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DISSOLUTION OF CUSTOMARY AND STATUTORY MARRIAGES WITH A SINGLE "STROKE"

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ABSTRACT: *Nigeria operates a dual system of marriage laws that allows the same parties who married under customary law to proceed and marry under the Act if they so wish. Since both marriages are under the jurisdiction of different courts. This article seeks to address the misconception that, to determine both marriages, only the statutory marriage should be dissolved. Literature was reviewed via documented sources and relevant decided cases. The need to urgently revisit finally and properly resolve the controversies surrounding the dissolution of marriages contracted between the same parties under Customary Law is suggested.*

KEYWORDS: Dissolution, Single Stroke, Statutory marriage, Customary Marriage

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INTRODUCTION

The main thrust of this paper is the controversy surrounding the dissolution of marriages contracted between the same parties under Customary Law, usually of the bride and the Marriage Act. It is a common place in Nigeria for couples to marry under customs and traditions applicable in the bride's community and then later proceed to contract another marriage under the Marriage Act[1]. On the other hand, the couple may first contract marriage under the Act and later go on to contract another marriage under native law and custom. The latter instance is common with couples who are of age but, could not get the consent of either of one set of parents, or both sets of parents for the purpose of entering into a customary law marriage[2], or couples who may have met outside their home areas and who avoid the inconvenience of going home to marry. In such cases, they could get a witness each who necessarily does not need to be their relations and go through a marriage under the Act. They can later at their convenient time go into the customary law marriage to satisfy their custom and wishes of their parents. This has been the practice in Nigeria even though the Marriage Act prohibits it.

The problem that arises after the couples have contracted both marriages is what constitutes effective dissolution of such marriage? In this regard, two Nigerian cases would be used as a case study. The two Nigerian cases are Ohochukwu v Ohochukwu[3] and Jadesimi v Okotie-Eboh and others[4].

The facts in Ohochukwu[5] may be stated briefly as follows: The parties were first married under the Igbo native law in Nigeria. While living in England, they again married under the Act in England. In 1953 the English court granted divorce in respect of the latter marriage and refused to dissolve the marriage contracted in Nigeria by both parties under Igbo customary law.

According to the court, "Customary Law marriage is unknown to English law". In refusing to extend the decree to the customary marriage, the couple found themselves in the inevitable position of being married at customary law while divorced under the statute. However, in Okotie - Eboh[6]: while discussing the implication of marrying under both native law and subsequently Act Marriage, the Nigerian court held that where couples marry according to the appropriate native law and custom and later on marry under the Act, the two marriages do not coexist. The customary law marriage according to the court collapses into statutory marriage thereby losing its distinctiveness and characteristics and its legal incidents. To all intents and purposes the relationship becomes monogamous".

The learned author of Family Law in Nigeria[7]. Professor E. I. Nwogugu is of the view that the English court's decision in Ohochukwu" is wrong. He stated that once the same parties

[1] Ohochukwu v Ohochukwu (1960) All ER P253 (1960) 1 W.L.R. 183
[2] I. Ogefere Nigerian Law Through The Cases, Vol. 28 Benin City Uri Publishing Ltd (1997)
[3] [1960] I All ER .253 [1960] 1 W.L.R 183
[4] [1996] 2 N.W.L.R. (Pt. 429) 128 at 148
[5] [1960] 1 AlI ER 253 [1960] 1 W.L.R. 183
[6] [1996] 2 N.W.L.R. (Pt. 429)
[7] Nwogugu E.I. Family Law in Nigeria,(Revised Edition. Ibadan. Heineman Educational Books (Nig.) Ltd (1990) .67.

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contract a latter marriage under the Act, where there is a subsisting marriage under customary law, the former ceases to exist and only the latter one now exists. As a result, it is only the latter one that should be dissolved to bring the marriages to an end. The learned Professor's view is in line with the decision in Okotie-Eboh[8]. This view reflects the implicit belief that wherever a statute is introduced, it sets aside the Common Law and the customary law that existed before. However, the introduction of a statutory regime in marriage in Nigeria, did not wipe out the customary law regime that existed before. It is therefore a fact that both forms of marriages exist as a parallel system essentially in Nigeria.

