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LEGAL IMPLICATION OF DISSOLUTION OF STATUTORY MARRIAGE IN A DUAL MARRIAGE: A CULTURAL RELATIVIST EXAMINATION

Iniye Linda Iyaye Ikimi[1]

ABSTRACT

Marriage is a universally recognised institution. It is the bedrock of the family and smallest unit of society. The procedure and manner of its celebration differ from one society to another. In some societies, a valid marriage is one contracted only between persons of the opposite sex. However, in some other societies, persons of the same sex can contract a legitimate marriage. In Nigeria, only persons of the opposite sex can enter into a marital relationship. This paper explores two types of marriage - customary marriage and statutory marriage. Quite a number of the marriages in Nigeria between the same couples are contracted both under customary law and the Marriage Act. In a situation where there are irreconcilable differences leading to a divorce, would the dissolution of one type of marriage have any effect on the other? This is the crux of this paper. An analysis of the two marriages and divorce proceedings were made, divergent opinions of different learned authors were explored, laws and decisions of courts were considered in order to examine the effect of dissolution of one type of marriage on the other type of marriage.

Keywords: Customary marriage. Statutory marriage. Divorce. Culture. Cultural Relativism

INTRODUCTION

Marriage is ideally regarded as a voluntary union of persons for life.[2] In Africa, marriage relationship is usually between a man and a woman, or a man and more than one woman.[3] Generally, marriage institution is in two forms or categories namely monogamy and polygamy. Monogamous norms restrict the individual to only one spouse at a time while polygamous norms permit plural marriage and take the form of either polygyny or

[1] LL.B., B.L, LL.M, ACArb., Lecturer, Nigerian Law School. E-mail: inisspecial@yahoo.com
[2] FE Mostyn, *Marriage and the Law: The Law of the Family* (Oyez Publishing Limited 1976) 14.
[3] Elijah Tukwariba Yin, Jenna Marie Black, 'The Legal Anthropology of Marriage in Ghana: Presenting Power Dynamics Through Legal Arenas' (2014) 6 (12) International Journal of Current Research 10697.

polyandry.[4] Although monogamy and polygamy are recognised in Nigeria, the only aspect of polygamy accepted is polygyny; marriage of one husband to two or more wives. Polyandry which is the marriage of one woman to two or more husbands at the same time is rare, if not prohibited by indigenous customs. There is yet to be on record that a woman in Nigeria attempted marrying or actually married more than one husband at the same time.

There are basically two types of marriage recognised by law in Nigeria; marriage under the Marriage Act known as statutory marriage, and marriage by customary law known as customary marriage.[5] Islamic marriage, which is a marriage under Islamic law and contracted between persons of the Islamic faith, possesses most of the features of customary law marriage.[6] One learned author views customary law as having two classes; the ethnic or non-Muslim customary law and the Islamic or sharia law.[7] Thus, Islamic marriage has been described as customary marriage.[8] However, another learned author has argued that Islamic marriage is foreign, not indigenous to the people of Nigeria and thus, cannot be regarded as customary marriage in Nigeria.[9] From the definition of marriage under Nigerian law, marriage is a legal union entered into between persons of the opposite sex in accordance with the Marriage Act, Customary law or Islamic law.[10] By this definition, Islamic marriage is not subsumed under customary marriage but regarded as different from it. Just as statutory marriage was foreign to the indigenous communities in Nigeria, so also was Islamic marriage. Statutory marriage became one of the marriages celebrated in Nigeria after the cession of Lagos to the British Crown in 1861.[11] Also, Islamic marriage formed part of the marriage in northern Nigeria and some part of southern Nigeria, for those subject to Islamic law, after the introduction of Islam in Borno in the 11th century.[12] Thus, this paper aligns with the second learned author above that, Islamic marriage is not customary marriage since it is foreign and not indigenous to the people of Nigeria. In this

