

> **GETTING A DIVORCE IN NIGERIA**

Divorce (or the dissolution of marriage) is the termination of a marital union, the cancelling and/or reorganizing of the legal duties and responsibilities of marriage, thus dissolving the bonds of matrimony between a married couple under the rule of law of the particular country and/or state.

Filing for a divorce in Nigeria can be a stressful experience: affecting finances, living arrangements, household jobs, schedules etc.

Meanwhile, it is better to learn more about how to get a divorce in Nigeria before filing for a divorce. It is also important for anyone seeking a divorce to know that there are different disputes resolutions and mediation mechanisms in Nigeria that can intervene on matrimonial matters, and the divorce should only be considered as a last resort for anyone facing a troubling marriage.

However, if someone must consider the option of a divorce, the followings are necessary steps or things to put into consideration:

• **Consulting a Lawyer**

In diving into the issue of Divorce, the first and most important thing is to consult a Lawyer, briefing the Lawyer about necessary information as regards the marriage contracted most especially on important divorce requirements.

• **Grounds for Divorce**

It is noteworthy that the divorce grounds vary significantly from country to country.

Divorce under the statutory law in Nigeria is basically governed by the provisions of the Matrimonial Causes Act CAP 220 LFN 1990.

A marriage celebrated under the Act (i.e. Statutory Marriage), as opposed to Customary Marriage and Islamic Marriage can only be dissolved on the ground that the marriage has broken down irretrievably. Section 15 (2) of the Act states the grounds upon which a marriage may be dissolved. It provides as follows:

The court hearing a petition for the decree of dissolution of a 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. (A party is said to have willfully and persistently refused to consummate a marriage when he or she deliberately refuses to have sexual intercourse with the other party despite a number of requests.

The Petitioner must satisfy the Court that no consummation has taken place before the commencement of the hearing of the Petition).

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

(Adultery means the voluntary sexual relations between either of the party to the marriage to a third party.

Furthermore, a party is said to commit adultery if the sexual relations with the third party was voluntary or consensual during the subsistence of the marriage).

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
(Section 16 MCA provides circumstances that can fall under the fact. This include rape, sodomy, bestiality, drunkenness, going in and out of jail etc. Note that cruelty falls under the ground too).

d) The respondent has deserted the petitioner for a continuous period of at least one year, immediately preceding the presentation of the petition;
(Desertion means living apart with the intention to bring to an end all rights and duties of marriage.

Living apart with the consent of the other party does not amount to desertion. Note that such consent can be withdrawn and upon withdrawal of consent, the period for purpose of desertion begins to count.

There is willful and constructive desertion. In willful desertion, the person that left is in desertion while in constructive desertion, the person in the house is in desertion (by conduct causing the other party to live apart).

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.

(It is important to note that mere physical separation does not constitute living apart. Living apart involves physical separation accompanied by the termination of consortium).

f) That the parties to the marriage have lived apart for a continuous period of at least three years, immediately preceding the presentation of the presentation of the petition.
(Living apart as envisaged by the ground does not connote physical living apart of the parties to the marriage.

There must be evidence of definite termination of the consortium between the parties to the marriage before the physical fact of being apart can be said to constitute separation).

g) That the other party to the marriage, has for a period not less than one year, failed to comply with a decree of restitution of conjugal rights made under the Decree.

(The main ground here is that the Respondent has failed to resume cohabitation with the Petitioner in compliance with a court order to that effect.

The Respondent must also not have been cohabiting at the time of the presentation of the petition).

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

(Under the Evidence Act, a person must be absent for 7 years for such person to be presumed dead. Section 164(1) EA, 2011, Section 16(2) (a) MCA)

Where the above stated grounds have been proved by the petitioner to contribute to the irretrievable breakdown of the marriage, he or she is entitled to a decree of divorce.

> **DIVORCE PAPERS**

After proper consultation with the Lawyer, the lawyer to the Petitioner can then go ahead to prepare the necessary documents or papers for filing for a divorce at the appropriate Court. The following are the required and important documents to be filed namely:

- a) Notice of petition.
- b) Petition for the dissolution of marriage.
- c) Verifying affidavit.
- d) Certificate relating to reconciliation signed by the legal practitioner.
- e) Acknowledgement of service.
- f) Original Marriage Certificate.

By Section 32 of the Marriage Act which states: where the original marriage certificate is lost, a duly certified true copy thereof or entry in a marriage book and a certified true copy of such copy could be tendered in evidence.

g) Discretion statement

This statement is required to be filed where a party to the proceedings has committed adultery either before the filing of the petition or answer but before the trial of the proceedings.