The writer with all humility and respect disagrees with the learned Professor's view and the decision in Okotie-Eboh.[9] The writer is of the view that in such instances, there are two marriages, which require two separate actions to bring to an end. The writer is therefore of the view that the English Court's decision in Ohochukwu should be preferred.

In the light of current directions about individual rights and their impact on divorce law, this work is intended to take a look at the positions represented by the two previous cases, by discussing in fair details, the formalities, formation and dissolution of both types of marriages. The writer would advance reasons for preferring the court's decision in Ohochukwu to Okotie-Eboh.

There is no doubt today in Nigeria that there exists a dual system marriage law viz. customary law and statutory law marriage. According Arthur Phillips in his book; "Marriage Laws in Africa[1] . The fundamental difference between the conceptions of marriage inherent in African native law, on the one hand, and in the legal systems of most European countries on the other, was sufficient in itself to entail the creation of legal dualism in this sphere, as an inevitable consequence of the opening-up of Africa. The introduction of European marriage law would have been dictated, if by no other consideration, by the presence of European settlers and residents; but it seems probable that, in fact, other considerations usually did operate from the outset - in particular, (a) The need for a lex loci in respect of marriage, and (b) The desire to make available a legal form of Christian marriage for those Africans who, on grounds of religion or civilization might require it.

In Nigeria, two types of marriages are therefore recognized by law. They customary law marriage and marriage contracted under the Marriage Act.

Marriage by Islamic rites is regarded as a form of customary law marriage. Marriage according to Christian rites, can be an empty gesture, satisfying the couples' religious scruples or where the parties comply with the requirements of the Marriage Act, as an alternative to the civil marriage envisaged by the Act. Thus in Ajih v Ajih[1] the court held that for a church marriage to be a marriage under the Act, it must comply with the provisions of the Marriage Act.

[8] [1960] I All ERP. 253 (1960) IWLR , 183

[9] [1996] 2 N.W.L.R. (Pt. 429) 128

[1] See Arthur Philips and Henry F. Moris, Marriage Laws in Africa London International Institute for Africa.Oxford University Press, (1971). 137.

[1] (1976) 5 E.C.S.L.R. P. 6 at 8

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In Obiekwe v Obiekwe[1] , the parties celebrated their marriage at Holy Ghost Catholic Church Enugu in 1953, without the parties complying with the provisions of the Marriage Act. In the petition for divorce, the learned judge pointed out that;

As the law of Nigeria confers upon Priest, and Ministers of religion the right to officiate at marriages recognised by the state, it is their duty to make themselves familiar with the Ordinance and to see that people who come to them to be married understand their legal positions.

The judge went further to state that;

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 under the Marriage Ordinance. Legally a marriage in Church (or any denomination) is either a marriage under the Ordinance or Act (when it conforms with the provision of the Act,) or it is nothing. In this case if the parties had not been validly married under the Ordinance then either they are not married at all. In either case, the ceremony in church would have made not a scrap of the difference to their legal status.

A statutory marriage or marriage under the Act is essentially a monogamous marriage. According to Lord Penzance in Hyde v Hyde[1] , "it is the voluntary union for life of one man and a woman to the exclusion of all others". On the other hand, a customary law marriage is "the union of a man and his wife or wives". Under this type of marriage, the man is allowed to marry, if he so wishes, more than one wife. Such a marriage could either be monogamous marriage"[1] or a polygamous marriage depending on the choice and bias of the man. Thus in the State v Akinbamiwa[1] . The court held that;

A marriage under customary law is essentially potentially polygamous not by private agreement of the parties thereto but by the requirement of the law under which the marriage was contracted.