[4] EE Ezewu and others, *Sociological and Philosophical Foundations of Education* (Heinemann Educational Books (Nigeria) Limited 1981) 28.
[5] *Chinweze v Masi* [1989] 1 NWLR (Pt 97) 254.
[6] EI Nwogugu, *Family Law in Nigeria* (revised edn, Heinemann Educational Books (Nigeria) Plc 1990) 58.
[7] AO Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 83.
[8] ibid.
[9] BR Akinbola, 'Islamic Law as an Aspect of Customary Law in Nigeria- A Call for Review' (2006) 5 UIJPL 193.
[10] Same Sex Marriage (Prohibition) Act 2013, s 7.
[11] 'Nigerian Marriages: A Historical Background including Divorce Laws' <https://onlinenigeria.com/marriages-in-nigeria/> accessed 24 June 2022.
[12] African Studies Centre Leiden, 'Islam in Nigeria' <https://www.ascleidon.nl/content/webdossiers/islam-nigeria> accessed 26 June 2022.

paper, the discourse on customary marriage does not include Islamic marriage. While statutory marriage is a marriage contracted in accordance with the Marriage Act,[13] customary marriage is based on the customary practices of an ethnic group, and there are different ethnic groups in Nigeria. Customary practices of an ethnic group form the basis of customary law which is a source of Nigerian law. Customary law possesses three unique features: it is unwritten, it must be a mirror of accepted usage in the area where it is applied, and its rules change with time.[14]

Although the two distinct marriages; customary and statutory, are respected and legally recognised in Nigeria, some couples usually contract a subsequent statutory marriage irrespective of the fact that they have contracted a valid customary marriage. Most of these couples or parties may actually not realise that they have ended up contracting two distinct marriages. Customary and statutory marriages have separate procedures in order to be validly contracted, and thus, have distinct procedures for their dissolution. The question that arises is whether the dissolution of the latter type of marriage contracted between couples also dissolves the former type of marriage, where a dual marriage was contracted between the same couple? This is the crux of this paper.

This paper is divided into five major segments. The first segment which is the introduction also deals with universality of marriage institution and marriage as bedrock of family and society. The second segment focuses on custom and cultural relativism. Dissolution of customary marriage and statutory marriage are considered in the third segment. A theoretical perspective of the two marriages and their dissolution, and the effect of dissolution of one marriage on the other are dealt with in the fourth segment. The fifth segment concludes this paper and proffers a few recommendations.

The universality of Marriage Institution

Marriage is a universally accepted or recognised institution. It is a respected union all over the world. Apart from its abstract meaning as a social institution, “marriage” has two distinct meaning. It is the ceremony by which a man and a woman become husband and wife or the act of marrying, and the relationship that exists between a husband and his wife or the state of being married.[15] In English law, marriage is an agreement by which a man and a woman

[13] Cap M6 LFN 2004.
[14] EI Nwogugu, (n5) lxxxii.
[15] PM Bromley, *Family Law* (3rd edn, Butterworths & Co Ltd 1966) 2.

enter into certain legal relationship with each other, which creates and imposes mutual rights and duties.[16]

The purpose of marriage may differ from person to person. It is basically for companionship or for the purpose of raising a family. However, to some persons, marriage may be for the sole purpose of acquiring the nationality of a country, or to facilitate entry into a country or to confer a 'right of abode' in a country.[17] For some westerners, marriage may be for the purpose of companionship or for romantic reasons, but in Africa, marriage is usually for the purpose of raising a family. There are couples in Africa who may marry for romantic reasons or for mere companionship, but basically, the issue of raising a family is fundamental in most African marriages.

Marriage dates back to the existence of man on earth. Its origin is founded in the biblical account of the Creation and presentation of the first woman to the first-created man by the Almighty Creator.[18] Flowing from this presentation of the woman to the man, marriage can be described as the union of a living man and a living woman for life. However, there is a distinct form of marriage which is contracted between a living person and a 'deceased person'; usually represented by a living person. This is known as postmortem marriage and practiced in some cultures in Nigeria. Postmortem marriage is a form of customary marriage.

