

MARRIAGES AND THEIR LEGAL FRAMEWORK IN NIGERIA.

To enjoy marriage rights in Nigeria, a person has to be validly married under any of the three recognized marriage systems. There are three legal systems that exist in Nigeria, these systems are: Statutory (English) law, Customary law, and Islamic law. These legal systems govern different areas of the society including family law, inheritance, and succession.

A person can therefore be married validly under Statutory law, Customary law or Islamic law and a combination of two or more of the systems.

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Statutory Marriage

Definition of a Statutory Marriage: Hyde v. Hyde (1860) L.R.I PD. 130

“The voluntary union for life of one man and one woman to the exclusion of all others”

A statutory marriage is one that is essentially monogamous in nature, this means that a man can only be married to one woman and a woman can only be married to one man at a time.

This type of marriage is also known as marriage under the Act because it is governed by and has to comply with the provisions of the Marriage Act. It comes with enormous benefits and rights for the couple and their children, with regards to inheritance, Will and other family matters. In Nigeria, statutory marriage must start from the Marriage Registry but can end up in a licensed place of worship or at any other licensed public place.

What is the Legal Framework?

Statutory marriage in Nigeria is governed by the provisions of:

1. The Marriage Act: a federal law that regulates the contracting and celebration of statutory marriages in Nigeria.
2. The Matrimonial Causes Act: a federal law that regulates and determines matters arising from statutory marriages in Nigeria, including divorce, separation, custody, and maintenance;

3. The Matrimonial Causes Rules: a rule of court (High Courts in Nigeria) made pursuant to the Matrimonial Causes Act for management and determination of cases arising from statutory marriage in Nigeria.

The Constitution of Nigeria established the High Courts in states across Nigeria, including the Federal Capital Territory, Abuja. Among other things, divorce and other related issues arising from statutory marriages can only be determined in the High Court of a State. If a matter is settled in a way that is not justifiable to a wife seeking to enforce her marriage rights, she can appeal against the judgment of the High Court at the Court of Appeal and the final court is the Supreme Court of Nigeria.

What Makes a Valid Statutory Marriage?

A statutory marriage must pass through certain specific steps, for it to be valid. Although it must commence from the Marriage Registry, it can be completed in the Marriage Registry or in a licensed place of Marriage or in any other public place, (where there is special approval from the Minister of Interior).

Hence, what makes a valid statutory marriage, will be further considered under the following circumstances; the Marriage Registry or in a licensed place of Marriage or in any other public place.

Generally, the steps below lead to a valid statutory marriage. These steps cover the stages of statutory marriage before a certificate is issued for a public celebration (wedding), during and after the public celebration (wedding) in the Marriage Registry or in a licensed place of Marriage or in any other public place. It also covers the circumstances that make a statutory marriage to be invalid.

A General Commencement of Statutory Marriage

1. You must obtain a "Notice of Marriage" from the Marriage Registry to be filled, signed, and returned to the Registrar of Marriages (Section 7 of the Marriage Act [MA]);
2. The Registrar shall enter the notice of marriage into the "Marriage Notice Book" and affix a copy of the notice on the outer door of his office for all to see until the "Marriage License" has been granted or until 3 months have elapsed (Section 10 of MA);
3. If after 21 days, there are no objections to the granting of a Marriage Certificate by members of the public and the prescribed fees having been paid to the Registry and appropriate affidavit of facts made, the Registrar shall then issue a "Registrar's Certificate" to the couple, which will allow them to publicly celebrate their marriage in the Marriage Registry, a licensed place of worship or at any other licensed public place. (Section 11 of MA);

4.The marriage can then be celebrated **within three months** from the date of notice in any of the approved places (Marriage Registry, a licensed place of worship or at any other licensed public place). If the marriage does not take place within three months, the notice as well as all other subsequent proceedings will no longer be valid. In such circumstance, for a valid marriage to be contracted, the entire process must be repeated, unless a waiver is gotten through a special license from the Minister of Interior. (Section 12 of MA).