FORMALITIES AND ESSENTIAL REQUIREMENTS FOR A VALID CUSTOMARY LAW MARRIAGE

Certain requirements are necessary to validate a customary law marriage. Such requirements include the consent of the parties where they are of age or the consent of the parents where they are not of age. In Osamwonyi v Osamwonyi[1] the court declares that, "under Benin native law and custom, a daughter who is of age, could not be married to a man without her consent. The court also held in Aiyede v Williams[1] where a promise to marry is conditional upon consent of the man's parent, there could be no valid marriage except the consent of the man's parent is obtained.

1 (1963) 7 E.C.L.R. 196

1 (1886) L.R. P & D at 133

1 Monogamous as it is used in this sense, does not convert such customary law marriage into a monogamous marriage under the Act. It simply means that the man has only a wife as under the Act, as the man could decide at any moment to marry more wives.

1 (1964) 1 N.M.L.R. 355 at 358.

1 (1972) 1 ALL NLR. (1973) 2 UILR 257

1 {19603} L.L. R. 253.

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In addition to the above requirements, parties to a customary law marriage must be mentally fit and be of age. Here, the age of a party to customary law marriage varies from one community to the other.[1] Where the party is not of age his parent or guardian could consent on his or her behalf.[1] Also, there must be payment of bride price or dowry, and excursion of the bride to the bridegroom's house and cohabitation. In the absence of any of the above requirements, such customary law marriage would be declared null and void. It is essential that the bridegroom must pay to the parents of the girl a bride price or dowry. In Akinsemoyin v Akinsemoyin[2] the court held that payment of a bride price is a prerequisite to a valid customary law marriage. In Baruma v Adefioye[2] , the court held that in addition to payment of bride price there must be an excursion of the bride to the bridegroom's house and cohabitation.

Under customary law marriage, persons within certain degrees of affinity and consanguinity are not allowed to marry each other. Similarly, a party who is married under Customary Law cannot contract a marriage with a third party under the Act except the customary law marriage is dissolved. The Marriage Act[2] provides that;

Whoever contracts a marriage under the provision of this Act, or any modification or re-enactment thereof being at the same time married in accordance with customary law to any person other than the person with whom such marriage is contracted shall be liable to imprisonment for five years.[2]

The Act also provides that any one married under the Act is prohibited from contracting a second marriage under customary law with the same party, he or she earlier on contracted marriage with under the Act[2] . The Act provides as follows;

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 marriage so contracted.

DISSOLUTION OF CUSTOMARY LAW MARRIAGE

Customary law marriage could be dissolved judicially by the customary courts or extra judicially by the parties themselves. In most cases, only Customary Courts or Area courts

1 Some States fix marriageable age at 12, and 13 years while some fix it at puberty age. However, the Children and Young Persons law defines a young person as someone under 17 years.

1 Mohammed v Knot (1962) O.B

2 {1971} N.M.L.R. 272. Also see Cole V Cole {1881- 191} N.L.R. 15

2 {1976) 6 U.I.L.R. pt. 111, 350 at 354, See also Osamwonyi v Osamwonyi {1972) 1 ALL N.L.R. 256 at 354.

2 Section, 46 Marriage Act Cap M.6 Laws of the Federation of Nigeria 2004.referred to as M 6 LFN 2004

2 Section. 370 Criminal Code Provides a jail term of seven years for breach of the provision of the code which tagged the offence as bigamy, While the Marriage Act lays down five years imprisonment. In R v Princewill the accused was sent to jail for breaching the provisions of the Criminal Code (1963) N.N.L.R.

2 Section 35 Marriage Act Cap M.6 LFN 2004.

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have jurisdiction over customary law marriage. Where the dissolution is to be by the order of court, one of the parties would petition the court for the dissolution, which the court may grant. When such dissolution is granted, the court would order the woman to refund the bride price to the man and give other beliefs as to maintenance where there are children. With the order of dissolution and refund of bride price or dowry, the marriage comes to an end and the woman is free to remarry. In Egri v Egri[2] the court held that such an order for the repayment of bride price or dowry is usually made subsequent to an order for the dissolution of a customary law marriage.