As a universal phenomenon, marriage varies from one custom to another or one society to another. In Nigeria, customary marriage is usually contracted between a man and a woman, as well as their families by implication. Statutory marriage is not subsumed under any particular custom in Nigeria. It is a type of marriage which is contracted and regulated by an Act of the Legislature; the Marriage Act. It is a prototype of marriage in English Law as defined by Lord Penzance in the English landmark case of *Hyde v. Hyde*[19] thus:

> I conceive that marriage, as understood in Christendom, may … be defined as the voluntary union for life of one man and one woman to the exclusion of all others.[20]

This definition involves three conditions. First, the marriage must be voluntary. Secondly, it must be for life. This does not mean that by English law a marriage is indissoluble. Thirdly,

[16] ibid.
[17] Sebastian Poulter, 'The Definition of Marriage in English Law' (1979) 42 (4) MLR 409, 421.
[18] Holy Bible, Genesis 2:22-24.
[19] (1866) LR 1 P & D 130.
[20] ibid 130 [133].

it must be monogamous.[21] Although Lord Penzance made reference to "marriage as it is understood in Christendom", it must not be supposed that this is synonymous with "a Christian marriage".[22] The English courts recognise the legal union as a marriage once it satisfies the three conditions laid down by Lord Penzance, even though neither party professes the Christian faith.[23]

From the definition of Lord Penzance in the above case, marriage is a contractual arrangement between persons of the opposite sex. This definition has statutory backing as only a marriage contracted between a man and a woman is recognised as valid in Nigeria.[24] Marriage, thus, means a legal union entered into between persons of opposite sex in accordance with the Marriage Act, Customary Law or Islamic Law.[25] This statutory definition of marriage expressly excludes same-sex marriage in Nigeria. Thus, same-sex marriage is not recognised but proscribed by law in Nigeria.[26] However, in some foreign countries, same-sex marriage is recognised and the couples are statutorily protected. English family law is no longer infused with the doctrines of the past. Its new philosophy is the attainment of individual happiness so far as this is consistent with the well-being of others.[27] The general concept of marriage as recognised in England which consists of two persons of the opposite sex became modified in recent times by the introduction of Lesbian, Gay, Bisexual and Transgender (LGBT) relationships. Same-sex couples began to be legally recognised. Consequently, this type of union got statutory backing by the passing of the Civil Partnership Act 2004 which granted civil partnerships to same-sex couples in the United Kingdom with rights and responsibilities identical to civil marriage. In 2013, the Marriage (Same Sex Couples) Act introduced civil marriage for same-sex couples in England and Wales. The legislation also enabled civil partners to convert their civil partnership into marriage, and transsexual persons to change their legal gender without having to end their existing marriage. Upon the passing of this Act, the first same-sex marriages in England and Wales took place in March 2014.[28] The UK parliament passed another law which borders on

[21] PM Bromley, (n14) 3-4.
[22] ibid 5.
[23] ibid.
[24] Same Sex Marriage (Prohibition) Act 2013, s 3.
[25] ibid s 7.
[26] ibid s 1.
[27] Sebastian Poulter, (n16) 409, 416.
[28] UK Parliament, 'The Law of Marriage' <https://www.parliament.uk/about/living-heritage/transformingsociety/
private-lives/relationships/overview/lawofmarriage-/> accessed 18 April 2022.

marriage in 2019. It is the Marriages, Civil Partnerships, Marriages and Deaths (Registration Etc.) Act. It came into force on 4th May, 2021 and deals with registration of marriages for civil partnerships, civil marriages and religious marriages.[29] Thus, the term "marriage" in modern day English law includes marital relationship between persons of the opposite sex or the same sex. However, this article focuses on the definition of marriage in English law as stated by Lord Penzance in *Hyde v. Hyde*. In its reference to marriage; whether English or statutory or customary, LGBT union or relationships are not inclusive.