B. Marriage Celebration in a Place of Worship (commonly known as church wedding)

1.Having obtained a “Registrar’s Certificate”, authorizing a public celebration (wedding), a marriage may be celebrated in a licensed place of worship by any recognized clergy of such a place of worship, in accordance with the marriage rites observed by that place of worship.The marriage must be conducted within the hours of 8 o’clock in the morning and 6 o’clock in the evening and must be witnessed by at least two people, excluding the clergy performing the ceremony (Section 21 of MA);

2.Recognized clergies of licensed places of worship are provided with ‘Books of Marriage Certificates’ by the principal Registrar in charge of a Marriage Registry. Upon the celebration of any marriage in a licensed place of worship, the clergy shall fill a Marriage Certificate in duplicate with the required information, such as date of the marriage, name of the couple and the names of witnesses. The certificate shall then be signed by the officiating clergy, the parties to the marriage and two or more witnesses to the marriage (Sections 24-26 of MA);

3.The clergy shall give one of the duplicate marriage certificates to the couple and within seven days, the clergy must send the other copy to the Registrar of Marriages for the district where the marriage took place, and the Registrar shall file the certificate in his office (Section 26 of the MA).

4.The Marriage Certificate mentioned here is a federal government of Nigeria issued certificate and will always have the coat of arms of Nigeria. It must not be confused with the mere certificates created and issued with and by the names of a religious group/centre/organization. It is the above-mentioned federal government issued marriage certificate that is a better proof of statutory marriage.

C. Marriage Celebration in a Registrar’s office (commonly known as court wedding)

1.Having obtained a “Registrar’s Certificate”, authorizing a public celebration (wedding), a marriage can take place in the office of the Registrar of Marriage in the presence of at least two witnesses and between the hours of ten o’clock in the morning and four o’clock in the evening (Section 27 of the MA);

2. After the exchange of marriage vows in the presence of the Registrar, the Registrar shall fill the Marriage Certificate. The Registrar, the parties and the witnesses to the marriage shall sign the Marriage Certificate in duplicate (Section 28 of the MA);

3. The Registrar shall give one of the Marriage Certificates to the couple and file the other copy in his office (Section 28 of the MA).

4. The Marriage Certificate mentioned here is a federal government of Nigeria issued certificate and will always have the coat of arms of Nigeria.

D. Marriage Celebration Outside the Marriage Registry and A Licensed Place of Worship

The Minister of Internal Affairs may, if he sees fit, grants a license to a couple to get married without the need for a Notice and a Registrar's Certificate. The license also allows the marriage to take place somewhere other than in the Registrar's office or a place of worship, provided that all the formalities are observed, and a copy of the Marriage Certificate is transmitted to the Registrar's office. (Section 13 of the MA).

The Marriage Certificate mentioned here is a federal government of Nigeria issued certificate and will always have the coat of arms of Nigeria.

E. Circumstances That Will Render a Statutory Marriage Invalid (Section 33 of MA)

1. If any of the parties (persons) to a marriage is already married to another person under any customary law, before the statutory marriage;

2. If the parties knowingly and wilfully celebrated their marriage in a place other than the Registrar's office or a licensed place of worship without a special license from the Minister of Internal Affairs;

3. If the parties knowingly entered the marriage under a false name or names.

4. If the parties knowingly entered into the marriage without first getting a Registrar's Certificate of Notice or Minister's License;

5. If the parties were wedded by a person they knew is not a recognized clergy of a licensed place of worship or a Marriage Registrar.

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Customary marriage

This type of marriage is governed by native law and custom. Customary Marriage is polygamous in nature, (in other words it is a marriage between a man and one or

more wives). At times, it allows one woman to marry multiple husbands. The native law and customs of communities across Nigeria govern customary marriages made under them as well as issues of inheritance, divorce, and other related issues.

Some customs also have “woman to woman” marriages. Here, a woman who is barren or widowed or for any other reasons, may marry another woman by paying bride price and carrying out other customary marriage rites in order for the new wife to bear children.

This custom does not enjoy judicial recognition, (**Meribe v. Egwu 1976, 3 S.C 23**). Such customs have been declared unlawful and invalid by the Supreme Court of Nigeria.

What is the Legal Framework?

There is no uniform customary law that governs the whole of Nigeria. Different localities in Nigeria have practices which due to a long history of accepted usage, have come to be known as customary law and is binding on people who are subject to it. Customary law is mostly unwritten but can be enforced by courts if the existence of such customary law is proven before the courts.