Similarly, under customary law marriage, parties could extra-judicially dissolve a marriage by taking physical and positive acts to that effect. In most cases, the two families are involved. Under the custom of the IGARRA people of Edo State, Nigeria, if the woman "is tired of the marriage", she could pack her belongings and leave the man's house. If it is the husband that "is tired", he will compel the woman to leave his house or delegate a young male member of his family to escort his wife to her parents' house. Such escort by a male member of the man's family is a serious indication that the man is no longer interested in the marriage. Where the woman's family tries to reconcile the couple and it fails, the next thing to be done is to refund the bride price to the husband and the marriage is thus brought to an end. In Nwagwa v Nwagwa[2] the Court of Appeal stated that to dissolve a customary law marriage by extra judicial means there must be an act on the part of the party who is tired and not willing to continue with the union or association.

FORMALITIES AND ESSENTIAL REQUIREMENTS FOR A VALID STATUTORY LAW MARRIAGE

On the other hand, marriage under the Act[2] , which is defined as the voluntary union for life of one man and a woman to the exclusion of all other[2] is subject to some statutory requirements. The requirements include compliance with the preliminary stages of the marriage, obtaining the Registrar's certificate and the celebration of marriage in a licensed place. [2] To constitute a valid statutory marriage, the parties must be of age[3] , be of single status[3] and be mentally fit. In Wusu v H. Wusu[3] , the marriage was dissolved on the grounds that the wife suffered from insanity. Also the parties to a statutory marriage must not be within the prohibited degrees of consanguinity. This is defined by blood and marital relationship. They must also give their consent voluntarily.

As stated earlier on, the Marriage Act, frowns at marriage between parties who was formerly married under the Act, to be married under customary law to a third party except the earlier marriage is dissolved.

The Act provides that;

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2 (1973; 11 SC. 299 at 310
2 (1963) N.N.L.R. 54 Craig v Craig (1964) 96.
2 Jabre v.Jabre [1999] 3 N.W.L.R. (pt. 596; 606 CA
2 Udom v Udom (1979) 7 - 9 CCHC (Vol.) 424 at 431
2 Obiekwe v Obiekwe (1963) 7 E.N.L.R. 196
3 Agbo v Agbo (1974) 18 N.L.R. 152
3 Onwudinjoh v Onwudinjoh (1957 - 58) 1 E.N.L.R.I.
3 Нипропu Wusu v Нипропи Wusu (1969) I ALL N.L.R. 62 at 143

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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.

By the provision of the above Act, it means that, the parties to an earlier customary law marriage could contract another marriage under the Act. Such a marriage is valid in law, insofar as the latter marriage is not with a third party. All marriages contracted under the Marriage Act could be dissolved in accordance with the provisions of sections 15 and 16 of the Matrimonial Cases Act.[3] The Marriage Act is the law regulating formation of statutory marriages, while the Matrimonial Causes Act regulates the requirements for its dissolution and the relief attached thereto.

The only ground under the Matrimonial Causes Act for the dissolution of marriage is that the marriage has broken down irretrievably.[3] The facts for the dissolution of a statutory marriage as provided in Sections 15 and 16 of the Matrimonial Causes Act, include, the inability of any of the parties to consummate the marriage, desertion by one of the parties, presumption that one of the parties is dead. Another fact is that, the parties have stayed apart for a period of two or three years as the case may be. Where the parties have lived apart for only two years, the court must grant an application to enable the party seeking the dissolution to file his or her petition. In addition, such a party should state his or her reasons for seeking the dissolution. However, where the parties have lived apart for three years, no leave of court is required and no further reason is required for the dissolution of the marriage. The fact that the parties have lived apart for three years and more, if not contested, is sufficient fact for the dissolution of the marriage without further reason. Section 16 of the **Matrimonial Causes Act** further supplement the provisions of Section 15. The two sections should be read together.[3] Further facts for the dissolution of statutory marriage include rape, sodomy, bestiality, drug addiction, drunkenness, and attempt by one of the parties to kill the other. Jurisdiction over statutory marriage is vested in the State High Court.[3] For this purpose, the whole country is assumed to be one judicial district. A marriage that was contracted in Calabar, Cross River State, could be dissolved by a High Court in Borno State.

