



TOPE ADEBAYO LP

# PROCEDURE FOR DISSOLUTION OF MARRIAGE UNDER CUSTOMARY LAW



# PROCEDURE FOR DISSOLUTION OF MARRIAGE UNDER CUSTOMARY LAW



## Introduction

The process for dissolution of a marriage in Nigeria depends on whether the couple entered into a statutory marriage or a traditional marriage. Customary marriages are dissolved in line with the customs and traditions of the locality where the marriage was contracted, while statutory marriages are dissolved in accordance with the applicable laws governing marriage in Nigeria.

The process for ending a statutory marriage is outlined in the applicable enactments and court regulations, in contrast to the mainly unwritten process for ending a customary marriage<sup>1</sup>. The goal of this article is to examine the process for dissolution of customary marriage.

## Meaning and nature of customary marriage

Customary marriage is a union of a man and a woman in accordance with the custom and tradition to which they are both subject. Custom is generally defined as “a way of life”. It is a rule that over years of application in a particular district, has obtained the force of law.<sup>2</sup> Customary law is the organic or living law of the

indigenous people of Nigeria regulating their lives and transactions.<sup>3</sup>

Customary marriage differs from statutory marriage in certain ways, yet it is nonetheless recognised as legal in the eyes of the law. One illustration is polygamy. While polygamy is forbidden under formal marriage, it is legal under customary law for a man to have multiple wives. Where a man maintains his marriage with his one wife under customary marriage, he is deemed potentially polygamous and does not become polygamous until he marries another wife.<sup>4</sup>

## Requirements of a Valid Customary Marriage

The validity of customary marriage differs from one locality to the other. This is attributed to the dynamic nature of customary law and the fact that no single law in its totality regulates the customs and traditions of the people. However, over the years, an aggregate of the practices that run through the various customary marriages shows that there are some basic requirements which must be

<sup>1</sup> Umeadi v. Chibunze (2020) 10 NWLR (Pt. 1733) 405

<sup>2</sup> Section 258 of the Evidence Act, 2011

<sup>3</sup> Pam v. Gwom (2000) 2 NWLR (Pt. 644) 322

<sup>4</sup> E. I. Nwogugu (1999), family law in Nigeria at ixviii (3rd edition, Claverianum pres) Ibadan

# PROCEDURE FOR DISSOLUTION OF MARRIAGE UNDER CUSTOMARY LAW



fulfilled to have a valid customary marriage. They include<sup>5</sup>:

- **Capacity of the parties:** The parties to a customary marriage must be of marriageable age. In Nigeria, the eligibility for marriage is 18 years and above.
- **Payment of bride price:** The payment of bride price or dowry could be in form of a gift, money, natural produce or any other valuables.
- **Marriage ceremony:** There must be a marriage ceremony where the woman (wife) is handed over to the man (his family).

The cohabitation of a man and a woman as a couple and the procreation of children, do not constitute marriage under the customary law. There must be some sort of ceremony based on the custom of the people, as well as a performance of stipulated customary rights to have a valid customary marriage.

## Procedure for Dissolution of Customary Marriage

Dissolution of a customary marriage involves ending a man and woman's union

<sup>5</sup> Agbeja V. Agbeja (1985) 3 NWLR (PL-11) 11

<sup>6</sup> Okpanum V. Okpanum (1972) (1972) ECCLR 561

in accordance with their traditions and customs. The fact that the couple's families are typically engaged in the dissolution of the marriage is an intriguing aspect of customary marriage.<sup>6</sup> The families of the couple will decide how much of the bride price and other expenses incurred towards the marriage should be returned to the man or his family through the marriage middlemen. Where the bride price (and other expenses agreed on) has been returned successfully to the husband or his family, the marriage is said to have been dissolved. Hence, the marriage is in progress until the bride price is returned.<sup>7</sup>

A person seeking dissolution of a customary marriage may either elect to have a Judicial Divorce, or a Non-Judicial Divorce. It should be noted that each procedure requires the return of the bride price for the marriage to be deemed dissolved under customary law.

**Non-judicial divorce:** This is the most common method of dissolving a customary marriage. Here, the marriage is dissolved by the parties and their families

<sup>7</sup> Registrar of Marriage v. Ighinomwanhia, suit No. B/16M/72 unreported, High Court, Benin 5 August 1972

# PROCEDURE FOR DISSOLUTION OF MARRIAGE UNDER CUSTOMARY LAW



without recourse to a customary court<sup>8</sup>. Non-judicial divorce could be achieved by agreement of the parties or by unilateral act of either of the parties.

- Agreement of the parties: Here, the parties on their own accord, decide to put an end to the marriage. The bride price to be returned to the husband will be decided by the parties and their families, and where they are unable to agree on the bride price to be returned, the customary court may be invited to resolve the matter<sup>9</sup>.
- Unilateral act of either of the parties: This occurs when one party with the intention to put an end to the marriage decides to take steps to end it. For instance, where a wife deserts or abandons the marriage for whatsoever reason, or where a husband drives the wife out of the

house and demands a refund of the bride price.

Under Islamic personal law, there are other non-judicial divorce procedures such as Tadriq<sup>10</sup>, Ila<sup>11</sup>, Lian<sup>12</sup> etc. Non-judicial divorce is not recorded (documented) as the dissolution most times is between the families involved.