For a customary practice to have the force of law, it must not be repugnant to natural justice, equity, and good conscience, it must not be incompatible with any existing law, and it must not be an ancient customary practice, but one which exists at the present time. (Evidence Act, Section 18 (3); **Lewis v Bankole (1908) 1 NLR 81 at 102 and Dawodu v Danmole (1962) 1 All NLR 702**).

All native laws and customs in Nigeria bow to the Constitution and laws in Nigeria. Hence, at all times, customs, customary laws, rites, rituals, process, rights, and duties under customary marriage must not and cannot conflict with any rights created by any law in Nigeria.

The Customary Courts and Area Courts of the States in Nigeria, including the Federal Capital Territory, can hear and legally resolve customary issues relating to marriages under customary law and the rights or duties that arise out of same.

If a matter is settled in a way that is not justifiable to a wife seeking to enforce her marriage rights, Customary Courts of Appeal in the States and the Federal Capital Territory are established and empowered to review and supervise in such matters. Appeals from the Customary Court of Appeal go to the Court of Appeal, and the final court is the Supreme Court of Nigeria.

What Makes a Valid Customary Marriage?

Customary Marriages vary from one locality to another. The courts have determined that two ingredients must constitute a valid Customary Law Marriage in any part of Nigeria:

In the case of **Obi & Ors v Bosah & Ors (2019) LPELR-47243(CA)**, it was held: “it is the law that there are two essentials of a valid marriage. These are payment of bride price and handing over of the bride to the groom.” The same principle was stated in the cases of **Agbeja v Agbeja (1985) 3 NWLR (Pt 11)** and that of **Okolonwamu v Okolonwamu (2014) LPELR-22631 (CA)**.

In addition, another essential ingredient for the celebration of Customary Marriage is the consent of both parties to the marriage as well as the parents of the bride, who are supposed to collect the bride price from groom. In **Osamwonyi v Osamwonyi (1972) LPELR-2789 (SC)**, the court held that “consent is not only basic but fundamental to a potentially polygamous union such as a Customary Marriage”.

After these requirements have been satisfied, a ceremony is expected to hold in line with the customary practices of the locality where the wedding is to take place. The ceremony is expected to take place in the presence of witnesses. Every Customary Marriage contracted in Nigeria must be **registered within sixty days** in the area court or Customary Court where the marriage was contracted, according to section 30 of the Births, Deaths, etc (Compulsory Registration) Act.s

Summary: Steps to a Valid Customary Marriage

- Both parties to the marriage must have freely consented to the marriage;
- The parents of the bride must consent to the marriage;
- The groom and his family must pay an agreed sum as bride price to the family of the bride. There is no national maximum or minimum prescribed bride price, although, certain states have set down a maximum amount. In some customs, this sum is accompanied by certain material things like clothes, food items and drinks;
- A wedding ceremony must be carried out in the presence of witnesses and in accordance with the customary practices of the people in the locality;
- The family of the bride shall, during the customary wedding ceremony, hand over the bride to the groom and his family. After the marriage ceremony, the couple can then begin to cohabit.
- After the celebration of a customary marriage, the marriage should be registered with the Area Court or Customary Court.

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Islamic Marriage

Some people classify Islamic and customary law as one, however, the finding of the court in the case of **Khairie Zaidan v Fatimah Khalil Mohssen (1973) LPELR-SC.52/1973** proves that this is not the case.

Islamic law is not customary law and as such, has its own unique approach and process for marriage. Islamic law is religious based doctrine and not a native law and custom, it binds its faithful. The Nigerian Constitution guarantees freedom of religion, and this allows and guarantees Islamic law and Islamic marriages.

Islamic law is based on the doctrines of the Islam and is applicable to persons who practice the religion and accept it as their personal law. Islamic family law provides for issues relating to marriage, the rights and duties that arise out of marriage, dissolution of marriage and others.

What is the legal framework?

Like customary marriage, Islamic law on marriage is not codified (compiled and contained in a document). Issues of marriage under Islamic law are governed by Sharia principles derived from the Quran and Hadith, Nigerian customary practices, and judicial precedents. The jurisprudence of the Maliki School of Islamic law also known as *fiqh* generally applies in issues of marriage under Islamic law.