In Koku v Koku[3] the court stated that divorce petition is governed by the domicile of the husband and not the residence of the husband and by operation of law, a married woman on marriage takes the domicile of the husband.

It should be noted that adultery is only a fact upon which the irretrievable breakdown of marriage may be established and not a ground for the dissolution of marriage[3] . It must be proved that the adultery was such that the party complaining of it could no longer tolerate it, and that this has led to the irretrievable breakdown of the marriage. Where the leave is brought before three years, the party seeking for the dissolution must state that if the application is not granted it would amount to exceptional hardship or depravity on him or her,

[3] See sections 15 and 16 of Matrimonial Causes Act Laws of the Federation of Nigeria referred to as M.C.A. Cap. M.7 L.F.N. 2004.

[3] Ekrebe v Ekrebe [1999] 3 N.W.L.R. (Pt. 596) 514

[3] See sections 15 and 16 of M.C.A. Cap. M.7 LFN 2004.

[3] S.2 M.C.A Cap M.7 LFN 2004

[3] Koku v Koku (1999) 8 N.W L.R. (Pt 616) 672 C.A

[3] Kalejaiye v Kalejaiye (1986) 2 N.W.L R. 161

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In Akere v Akere[3] , the petitioner in the suit alleged that the respondent had inordinate sexual urges and demanded for sex when the petitioner was in poor health, he was violent, quarrelsome, and infected the petitioner with venereal disease. The respondent also turned the petitioner out of his house and committed adultery with his first cousin and with two other women. After considering the facts of this case, the court held that the allegations of the petitioner if proved, would amount to exceptional hardship and depravity and that reconciliation was unlikely before the expiration of the three years' period.

From the above discussion, a number of factors have come to the fore.

They are:

(i) That Customary Law marriage is different from statutory marriage[4]

(ii) That the Marriage Act regulates statutory marriage while customary law marriage is regulated by custom.

(iii) That where the parties contract marriage under customary law and while the marriage is still subsisting any of the parties' contracts another marriage with a third party under the Act, the latter marriage (which is the marriage under the Act) is void[4] and attracts five years imprisonment.

(iv) That similarly, where the parties contract marriage under the Act and one of them, while the marriage is subsisting contracts another marriage with a third party under customary law, the latter marriage, (which is the customary law marriage) is void[4] The punishment is also five years imprisonment.

(v) That the Marriage Act approves of the same parties, contracting marriage under the customary law and the Marriage Act.[4]

(vi) That as between the two forms of marriages, no one is superior to the other.

(vii) That the Act recognizes marriage under customary law and customary law recognises marriage under the Act.

Section 46 of the Act relates to contracting marriage under this Act when already married by native law, It provides that;

Whoever, contracts a marriage under the provisions of this Act or any modification or re-enactment thereof, being at the time married in accordance with customary law to any person

[3] (1962) W.R.N.L.R.

[4] See Mrs, Bassey Ita Okon v.Administrator General, (Cross River State) and Anor (1992) N.W.R.L.R. Pt 248. Where the Court held that the relationship into which parties enter by solemnising a statutory marriage is one which is unknown to customary law.

[4] Section 33 Marriage Act Cap M.6 LFM 2004

[4] Section 35 Marriage Act Cap M 6 LFN 2004

[4] Jadesim v Okotie Eboh and Ors 2 N. W.L.R. Pt (429), 128 at 146 155.