Marriage - Bedrock of Family and Society

Marriage is the root of the family as well as the society. It has been described as the only solid foundation for family life, and that without marriage, there cannot be a stable family, and by extension, a stable society.[30] The family is the smallest unit in the social structure of every society. The family is the basis of every human community, and may be regarded as the nucleus of society.[31] It has also been referred to as the most important primary group in the society which has its roots in our biological and physical nature. As such, it is universal in the sense that no human society could possibly exist or has ever existed without some form of family organisation.[32] Sociologists have explained that marriage does not actually exist for itself. Its roots are in the family and whether or not religion continues to inform ideas concerning marriage, there can be no doubt of the institution of marriage itself.[33] For it satisfies deeply felt needs in human beings, gives meaning and value to men and women, and provides a settled emotional and social environment for the nurture of their children.[34]

Marriage also creates a status, that is, the condition of belonging to a particular class of persons; married persons, to whom the law assigns certain peculiar legal capacities or incapacities in a society.[35] Marriage status is conferred on a person when the solemnities of marriage have been performed. Thus, where the solemnities have not been performed, any form of "live-in" association or cohabitation between persons of the opposite sex is not marriage, properly so called, in Nigeria. One important distinctive mark of customary

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[29] Barking & Dagenham, 'Changes to Marriage' <https://www.lbbd.gov.uk/changes-to-marriage#> accessed 18 April 2022.

[30] MA Ayemieye, 'The Illegality of Cohabitation' being a paper delivered on the occasion of International Federation of Women Lawyers (FIDA) Workshop tagged "Towards a Better Tomorrow" held at Yenagoa, Bayelsa State on 6 June, 2012, 5.

[31] EI Nwogugu, (n5) lxxxvii.

[32] EE Ezewu and others, (n3) 26.

[33] FE Mostyn, (n1) 13.

[34] ibid.

[35] PM Bromley, (n14) 3.

marriage is the payment of bride price coupled with other ceremonies. Where these are absent, the relationship is regarded as mere friendship to which the law relating to validly married couples does not apply.[36] The customs of many tribal societies in Africa provided, in the past, for young people to live together, often promiscuously, until they were ready for marriage and the creation of a family. In fact, the choice in favour of living together outside marriage is not so much an argument against marriage, as against the Christian marriage. It is also no argument against marriage as the socially approved form and emotionally supportive framework within which men and women build their nest and rear their young.[37] Other than Africa, relationships outside marriage occur in every society. Some societies have provided for this by having a secondary type of "marriage" that involves less rights and duties and others have recognised cohabitation as a form of "marriage".[38] Even in Britain, a large number of people perceive and experience cohabitation as a type of marriage.[39] While legal effect has been given to the consensual cohabitation of adults in some western countries, the general law in Nigeria does not recognise or give legal effect to cohabitation. Cohabitation has been regarded as not only an illegality but an aberration. Cohabitation is actually a caricature of marriage and the parties in such a relationship hold themselves out as married persons.[40] The Court of Appeal in the case of *Lawal-Osula v Lawal-Osula*[41] held that living with a man and having children for him alone does not necessarily make a woman a wife of the man under native law and custom. This arrangement is considered illicit and immoral as the couple involved in pre-marital cohabitation hold themselves out as husband and wife while in fact they are not married. The act is thus regarded with odium as it is morally offensive to the sensibilities of people who hold the marriage institution as the foundation of family unit.[42] In *Chawere v Aihenu*[43] it was held that mere living together does not *per se* constitute a customary law marriage. However, there is usually a presumption of marriage under Customary or Islamic law where two persons have cohabited as husband