> **DIVORCE PROCESS**

Every matrimonial cause or divorce process in Nigeria shall be commenced by Petition – Section 54(1) MCA. The petitioner commences or institutes matrimonial proceedings by a PETITION.

The content of the Divorce Petition shall include followings:

- 1) Petition number/suit number.
- 2) Parties and status.
- 3) Full names, occupation and address of each of the party to the proceeding. Name of the wife immediately before marriage.
- 4) Particulars of the marriage.
- 5) Particulars of birth of the parties to the marriage.
- 6) Particulars relating to domicile or residents of the marriage in Nigeria.
- 7) Particulars of cohabitation of the parties to the marriage and its ceasing.
- 8) Particulars of children of the parties to the marriage and the children of either party to the marriage.
- 9) Particulars of previous proceedings between the parties to the marriage, if applicable
- 10) Facts relied upon but not evidence by which the facts are to be proved. Facts to support the ground.
- 11) Condonation, connivance and collusion.
- 12) Proposed arrangement for children.
- 13) Custody.
- 14) Maintenance and settlement of property.
- 15) Reliefs being sought
- 16) Address for service on Respondent.

The Respondent can also file an answer to the petition. And the Petitioner may also file a reply to the answer.

The Respondent can also cross-petition which is in form of another petition. Then Trial may commence.

FACTORS TO BE CONSIDERED IN A DIVORCE

• Jurisdiction

The only court with the jurisdiction for the above-mentioned proceedings is the High Court of any state of the federation. However, where the High Court of a State makes an order for maintenance, the order can be enforced in a court of summary jurisdiction in a summary manner. Thus the Magistrate Court being a court of summary jurisdiction can enforce such order of maintenance, subject to its jurisdictional limit.

There is a single jurisdiction for the High Court as any High Court of any state of the federation can exercise jurisdiction irrespective of where the parties to the proceedings are domiciled.

Thus for the purpose of matrimonial causes, there is only one domicile, which is Nigeria, notwithstanding that the parties being domicile in different states.

However, section 9(2) of the MCA provides that for the transfer of any matrimonial proceedings in a court where it was commenced to another Court on the ground that the first Court is not convenient for the parties and the latter is more convenient.

• Domicile

The general rule is that it is the domicile of the petitioner that confers jurisdiction on the High Court of a state for the purpose of hearing matrimonial proceedings. The petitioner must be domiciled in Nigeria before the court can have jurisdiction. Section 2(3) MCA. Domicile in one word is the permanent home of a person. There are three types of domicile:

- a) Domicile of origin,
- b) Domicile of choice; and
- c) Domicile of dependence.

Domicile of choice is the domicile taken by a person upon attaining majority. In this like, one must be resident in that country permanently or indefinite period and an intention to so remain. That is the animus.

Domicile of dependence is a domicile given to persons dependent on others e.g. a child, wife, etc. thus the domicile of wife follows that of the husband. Upon marriage, the wife takes the domicile of her husband.

If the husband changes his domicile, the wife's domicile automatically changes. Hence, before a wife can bring matrimonial proceedings in Nigeria, she must be domiciled in Nigeria, that is, her husband must be domiciled in Nigeria.

However, because of the injustice that is likely to be done to a deserted wife in Nigeria whose husband may have changed his domicile, special domicile for the purposes of matrimonial proceedings before the Nigerian court was created for such wife under the Section 7(a) &(b) MCA.

Thus where the wife was domiciled in Nigeria either immediately before her marriage or immediately before the desertion, she shall be deemed domiciled in Nigeria - Section 7(b)

MCA. Also, where at the date of instituting the proceeding, she has been resident in Nigeria for at least 3 years before instituting the matrimonial proceeding, she shall be deemed to be domiciled in Nigeria - Section 7(b) MCA. The special domicile so created is only for the purpose of the matrimonial proceeding, thus limited.

• **The Two-year rule**

Because of the need to protect the sanctity of marriage, Section 30(1) MCA provides that proceeding for dissolution of marriage shall not be made/instituted within two years after the date of the marriage except by leave of the Court.

Thus where proceeding for dissolution of marriage is to be instituted within two years of celebrating the marriage, the leave of court must be sought.

However, the Court can only grant leave on the ground that to refuse to grant leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the other party to the marriage - section 30(3) MCA.