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other than the person with whom such marriage is contracted shall be liable to imprisonment for five years.[4]

Section 47 of the Act relates to contracting marriage by customary law when already married by the Act. It provides that;

Whoever, having contracted marriage under this Act or any modification, re-enactment repealed by this Act, during the continuance of such marriage contract another marriage in accordance with customary law, shall be liable to imprisonment for five years.[4]

(viii) That under customary law marriage, the bride price is an essential requirement without which the marriage is not valid[4] . Under the Act, bride price is not essential.

(ix) To dissolve a marriage under the customary law, the bride price must be refunded by the bride otherwise the marriage remains valid. Under the Act, since no payment of the bride is required the issue of refund does not arise.

In Baruwa v Adefioye[4] the court dealt extensively with the purpose of repayment of bride price by a prospective husband. The court stated that;

It is a common method of marriage in Western Nigeria (as in other part) that a prospective husband pays bride price on a married woman with the intention to marry her, The payment of bride price serves two purposes, The first is to extinguish the first marriage and the second is that it marks the celebration of the second marriage.

It therefore means that no customary law marriage could be dissolved, without the refund of the bride price. Since it is not possible to refund bride price when the marriage is still subsisting, it means the marriage must either be dissolved judicially or extra-judicially.

DISSOLUTION OF CUSTOMARY AND STATUTORY MARRIAGE "WITH A SINGLE STROKE"

Now, we turn to the crux of the matter. Where a customary law marriage is followed by a marriage under the Act, how is the marriage to be dissolved? By the judgement in Mrs. Bassey Ita Okon v Administrator- General, Cross River State and Anor[4] which was followed in Okotie Eboh[4] some four years later, it was stated that a subsequent statutory marriage supersedes a previous customary law union. Whatever informed this type of judgement is what baffles the writer. Is it because the statutory marriage was the last in time? Does it therefore follow that once the latter marriage is dissolved it affects the former? Are we now saying that statutory law marriage is superior to customary law marriage? All these questions have to be answered.

4 Section 46 Marriage Act Cap M.6 LFN 2004

5 Section, 47 Marriage Act Cap, M.6 LFN 2004

6 In Ebikade v Atzie (1974) 4 U.L.L.R. (pt. 18) at 21. The Court stated that the dowry or bride price in Customary Law Marriage is the total of the various absolute necessary sums of fees which must be paid by the prospective husband either at different stages to seal the marriage agreement between the parties and their families.

7 (1976) 4 U.I.L. (pt. 11) 350 at 357

8 [1992] 6 N.W.L.R. (pt. 248)

9 [1996] 2 N.W.L.R. (pt. 249)

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In the same Okotie Eboh[5] , the court held that where a couple who contracted marriage under the Marriage Act had earlier on undergone a form of customary marriage, the marriage under the Act supplement that under customary law than nullifying it. Giving the word 'Supplement' its ordinary grammatical English meaning, the Oxford Advanced Learner's Dictionary[5] define 'supplement' to mean "add to or complete with". Since the marriage under the Act cannot nullify the customary law marriage, if the marriage is to be dissolved, is it the two that should be dissolved or the former or latter one? The writer is of the view that there are two types of marriages here that must be twice dissolved. In Afonne[5] , the court, while considering the dissolution of two legally recognized marriages, advised that the party seeking dissolution and a divorce should clearly specify which marriage he or she wants dissolved and the ground upon which each could be dissolved. This to my mind supports the decision in Ohochukwu[5] , which is to the effect that where parties contract the two forms of marriages, they must be dissolved separately. If we go by the decision in Afonne,[5] and a party says he or she wants the statutory marriage dissolved, does it not follow that the customary law marriage will still be subsisting? Furthermore, in support of the writer's ground of argument, under native law and custom, the bride is not the one that receives the bride price but her parents. If the marriage is dissolved, the parents refund the bride price. We do know that the High Courts have no original jurisdiction over customary law marriage in Nigeria. If the High Court dissolves the later statutory marriage, which we now assume to have effect on the customary law marriage, can it order the refund of the bride price? The answer is no. It is only by the dissolution of the customary law marriage that the bride price could be refunded. It then means that there must be a second dissolution.

