

CUSTOMARY LAW MARRIAGE AND ITS DISSOLUTION IN NIGERIA

This short article is concerned with the rules that regulate the marriage and dissolution of Customary law marriages in Nigeria. There are two forms of marriage valid in Nigeria. A statutory marriage and a customary marriage. This article does not deal with statutory marriages.

Parties to Customary marriage.

Customary marriage is celebrated between a man and a woman and between their families. In certain situations, customary marriage may be celebrated between two women. Where customary marriage is celebrated between two women, it is for the attainment of the following objectives:

- (a) marriage for the purpose of bearing children for a barren woman who desires to have children of her own;
- (b) marriage for the purpose of bearing male children for a woman who has no male children;
- (c) marriage for the purpose of preserving a father's lineage by his daughter where he dies without a male child to inherit his compound; and
- (d) a daughter may be married into her father's compound for the purpose of bearing male children to continue her father's lineage.

The marriage of a woman by another woman is different from same sex marriage. The female parties to such marriage do not consummate the marriage themselves, rather, the woman who has been married is handed over to a man chosen by the woman who has been married herself. The purpose of such union is to bear children for the woman who married her.

Any child born out of such marriage does not belong to the biological parents. The mother of such a child is the woman who married the biological mother of the child and the father of the child is the husband of such woman whether he is living or dead.

Commencement of Customary marriage.

Customary marriage is commenced by the meeting of the families of the bride and groom. The main purpose of the meeting of the families is to seek the consent of the family of the bride. In very limited cases, the first visit is done by the groom and members of his age grade to present him to the family of the bride. In some communities, the consent of the bride and her parents is sought through an intermediary who is usually well known to the bride's family.

Before consent is given to the proposed marriage both families quietly investigate each other to make sure there are no blood ties, cultural taboos or other impediments to the marriage. After consent has been given to the proposed marriage by the bride's family, a date is fixed for other formalities to be observed.

Payment of Bride Price

Payment of bride price is very significant in customary marriages. It seals the bond between the spouses creating reciprocal entitlements and obligations. Bride price is paid by the man to the family of the woman. Without the payment of the bride price there can be no valid customary marriage. At the point of the payment of the bride price, there must be witnesses to the transaction from both parties. Payment of bride price is a condition precedent to the claim of children of a marriage by a man. A man who has not paid the bride price of a woman is not the owner of any children which result from his union with that woman. In dissolution of customary marriages, the return of bride price paid by a man to the family of the woman is the most symbolic act showing that the marriage between a man and a woman has been effectively terminated.

Marriage festivities

Celebration of customary marriage is concluded by marriage festivities. The festivities offer an opportunity for the families of the couple to bond and for the members of the community to witness the union.

Invalidation of Customary marriage

The only condition that can invalidate an otherwise proper marriage conducted in accordance with customary law is when one of the parties to the customary marriage was at the time the customary marriage was conducted, married to another person under the Marriage Act and the marriage was still subsisting. Let me say that while a subsequent Statutory marriage by or to a person who is either married under the Act or in accordance with Customary law is forbidden, subsequent marriage under the Act or in accordance with Native law and Custom is not forbidden under any law where the parties remain the same. In other words, where Mr. A marries Mrs. A in accordance with Native law and custom, they can proceed to conduct another marriage under the Act if they so wish and vice versa.

Ground for dissolution of customary marriage

Customary marriage can be dissolved by way of divorce. This is a customary practice of common application in Nigeria. The grounds for dissolution of customary marriage are numerous and vary across the various ethnic groups in Nigeria.

Mode of dissolution of customary marriage

Customary marriage is finally dissolved by the refund of the bride price by the family of the woman to the family of the man. Long periods of absence, separation or desertion of the matrimonial home by either party is not sufficient to dissolve a customary marriage if not accompanied by the return of the bride price by the family of the woman to the family of the man. The act of returning the bride price is what finally severs all marriage ties between the families of a man and a woman. The consequence of not refunding the bride price paid on a woman means that any child which she bears within the

period of her absence from her matrimonial home will automatically belong to her husband who continues to enjoy a proprietary claim on her as his wife.

A customary law marriage may be dissolved either by non-judicial divorce or by the order of an appropriate customary Court.

***Hakeem Allison** was called to the Nigerian Bar where he was admitted as a Solicitor and Barrister of the Supreme Court of Nigeria on 25th February 1998 and a Solicitor of England and Wales (2002). Hakeem practices from Allison Solicitors in Essex UK. He can be contacted at hakeem.allison@allisonsolicitors.com