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DECRIMINALISATION OF BIGAMY IN LAGOS STATE AND ITS LEGAL IMPLICATIONS

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INTRODUCTION

The present Nigerian criminal justice system is part of Nigeria's inheritance from colonial Britain. In fairness, it served the colonial power rather well. But with the transformation from colonialism to self-governance, democracy, military rule and now a hybrid of civilian rule and democracy, the inherited system had come under severe strain to the extent that it can safely be said to be non-functional or at least comatose

Bigamy was introduced into the body of the Nigeria criminal legal regime by the colonial powers like other incongruous legislations that are alien to our culture and traditions as Africans and particularly as Nigerians. Since this law found its way into Nigeria it has not been tested by any court of competent jurisdiction in Nigeria, this underscores its inconsistency with our culture as a people.

Recently in view of the dormancy of the provision for the crime of bigamy in our Criminal Codes Act and laws of the various states, Lagos State in its proactive nature expunged the unexploited provision from its Criminal Code Law, this discuss is to examine the said step taken by the Lagos State Legislatures and the extent of its consistency or otherwise with the constitution of the Federal Republic of Nigeria 1999 (as amended) or any other relevant laws in force in Nigeria.

The word bigamy is defined by the Black's Law Dictionary Ninth Edition as "the act of marrying one person while legally married to another" this definition is similar to what the Criminal code describes as bigamy when it provides thus:

"Any person who having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life time of such husband or wife, is guilty of a felony and is liable to imprisonment for seven years".

The old Criminal Code Law of Lagos State Cap C17, Laws of Lagos State 2004 section 370 provides that:

"Any person who having a husband or a wife leaving, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife is guilty of a felony and is liable to imprisonment for seven years.

The implication of this provision is that any person who contracts a marriage under the Act will commit a crime if he goes ahead to contract another marriage under the Act during the subsistence of the first marriage. The question here is can a state expunge from its laws a provision contained in an Act made by the National Assembly? Section 370 of the criminal code Act provides for the crime of bigamy, the said provision is the same with what is contained above in the laws of Lagos State.

The power of a state to make law is as contained in section 4(6) of the Nigerian constitution where it provides thus: "the legislative powers of a state of the federation shall be vested in the House of assembly of the state" the constitution went further in sub-section (7) of the same section to provide that "the House of assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say-

(a) Any matter not included in the exclusive legislative list set out in part 1 of the second schedule to this constitution

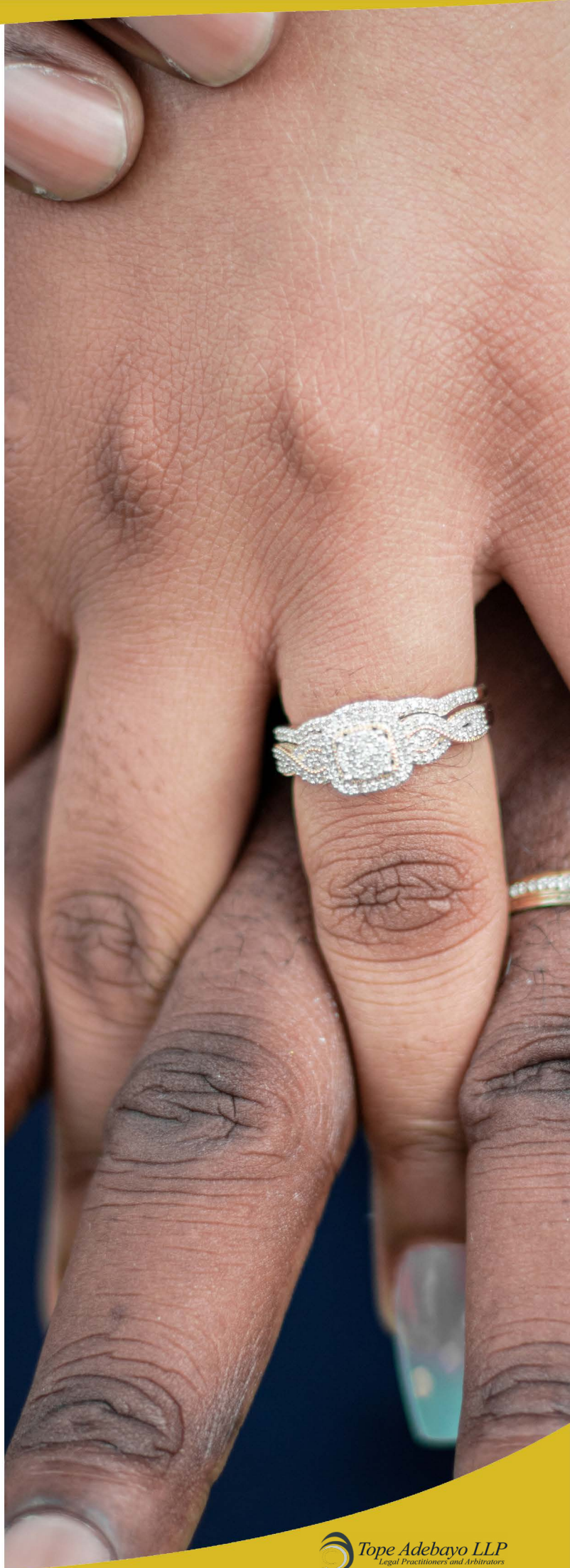
From the above provisions of the constitution, a state has power to make law for that state to the extent that the subject matter of such law is not included in the exclusive legislative list which only the National Assembly can legislate upon. Could the issue of bigamy be said to be included on the exclusive list in the constitution as to bring it outside the realm of the legislative powers of the state? To answer these questions we go back to the constitution.