If we are to assume that the dissolution of the statutory marriage automatically dissolves the statutory marriage, what happens if the woman wants to remarry under native law and custom? As we are all aware, bride price is essential to customary law marriage. There must be payment of another bride price by the husband. Can the parents of the woman collect another bride price when the earlier one has not been refunded? All over the country, our respective customs do not allow the receipt of double bride price over the same woman.

Professor Nwogugu[5] is of the view that the former husband could sue the woman under contract for the refund of such money. The writer agrees that marriage is a form of contract, but it is not a contract per se, as it is not governed by the law of contract but family law. This stand of the learned Professor has not resolved the issue. Again while discussing legitimacy of children of a voidable marriage, the learned Professor also said that;

It is customary for Nigerians who desire to marry each other to be married first under Customary Law before contracting a marriage in accordance with the Marriage Act. If the subsequent statutory marriage is void the customary law marriage remains.

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5 Ibid.

5 A.P.Cowrie Oxford Advanced Learners Dictionary, 4th Ed, Oxford University Press, Oxford, (1990) 1292.

5 (1975) 5 E.C.S.L.R. 159 at 168.

5 [1960] AII ER P.253 (1960) I WLR 183

5 (1975) 5 ECSLR 159 at 168

5 E.I Nwogugu Family Law in Nigeria Revised Edition Ibadan. Heinemann Educational Books Nig. Ltd. (1990).

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This stand simply buttresses the fact that, customary law image is not the same as statutory marriage and that under any condition, customary law marriage remains a distinct marriage from statutory a marriage The court's decision in Afonme[5] has compounded our efforts in finding a solution to this problem, The court stated here that where there is plurality of marriage within the same country, once one of them is dissolved no other marital relationship should be allowed to subsist between the parties. It would seem that this position is to make dissolution convenient for both the courts and the parties, It has failed to address the issue on how with a "**SINGLE STROKE",** two marriages that are not legally the same could be dissolved, If we accept this proposition, it means that if a customary law marriage is the latter or former, once it is dissolved, the statutory marriage stand automatically dissolved too. I do believe earnestly, that this is not what the court and the learned Professor have in mind.

For the purpose of analysis, let us discuss a hypothetical case. Assuming for whatever reason, a couple who were Muslims decided to marry under Islamic law, which is a specie of customary law. Later on, because of their new faith, the couple contracted another marriage under the Act through a Church.[5] Suppose they have a re-think and decide not to have anything to do with Christianity and go to the court to ask for the dissolution of the "Christian Act marriage". After the dissolution of the Christian-Act marriage, does the earlier Islamic law marriage become dissolved? If it is so, if the couple want to remain as husband and wife under Islamic laws, are they to undergo another process under Islamic law marriage? From this analysis it seems to the writer that the answer to our problem has been discovered. The answer is that, where two types of marriages are contracted by the same parties, under customary law and the Act, because the two marriages are different in nature, guided by different laws and requirements and fall within the jurisdiction of different courts, the two marriages should be dissolved separately at different times.

WHY THE DECISION IN OHOCHUKWU IS PREPARED?

One could possibly take the position that on the facts in Ohochukwu[5] , since the English court, which was seized with the case, had jurisdiction to deal only with the statutory marriage, it could not have considered the status of the earlier customary law marriage contracted in Nigeria without being drawn into considerations of conflicts of laws. Such an argument however does not arise since the position is not different in Nigeria. Nigerian High Courts also have no jurisdiction over customary law marriage.

Besides, by the decision in Afonne[5] , which states that where parties contract both types of marriages, the party seeking divorce and dissolution should clearly state which of the marriage he or she wants dissolved. It appears, from the writer's view, that Nigerian Courts have now adopted the position of the English Court in Ogochukwu.[6]

5 (1975) 5 ECSLR 159 at 168

5 The Marriage Act Cap M.6 LFN 2004 allows same parties to be married under Customary Law and the Act Islamic type of marriage is a specie of Customary Law Marriage

5 [1960] 1 All ER 253 [1960] I WLR 183.

