to the court why her reliefs sought is to be granted.

Married Women Property Act, 1882

A woman that has children for her husband and had married him before a house is built has the right to live in the house with the children even after divorce once the woman remain unmarried.

Where a woman buys a property in the name of her husband, it does not belong to him. Rather, the husband is holding the property in trust (as a guardian) to help her keep the property for his wife.

However, where a husband buys a property in the name of his wife, the property belongs to the wife, and it is seen as a gift from him to her. See: JOLUGBO & Anor V Aia & Anor (2016). If a man does not desire to gift his wife a property, it should be bought in his name or the joint names of himself and his wife.

Matrimonial Causes Act

Section 15 of this Act made provisions for grounds for dissolution of marriage as follows;

1) A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented by either party to the marriage upon the ground that the marriage has broken down irretrievably.
2) The court hearing a petition for a decree of dissolution of marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts;

a) That the respondent has willfully and persistently refused to consummate the marriage;
b) That since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
c) That since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
d) That the respondent has deserted the petitioner for continuous period of at least one year immediately preceding the presentation of the petition;
e) That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted.
f) That the parties of the marriage, have lived apart for a continuous period of at lest three years immediately preceding the presentation of the petition;
g) That the other party to the marriage has for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under this act.
h) That the other party of the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming the he or she is dead.

3) For the purpose of subsection (2)(e) and (f) of this section the parties to a marriage shall be treated as living apart unless they are living with each other in the same household.

Power of Court in Proceedings With Respect to Settlement of Property.
Section 72 of the matrimonial causes Act provides as follows;

1) The court may in proceedings under this Act by order require the parties to the marriage, or either of them to make for the benefit of all or any of the parties to, and the children of the marriage, such as settlement of property to which the parties are, or either of them is entitled (whether in possession or reversion) as the court considers just as equitable in the circumstances of the case.
2) The court may in proceedings under this Act, make such order as the court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of the marriage of the whole or party of property dealt with by ante-nuptial or post-nuptial settlement on the parties to the marriage or either of them.
3) The power of the court to make orders of the kind referred to in this section shall not be exercised for the benefit of a child who has attained the age of twenty-one years unless the court is of opinion that there are special circumstances that justify the making of an order for the benefit of that child.

Whether a petitioner who deserted the matrimonial home rely on dissertation as a ground for dissolution of marriage:

Section 15 (2) (h) (supra) that the parties to the marriage have lived apart for a continuous period of at least three (3) years immediately preceding the presentation of the petition is futile since this provision of the law envisages the scenario where the deserter is the respondent while the desertee is the petitioner. But in the instance where the petitioner who is trying to be clever by half when he deserted his matrimonial home for more that three (3) years, the court in Ogunjobi Victoria Babakemi V Ogunjobi Innakwe Chinyere (2021)

held, while considering the issue of desertion "to constitute dissertation therefore, the petitioner must plead and lead credible evidence to prove the following facts (a) defects or physical separation (b) the manifest intention to remain permanently separated (c) lack of just cause for withdrawal from cohabitation and (d) absence of consent of the deserted spouse. A defect or physical separation of the spouse does not necessarily mean living apart from each other, in that respect, dissertations remain a matter of fact and law to be determined by the court hearing the matter, physical movement from the matrimonial home by the respondent is not a pre-condition for constructive dissertation.

Where a petitioner or appellant decided to make use of "calculated actions/moves" to facilitate the dissolution of the marriage which tantamount to using the law as an instrument of fraud. That allowing such will open the floodgates for several spouses to indulge in such sharp practices where an irresponsible spouse will deliberately desert their matrimonial home, stay for the required number of years then turn around to raise the allegation of living separately for a period of time in compliance with section 15(2)(b) or (f) of the matrimonial causes Act and apply for divorce" per BITRUS GYARAZAMA SANGA, JCA (pp17-19 paras C-A).

Recommendation

This article recommends for a statutory definition of matrimonial property that will ingrain the socio-cultural norms and values regarding marital relations as a communal and partnership arrangement.

Conclusion

From what has been exhumed in this article, the issues boarding on divorce or dissolution of marriage and claims on matrimonial property, rules, laws and regulation guiding the proceedings and the intention of spouse heading into divorce or dissolution or marriage are clearly spelt out. This article serves as a serious guide to spouse and intending spouses as to what constitutes their rights and obligations over matrimonial properties and how and when to make claims if the need arises.

References

Akinbuwa V Akinbuwa (1998) 7 NWLR (Pt. 559) 611 @676-677 Para H-D, CA.

Aguolu V Aguolu (2015) LPELR-80269 (CA)

Evidence Act 2011 (Section 131) https://nigeria.action4justice

European Centre for Research, Training and Development (ECRTD) UK (2026)

London: Global Journal for Arts.

Jolugbo and Anor V Ania & Anor (2016) LPELR-40352 (CA) (PP27-29).

Kafi Vs Kafi (1986) 3NWLR (Pt.27) 175.

Matrimonial Causes Act and Rules (1970) N0. 18

Married Women Property Act, 1882

Ogunjobi Victoria Babakemi V Ogunjuobi Innakwe Chinyere (2021) LPELR-52894 (CA)

Ubani M.O. San (MOU) (2025) Dispelling the Myth of Equal Division in Matrimonial Property Settlement Owerri: Nigerian Bar Association Law Week.

Ulrich V Ulrich (1968) ALL ER 67 CA.