The constitution in its second schedule provides for the exclusive legislative list, in part 1 item 61 of the list the constitution provides as part of the exclusive legislative power of the federation:

"The formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto"

reasoning from the above provision of the constitution one may hastily conclude that marriage and anything at all that relates to it is under the exclusive list and therefore a no go area for the states. However, applying the principle of ejusdem generis as a canon of interpretation, when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed. See Kiabirikim V. Emefor

The provision above clearly listed the types of matters of marriage that comes under the exclusive legislative list. They include formation, annulment, dissolution and matrimonial causes relating thereto. The last item on the list will appear to be general "matrimonial causes relating thereto" however; it cannot be more general than the definition given to it under the Matrimonial Causes Act. The Act defines matrimonial causes to mean proceedings for a decree of dissolution of marriage, nullity of marriage Judicial separation, restitution of conjugal rights or Jactitation of marriage and other proceedings similar to the above listed as contained in sections 114 (1) of the Matrimonial Causes Act Cap. M7 LFN 2004. The Matrimonial Causes Act exhaustively mentioned what will amount to matrimonial causes and did not at any point make reference to the crime of bigamy. In a constructing of a statutory provision, where a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included. The principle is based on "expression urius est exclusion alterius" that is; the expression of one thing is to the exclusion of another this was the position of the Court of Appeal in S.E.C v. Kasunmu. It then means that the constitution did not contemplate the crime of bigamy under the exclusive legislative list.



Lagos State has power to determine what will amount to a crime within its jurisdiction bearing in mind the peculiarity of its constituents so long as such determination is not inconsistent with the constitution. A good example is the decision of the court in the popular case of Aooko v. Fagbemi where it was held that adultery is not a crime in the southern Nigeria, since it is not provided for anywhere in the laws of southern Nigeria but in the northern part of Nigeria Adultery is a crime as provided in the Penal Code Laws of the various states see Section 36(8) & (12) 1999 Constitution.

States in Nigeria by powers conferred on them by the constitution of the Federal Republic of Nigeria has their own criminal laws which defines and prescribe punishment for crime within their respective territories. A state can therefore amend or repeal a law made by it. Bigamy as contained in the criminal code law of Lagos State is a state legislation hence the state is empowered to expunge same from its law if it deems it necessary as in the present case of Lagos State.

It should be stated here that the mere fact that a provision is contained in an Act of the National Assembly does not make it automatically applicable to a state. When an issue is not a subject of the exclusive list a state has power to make laws on it but it must not be inconsistent with the provisions of the constitution this is the direct implication of the provision of Section 4(5) of the 1999 constitution of the Federal Republic of Nigeria (as amended).

Alluding to the statement made by the Lagos state commissioner of justice in one of the national newspapers, he said bigamy was expunged from the amended criminal code law of Lagos State because of the need to decriminalize it since there was no reason in the first place while it should be criminalized. What this means is that it is no longer a criminal offence for a man or woman who is legally married to contract another marriage. Instead, the marriage remains null and void by implication the earlier marriage will void the latter. The commissioner however said such act will now amount to a civil offence, whatever that imply is not for discuss here.

This legislative activism by the Lagos State Legislature is in my humble opinion another giant stride by the state to expunge laws that are occupying space in our statute books so that laws that are practicable and relevant to the time and environment in which they are promulgated to operate will replace them. It is worthy of note that nowhere in the Marriage Act was bigamy mentioned, this further supports the view of the Lagos justice commissioner that bigamy should not be a crime in the first place.

Reasoning from the above it is therefore, my well-considered view that the decriminalization of bigamy in Lagos is not inconsistent with the constitution of the Federal Republic or any other existing law in Nigeria. It therefore suffices to say that the decriminalization of bigamy in Lagos state is in order as it is consistent with the constitution of the Federal Republic of Nigeria.

– By Ferdinard Olufemi

Contact Details

Please contact us by email at:
info@topeadebayollp.com

Or write to the following address:

The Practice Manager
Tope Adebayo LLP (TALLP)
25C, Ladoke Akintola Street
G.R.A, Ikeja
Lagos Nigeria
Or call us at: +234 906 523 3664