[36] EI Nwogugu, (n5) lxxxviii.
[37] FE Mostyn, (n1) 13.
[38] Susan H Blake, *Law of Marriage* (Barry Rose Publishers Ltd 1982) 17.
[39] Anne Barlow and others, *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century* (Hart Publishing 2005) 74.
[40] M A Ayemieye, (n29) 4.
[41] [1993] 2 NWLR (Pt 274) 158 [172].
[42] FO Eimunjeze, 'Illegality of Pre-Marital Cohabitation', being a paper delivered on the occasion of the 2013 International Federation of Women Lawyers (FIDA) Week on the Theme – "Today's Woman and Her Family Life: Raising the Child, held at Yenagoa, 1-2.
[43] (1935) 12 NLR 4.

and wife for a long time, unless the contrary is proved.[44] But such presumption is rebuttable. In the case of statutory marriage, there can be no such presumption even if parties have lived together for a long period of time without contracting a valid statutory marriage as prescribed by the Marriage Act.

CULTURE AND THE CONCEPT OF CULTURAL RELATIVISM

Culture is another universally recognised phenomenon. All over the world, people have cultures that permeate their societies and infuse their way of life. Every person is entitled to respect, and to respect a person entails respect for that person's culture. This is because culture comprises to an extent, a person's identity.[45] Culture is regarded as the way of life of a people in a community or tribe. It is the acceptable customary practices by a group of people. The history, tradition and culture of a people form the root foundations of customary law and that is why culture is sometimes interchangeably referred to as custom.[46] Custom means a rule, which in a particular district, has, from long usage, obtained the force of law.[47] Custom has been defined as the unrecorded tradition and history of a people, which has grown with the growth of the people to stability and eventually becomes an intrinsic part of their culture.[48] It is also defined as a usage or practice of the people which by common adoption and acquiescence, and by long and unvarying habit, has become compulsory and acquired the force of law in respect of the place or subject matter to which it relates.[49] Certain customs have been passed into law in Nigeria. The legal system in its pluralistic nature permits the enforcement of those native laws and customs yet to be passed into law, in as much as they are not contrary to natural justice, equity and good conscience, and also not contrary to public policy. The Courts are to take judicial notice of such customs which are also well known, and to enforce those customs in their appropriate localities.[50] Customary law consists of customs accepted by members of a community as binding among them. There is no single system of customary law prevailing in Nigeria. The term 'customary law' covers a wide range of systems of law which differ from one locality to another. The court has described customary law as the organic or living law of an indigenous people of Nigeria which regulates their lives and transactions. It is organic in that it is not static. It is regulatory

[44] Evidence Act 2011, s 166.
[45] Michael Freeman, *Human Rights: An Interdisciplinary Approach* (2nd edn, Polity Press 2012) 126.
[46] BR Akinbola, (n8) 189.
[47] Evidence Act 2011, s 258(1).
[48] *Aku v Aneku* (1991) 8 NWLR (Pt 209) 280 [292 para E].
[49] ibid 280 [294 para C-D].
[50] Fabian Ajogwu, *Law and Society* (Centre for Commercial Law Development 2013) 80.

in that it controls the lives as well as transactions of the community subject to it.[51] The apex court in Nigeria which is the Supreme Court held in the case of *Esuwoye v Bosere*[52] that:

> The customary law of a people is a mirror of their accepted usage and it is no less a source of law as other sources of law. It is a set of rules of conduct applicable to persons and things…[53]

In order for a custom to be adopted as part of the law governing a particular set of circumstances, or forming part of customary law, it has to be judicially noticed or be proved to exist by evidence in court.[54] Thus, where a custom is yet to be judicially noticed, it has to be proved by facts in court.[55] It is only when a particular custom has been adjudicated upon once by a superior court of record in Nigeria that it can be regarded as being judicially noticed.[56] However, no custom shall be enforced as law if it is contrary to public policy, or if it is not in accordance with natural justice, equity and good conscience.[57] Generally, custom is a mirror of the culture of a people. Any culture or way of life of a people is usually anchored on a philosophy.[58]