The constitution establishes a Sharia Court of Appeal for the Federal Capital Territory (FCT) and states which are empowered to decide issues or questions of Islamic personal law, on appellate/supervisory position. This includes any question of Islamic personal law regarding a marriage concluded in accordance with the law, a question relating to the validity or dissolution of the marriage as well as any other issue arising out of such a marriage.

The Sharia Courts and the Area Courts can decide over such issues, while their judgments can be contested at the Sharia Court of Appeal in the States/FCT. An appeal from the Sharia Court of Appeal goes to the Court of Appeal and the final court is the Supreme Court of Nigeria.

What Makes a Valid Islamic Marriage in Nigeria?

A valid Islamic marriage originates from a proposal from the intending husband to the intending wife. The consent of the parents or guardian of the bride is also an important component of a valid Islamic marriage. Once the required consent is obtained, the families need to agree on a suitable dowry to be paid by the family of the groom to that of the bride, after which a marriage ceremony can then be held.

Steps to a Valid Islamic Marriage

- There has to be a valid marriage proposal. The man intending to marry has to make his intentions of marriage clearly known to the woman he intends to marry;
- There has to be a clear acceptance. The 'wife-to-be' has to agree to be married to the individual seeking her hand in marriage;
- If the woman has not been married before, the consent of her father or guardian has to be sought in addition to her own consent before the marriage;
- After the relevant consents have been gotten, the man seeking to marry has to present a dowry and/or marriage gift to the bride. There is no fixed sum to be paid as dowry, this is to be agreed upon by the family of the parties to the marriage. However, the Nigerian Supreme Council for Islamic Affairs has prescribed ₦19, 895 as minimum amount to be paid in 2020 (<https://www.nscia.com.ng>);
- A wedding ceremony can then be carried out in the presence of at least two witnesses. The ceremony signifies the official hand over of a wife to her husband and the husband's family.

4

When can a woman claim marriage rights in Nigeria?

A woman in Nigeria can only enjoy marriage rights in Nigeria, where such a woman is validly married under any of the three marriages systems in Nigeria (Statutory (English) law, Customary law, and Islamic law). Such a woman must be of any of the following circumstances;

- A woman that contracted a marriage using any of the steps for a valid marriage listed above;
- A woman who is not a Nigerian but is married to a Nigerian man and the marriage is carried out validly in Nigeria;
- A woman who is not a Nigerian but is married to a Nigerian man and the marriage is carried out validly in a foreign country;
- A woman who is a Nigerian, married to a foreigner and the marriage is carried out validly in a foreign country; and
- A woman who is a Nigerian, married to a foreigner and the marriage is carried out validly in Nigeria.

5

Can parties make a pre-nuptial agreement?

Section 72(2) of the Matrimonial Causes Act:

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 part of property dealt with by **ante-nuptial** or **post-nuptial** settlements on the parties to the marriage, or either of them.

A couple may ahead of their marriage make an agreement on how to manage their property ahead of marriage and even after their marriage, to avoid sharing their property as a court may order. In such circumstances, the courts will honour and observe the contents of such agreements of parties.

The agreements are often referred to as ante-nuptial, pre-nuptial or pre-marital agreements (agreements made by couple to manage their affairs before-marriage, during-marriage and after-marriage matters) or post-nuptial, post-marital agreements (agreements made by couple to manage their after-marriage matters).

The court takes notice of ante-nuptial agreement or post-nuptial agreements between the parties to the marriage (a husband and his wife) concerning the marriage made either before the marriage was contracted or after the marriage was contracted.

In the case of **Oghoyone v Oghoyone (2010) 3 NWLR (Pt 1182)**, the Court of Appeal held that the trial court was right to uphold the contents of a pre-nuptial agreements.

Pre- nuptial and post-nuptial agreement is a good way for a prospective wife to safeguard her rights to her property and to custody of children especially in the dissolution of the marriage. The Court does not have to agree with the terms of a pre-nuptial agreement, rather, the court has the freedom to take the terms into consideration when resolving issues arising from the marriage.