5 {1975) E.C.S.L.R. 159 at 169

6 [1960] I All E.R. P. 253. 59. |1960] I WLR 183

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CONCLUSION

The issue of the dissolution of marriages contracted under customary law and the statute is yet to be resolved as a result of conflicting judgments and a generally unacceptable logic in arriving at some of such judgments. It is hoped that one day, this issue would be finally and properly resolved. The writer is therefore of the view that the issue requires an urgent revisit.

REFERENCE

Books

Nwogugu E.I. Family Law in Nigeria,(Revised Edition. Ibadan. Heinemann Educational Books (Nig.) Ltd (1990) .67

Journal Articles

Arthur Phillips and Henry F. Morris, Marriage Laws in Africa London International Institute for Africa.Oxford University Press, (1971). 137.

I. Ogefere, Nigerian Law Through The Cases, Vol. 28 Benin City Uri Publishing Ltd (1997).

Cases

Agbo v Agbo (1974) 18 N.L.R. 152

Akere v Akere (1962) W.R.N.L.R.

Aiyede v Williams {19603} L.L. R. 253.

Ajih v Ajih (1976) 5 E.C.S.L.R. P. 6 at 8

Akinsemoyin v Akinsemoyin {1971} N.M.L.R. 272.

Baruma v Adefioye {1976) 6 U.I.L.R. pt. 111, 350 at 354

Bassey Ita Okon v.Administrator General, (Cross River State) and Anor (1992) N.W.R.L.R. Pt 248.

Cole v Cole {1881- 191} N.L.R. 15

Craig v Craig (1964) 96

Ebikade v Atzie (1974) 4 U.L.L.R. (pt. 18) at 21

Egri v Egri (1973; 11 SC. 299 at 310

Ekrebe v Ekrebe [1999] 3 N.W.L.R. (Pt. 596) 514

Hyde v Hyde (1886) L.R. P & D at 133

Нипропu Wusu v Нипропи Wusu (1969) I ALL N.L.R. 62 at 143

Article DOI: 10.52589/AJLPRA-3RVIGXUQ
DOI URL: https://doi.org/10.52589/AJLPRA-3RVIGXUQ

Jabre v.Jabre [1999] 3 N.W.L.R. (pt. 596; 606 CA

Jadesim v Okotie Eboh and Ors 2 N. W.L.R. Pt (429), 128 at 146 155.

Jadesimi v Okotie-Eboh and others [1996] 2 N.W.L.R. (Pt. 429) 128 at 148

Koku v Koku (1999) 8 N.W L.R. (Pt 616) 672 C.A

Kalejaiye v Kalejaiye (1986) 2 N.W.L R. 161

Mohammed v Knot (1962) O.B

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

Obiekwe v Obiekwe (1963) 7 E.C.L.R. 196

Ohochukwu v Ohochukwu (1960) All ER P253 (1960) 1 W.L.R. 183

Okotie – Eboh [1996] 2 N.W.L.R. (Pt. 429) 128

Okotie Eboh [1996] 2 N.W.L.R. (pt. 249)

Onwudinjoh v Onwudinjoh (1957 - 58) 1 E.N.L.R.I.

Osamwonyi v Osamwonyi (1972) 1 ALL NLR. (1973) 2 UILR 257

Osamwonyi v Osamwonyi {1972) 1 ALL N.L.R. 256 at 354.

State v Akinbamiwa (1964) 1 N.M.L.R. 355 at 358.

Udom v Udom (1979) 7 - 9 CCHC (Vol.) 424 at 431

Dictionary

A.P. Cowrie Oxford Advanced Learners Dictionary, 4th Ed, Oxford University Press, Oxford, (1990) 1292.

Article DOI: 10.52589/AJLPRA-3RVIGXUQ
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