The philosophical notion that all cultural beliefs are equally valid and that truth itself is relative, depending on the cultural environment, is the basis of cultural relativism. It is the principle that an individual human's beliefs and activities should be understood in terms of his or her own culture, and no culture is superior to any other culture when comparing systems of morality, law, politics, etc.[59] Cultural relativism is the ability to understand a culture on its own terms and not make judgments using the standards of one's own culture.[60] It is also the view that ethical and social standards reflect the cultural context from which

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[51] *Oyewumi Ajagungbade III v Ogunsesan* (1990) 3 NWLR (Pt 137) 207.
[52] [2017] 1 NWLR (Pt 1546) 256.
[53] ibid 256 [325 paras G-H].
[54] Evidence Act 2011, s 16(1).
[55] Evidence Act 2011, s 18(1).
[56] Evidence Act 2011, s 17.
[57] Evidence Act 2011, s 18(3).
[58] CS Momoh 'Nature, Issues and Substance of African Philosophy' in J. Unah (ed), *Metaphysics, Phenomenology and African Philosophy* (Hope Publishers 1996) 309.
[59] Social Science LibreTexts, 'Cultural Relativism' <https://socialsci.libretexts.org/to/Cultural_Anthropology/Book%3A_Cultural_Anthropology_(Evans)/01%3A_What_is_Anthropology/1.06%3A_Cultural_Relativism> accessed 12 June 2022.
[60] ibid.

they are derived.[61] Values, knowledge and behaviour of people should be understood within their own cultural context.[62] Cultural relativism differs from and tries to counter ethnocentrism by promoting the understanding of cultural practices that are unfamiliar to other cultures. Ethnocentrism is the tendency to look at the world primarily from the perspective of one's own culture. It is the belief that one's own race, ethnic or cultural group is the most important or superior to those of other groups.[63] Cultural relativism means preserving and defending cultures in the name of dignity. It does not mean refusing to allow any type of critique or using the culture to keep part of the population subjugated.[64] When culture is used to subjugate people or a part of the population, this amounts to marginalisation and discrimination. In addition to the fact that culture or custom should not be repugnant to natural justice, equity and good conscience, it must not be incompatible either directly or by necessary implication with any statutory law for the time being in force. It must not also be contrary to public policy.[65]

DISSOLUTION OF CUSTOMARY MARRIAGE

Customary marriage can be dissolved either by recourse to the court or without recourse to the court. In other words, there are two methods, either of which customary marriage can be dissolved. These are judicial or non-judicial methods.

Non-judicial mode comprises certain unambiguous overt acts by the husband or wife and an express declaration of the dissolution of the marriage to the other party.[66] The overt acts include the husband quitting the matrimonial home and informing the wife and her maiden family that he is no longer interested in continuing with the marriage, and demanding for a refund of the bride price. Another overt act is requesting the wife to return or taking her to her maiden family, informing them of his discontinuance with the marriage and requesting for the bride price.[67] The wife on the other hand may quit her matrimonial home, inform her

[61] Carnegie Council for Ethics in International Affairs, 'Cultural Relativism' <https://www.carnegiecouncil.org/explore-engage/key-terms/cultural-relativism> accessed 13 July 2022.
[62] Nicki Lisa Cole, 'Definition of Cultural Relativism in Sociology' <https://www.thoughtco.com/cultural-relativism-definition-3026122> accessed 13 July 2022.
[63] Maricopa Community Colleges, 'Ethnocrentrism and Cultural Relativism – Culture and Psychology', <https://open.maricopa.edu/culturepsychology/chapter/ethnocentrism-and-cultural-relativism/ > accessed 18 July 2022.
[64] F Nduwimana, IA Rehman, 'Universality and Cultural Relativism' [June 13 2003] <www.equitas.org/english/programs/downloads/ihrtp-proceedings/24th/universality.pdf> accessed 11 June 2019.
[65] Evidence Act 2011, s 18(3).
[66] Margaret C Onokah, *Family Law* (Spectrum Books Limited 2003) 168.
[67] ibid 167.