**Judicial Divorce:** This option involves petitioning the court<sup>13</sup> to dissolve a customary marriage. This arises where family arbitration or mediation has failed in reconciling the parties' differences<sup>14</sup>. This mechanism is gaining prominence due to its record of proceedings (documentation) as opposed to non-judicial divorce. Evidence of divorce is easily ascertainable. Like most judicial proceedings in Nigeria, it may entail additional costs such as filing fees and engaging a lawyer to provide legal representation, or delay in court proceedings.

---

<sup>8</sup> M. O. I. Izunwa, Divorce in Nigerian Statutory and Customary Marriage: A Comparative Critique of Grounds, Procedure and relief Attaching thereto [https://www.academia.edu/28171879/Divorce\\_in\\_Nigerian\\_statutory\\_and\\_customary\\_marriages\\_a\\_comparative\\_critique\\_of\\_grounds\\_procedures\\_and\\_reliefs\\_attaching\\_thereeto](https://www.academia.edu/28171879/Divorce_in_Nigerian_statutory_and_customary_marriages_a_comparative_critique_of_grounds_procedures_and_reliefs_attaching_thereeto) accessed on the 8th February 2023 at 5:33 pm

<sup>9</sup> Uke V. Iru (2001) 11 NWLR 197

<sup>10</sup> This is where a wife is seeking divorce on grounds that that husband has violated the terms of the marriage.

<sup>11</sup> Where the husband has taken out a vow to abstain from sexual intercourse for a period of time, usually four months longer, as the case may be.

<sup>12</sup> Where a husband accuses his pregnant wife of committing adultery and denies paternity of the child.

<sup>13</sup> Usually, a customary court and where there is no customary court in that locality, the Magistrate court can be referred to.

<sup>14</sup> Judicial divorce is referred to as second-order procedure or mechanism.

# PROCEDURE FOR DISSOLUTION OF MARRIAGE UNDER CUSTOMARY LAW



## Grounds for dissolution of a customary marriage

In general, there are no standardized or rigorous criteria for annulling a customary marriage. The customs and traditions practised in each community establish the grounds for divorce within that community. One of such grounds is irreconcilable differences between the parties. There are other grounds under the Marriage, Divorce and Custody of Children Adoptive Bye-Law Order 1958,<sup>15</sup> and they include:<sup>16</sup>

- Betrothal under marriageable age
- Refusal of either party to consummate the marriage
- Harmful diseases of a permanent nature which may impair the fertility of a woman or the virility of a man
- Impotency of the husband or the sterility of the wife
- Conviction of either party for a crime involving a sentence of imprisonment of five years or more
- Ill-treatment, cruelty, or neglect of either party by the other
- Venereal disease contracted by either party

- Lunacy of either party for three years or more
- Adultery, etc.

One important fact to note is that Section 7 of the Order,<sup>17</sup> states that unless the court is persuaded that it should grant an order for the dissolution of the marriage on special grounds, no order for divorce shall be granted in relation to an application by a wife who is a nursing mother,<sup>18</sup> or a wife who has three or more children with the husband.

Similar to this, according to the Local Government (Declaration of Tiv Customary Marriage Law) Order,<sup>19</sup> the grounds for dissolution of customary marriage are ill-treatment or cruelty, impotence of the husband, insanity, incompatibility, contagious leprosy disease, adultery that the petitioner has neither condoned nor forgiven, separation of parties, or desertion of any of the parties, for a period of not less than one year, and for any other reason such that the parties can no longer be expected to live together as husband and wife<sup>20</sup>.

<sup>15</sup> It applies to marriage under customary law in parts of Ogun, Oyo, Ondo, Delta and Edo States

<sup>16</sup> Section 7 Marriage, Divorce and Custody of Children Adoptive Bye-Law Order 1958

<sup>17</sup> *ibid*

<sup>18</sup> Nursing a baby under three (3) year old.

<sup>19</sup> BSLGN 1 of 1985, 12

<sup>20</sup> Section 14 *ibid*

# PROCEDURE FOR DISSOLUTION OF MARRIAGE UNDER CUSTOMARY LAW



## Conclusion

Dissolution of a customary marriage is valid under the law, and its validity is based on compliance with the established process.<sup>21</sup> When parties have a thorough understanding of the process for dissolving a traditional marriage, they can then decide on the best course of action. Always keep in mind that once the bride price has been paid back, the traditional marriage is considered to have ended. An order of the court dissolving any customary marriage without a consequent order for the return and acceptance of the bride price is meaningless.<sup>22</sup>

---

<sup>21</sup> Nwangwa v. Ubani (1997) 10 NWLR (Pt. 526) 559

<sup>22</sup> Eze v. Omeke (1977) IANSLR 138

## ABOUT THE AUTHORS



**HARRISON OGALAGU**

**Partner, Tope Adebayo LP**

E: [h.ogalagu@topeadebayolp.com](mailto:h.ogalagu@topeadebayolp.com)

P: +234 (0) 8090797782



**NNAMDI EZEKWEM**

**NYSC Associate, Tope Adebayo LP**

E: [nnamdiezekwem@gmail.com](mailto:nnamdiezekwem@gmail.com)

P: +234 (1) 628 4627

Do you need to get in touch with us, to know how we can help you and your business?  
Please contact us using any of the details provided below:

**TOPE ADEBAYO LP**

25C Ladoke Akintola Street, G.R.A. Ikeja Lagos, Nigeria

p: +234 (1) 628 4627

e: [info@topeadebayolp.com](mailto:info@topeadebayolp.com)

w: [www.topeadebayolp.com](http://www.topeadebayolp.com)