However, the foregoing provisions and requirements do not apply where the fact relied on are:

- a) Willful and persistent refusal to consummate the marriage - Section 15(2) (a).
- b) Adultery since the marriage by the respondent and the petitioner finding it intolerable to live with the respondent - Section 15(2) (b).
- c) Commission of rape, sodomy, or bestiality - Section 16(1) (a).
- d) Where the institution of proceedings for a decree of dissolution is by way of cross-petition.

• **Compulsory Conference**

A judge may order parties to hold a compulsory conference, where a party is outrightly denying his or her responsibility or liability. Such conference may also be mandated where parties need to discuss the issues related to custody and settlement of properties. A compulsory conference maybe neglected where having regards to the circumstances of the case, neither party is outrightly denying a responsibility or liability, but they are only disputing the extent of it. In such a circumstance, the judge may refuse to mandate a compulsory conference since the scope or extent of such dispute is already subject to the discretion of the court.

• **Setting down for hearing**

There is no room for default judgment in matrimonial proceedings, therefore all facts or matters must be proved, thus there are defended or undefended suit.

In a defended suit, the parties join issues; answer or cross-petition and answer; and reply. A defended suit is set down for trial in Form 32 MCR.

An undefended suit is where parties have not joined issues because respondent did not file an answer. It is set down in Form 31 MCR.

Then a Registrar Certificate is issued that the matter is ripe for hearing. The notice of the trial is in Form 33 MCR.

Every matrimonial proceeding is to be heard in public – Section 103(1) MCA

> **NIGERIAN DIVORCE CERTIFICATE**

After the conclusion of the trial and the Court is satisfied with the existence of any ground in respect of which relief or order is sought, it may grant a decree of dissolution of marriage.

A decree is granted in two stages namely:

- a. Decree Nisi
- b. Decree Absolute

• **Effect of Decree Nisi**

Generally, a Decree Nisi is for a period of 3 months after which it may be made absolute.

Note the following exceptions:

1. Where there is a valid appeal against a Decree Nisi, it will not become absolute except at the expiration of a period of 28 days from the day on which the appeal is determined or discontinued.

2. Where there are children of the marriage under the age of 16 years at the date of the Decree Nisi, the Decree shall not become absolute unless the Court is satisfied that proper arrangements have been made for the welfare and in appropriate cases, the advancement and education of the children. Otherwise, the Court must be satisfied that there are special circumstances that warrant the Decree Nisi being made absolute.

Also, a Decree Nisi may be rescinded by the Court at any time before the Decree becomes Absolute:

- a. Upon the application of either of the parties to the marriage on the ground that the parties have reconciled. The application is usually by way of Motion Ex parte if the parties to the marriage have by a joint or individual affidavit filed in support of the application verified the ground of the application.
- b. On the application of a party to the proceedings, if the Court is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance.

The Court may if it thinks fit, order that the proceedings be reheard. The party who makes the application shall cause it to be served on the other parties to the proceedings unless such services had been dispensed with.

c. Where an intervention takes place by the Attorney-General or other persons after a Decree Nisi has been made, the Court may rescind the Decree if it is proved that the Petitioner has been guilty.

• **Effect of Decree Absolute**

Generally, by Section 33 MCA, where a decree of dissolution of marriage has become absolute, a party to the marriage may marry again as if the marriage had been dissolved by death.

However during the 3 months following the issuance of the Decree Nisi, neither the party is free to lawfully marry a third party whether under customary law or marriage under the Act.

enforce

• **Decree and Right of Appeal**

A party to any matrimonial proceedings may appeal against the Decree Nisi before it becomes absolute. An appeal against a Decree Nisi must be filed within 3 months.

Being a final decision of the High Court, the appeal is as of right by virtue of Section 241(1) (a) of the Constitution of the Federal Republic of Nigeria 1999.

However, if the party fails to appeal against a Decree Nisi having had time and opportunity of doing so and the Decree Nisi is made absolute, then no right of appeal exists.

> **CONCLUSION**

Finally, it can be noted that the process of getting a divorce in Nigeria is a bit longer process compared to divorce processes in foreign jurisdictions. And for an action of dissolution of marriage to be successful in Nigeria, the Petitioner must have brought his or her petition in line with the grounds stated under the Matrimonial Causes Act and must satisfy the various requirements of the law.

However, it is important to know that a divorce may be very expensive in Nigeria. The cost of the divorce in Nigeria is usually determined on facts contained in the petition or nature of the divorce. The fact of the case is what would determine the time and industry a lawyer handling the matter would put into it. And the legal fee in Nigeria is usually based on the quantum of work done by the lawyer(s) on a client's case.

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