estranged husband of the dissolution of their marriage and request her maiden family to return the bride price.[68] There are different overt acts a husband or a wife can display, but in all of these, the issue of refund of bride price is essential. The Court of Appeal has held that a woman who is a wife of a man under native law and custom does not divorce the man merely by leaving him and staying with another for whom she has children.[69] Refund of bride price is a sine qua non for dissolution of customary marriage, more particularly non-judicial dissolution.[70] Thus, unless there is a refund of bride price or an agreed quantum of it, couples married under customary law are regarded by law as still validly married even though they are separated.[71] However, where attempts to refund the bride price fail due to the husband's unwillingness to accept, it will be unreasonable to claim that the marriage subsists. This is because it would be improper to compel an unwilling spouse to continue in the marriage.[72] Conversely, where a husband requests for refund of the bride price but the family of his estranged wife fails to do so, it would also be inappropriate to contend that the marriage subsists, and compel the husband to proceed with the marriage. There are instances in which a husband may forfeit the refund of bride price or waive it,[73] where a request for refund has been made but the family of the estranged wife is willing but unable to refund the bride price or agreed quantum of it due to certain prevailing circumstances. In such instance, it would be burdensome to insist that the marriage is not dissolved yet because bride price has not been refunded.

Parties intending to dissolve their customary marriage by judicial method would institute an action at the customary court situated in the locality where the customary law under which their marriage was contracted. There are customary courts in different States in Nigeria, which require such courts, and at the Federal Capital Territory, Abuja. A customary court does have and exercise original jurisdiction over matrimonial causes and matters in respect of marriages under customary law.[74] Recourse is usually had to the court where a husband refuses to accept a refund of the bride price he paid on his wife, or where a wife refuses to

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[68] Margaret C Onokah, (n65) 168.

[69] *Lawal-Osula v Lawal-Osula* [1993] 2 NWLR (Pt 274) 158 [172].

[70] Mary-Ann O Ajayi, 'The Dissolution of Customary Law Marriage in Nigeria and Intestate Inheritance: A Review of the Supreme Court Decision in Okonkwo v Ezeaku' <https://www.researchgate.net/publication/350663639_The_Dissution_of_Customary_Law_Marriage_in_Nigeria_and_Intestate_Inheritance_A_Review_of_the_Supreme_Court_Decision_in_Okonkwo_v_Ezeaku> accessed 6 August 2022.

[71] ibid.

[72] ibid.

[73] Margaret C Onokah, (n65) 176.

[74] Customary Courts Law of Bayelsa State 2022, s 6(1).

leave the matrimonial home on being asked to do so by her husband, or where parties fail to reach an agreement on the quantum of the bride price repayable.[75] Dissolution of marriage by the court is inchoate until there has been a refund of the bride price[76] or an agreed amount of it. In the Supreme Court case of *Egri v Uperi*,[77] it was held that an order for the refund of bride price is usually made subsequent to an order for the dissolution of the marriage in proceedings for dissolution of customary marriage before a customary court.[78] Where a party is dissatisfied by the decision of the court, an appeal can be filed at the Customary Court of Appeal of that State in which the customary law subsists, under which the marriage was contracted. Customary Court of Appeal is a superior court of record which entertains appeals in civil proceedings from customary courts.[79]

Statutory Marriage and Its Divorce

Statutory marriage is a prototype of an English marriage or a Christian marriage. It is contracted under the Marriage Act in Nigeria and celebrated in a licensed place of worship or the office of a registrar of marriages.[80] Flowing from the definition of Christian marriage in English law by Lord Penzance, a statutory marriage in Nigeria is also a voluntary union of one man and one woman to the exclusion of all others, for the period of their lifetime except determined by divorce by a competent court. The evidence of statutory marriage is the marriage certificate filed in the office of the registrar and registered in the marriage register book.[81] Statutory marriage is a monogamous marriage as opposed to customary marriage which is inherently polygamous.

A statutory marriage is terminated at the death of either spouse. It can also be terminated by a decree of dissolution of the marriage by a court of competent jurisdiction; usually the High Court. The only ground for which the court can grant a decree of dissolution of a statutory marriage is that the marriage has broken down irretrievably.[82] Unlike a customary marriage, a statutory marriage cannot be dissolved by non-judicial mode. The procedure for dissolution of a statutory marriage has to be commenced in court. A petition for dissolution

[75] SN Chinwuba Obi, *Modern Family Law in Southern Nigeria* (African Universities Press 1966) 365.
[76] Margaret C Onokah, (n65) 175.
[77] [1974] 4 ECSNLR 632.
[78] [1974] 4 ECSNLR 632 [637-638 per Fatayi-Williams JSC].
[79] Customary Court of Appeal Law (Cap C16) Laws of Bayelsa State of Nigeria 2006, s 1(2); Customary Court of Appeal Law (Cap C24) Laws of Delta State of Nigeria 2008, s 3(2).
[80] Marriage Act (Cap M6) Laws of the Federation of Nigeria (LFN) 2004, ss 13, 21 and 29.
[81] Marriage Act (Cap M6) LFN 2004, ss 30(1) and 32.
[82] Matrimonial Causes Act (Cap M7) LFN 2004, s 15.

of marriage can be presented to the court either by the husband or the wife of a statutory marriage. However, no petition for divorce may be presented within the first two years of marriage except with the leave of the court.[83] This two year bar to divorce can be regarded as a useful safeguard against irresponsible or trial marriages and a valuable external buttress to the stability of marriages during the difficult early years.[84] It is also to enable or encourage spouses encountering the initial adjustment difficulties of married life to try to resolve them, rather than to seek a solution in immediate divorce.[85]

THEORETICAL PERSPECTIVE OF THE TWO TYPES OF MARRIAGE AND DIVORCE

As stated earlier, cultural relativism is the view that no culture is superior to any other culture.[86] It has been observed that both the common law of England and African customary law enjoy the same origin and history and none is superior to the other.[87] This position has also been buttressed with the Nigerian Supreme Court decision of *Nwaigwe v Okere*,[88] where Onnoghen J.S.C. emphasised that English law also includes English common law which does not enjoy a higher legal status than Nigerian customary law.[89] In the light of this, this paper shall consider the two recognised types of marriage in Nigeria side by side. Before the advent of the Europeans and prior to enacting the Marriage Act in 1914, there was no English and statutory marriages respectively. Customary marriage was the only recognised marriage. It was not regarded as subordinate to any marriage in any part of the world. Currently, both customary marriage and statutory marriage are recognised types of marriage in Nigeria. None of the marriages can be said to be less significant than the other. Customary marriage is indigenous and existed before the introduction of statutory marriage. In typical cultural settings in Nigeria, where a couple contracts a statutory marriage without contracting a customary marriage or taking any step towards initiating a customary marriage, the extended family members of the husband do not normally recognise the woman as a wife married into their family and do not usually accord her the full respect given to other wives customarily married into the man's larger family, except or until the appropriate customary marriage steps are begun or taken. Thus, customary marriage is very significant in its respect, and of no less important than statutory marriage. It is just the

[83] Matrimonial Causes Act (Cap M7) LFN 2004, s 30(1).
[84] John Eekelaar, *Family Security and Family Breakdown* (Penguin Books Ltd 1971) 73.
[85] ibid 173.
[86] Social Science LibreTexts, (n58).
[87] Matthew Enya Nwocha, 'Customary Law, Social Development and Administration of Justice in Nigeria' <https://www.scirp.org/journal/paperinformation.aspx?paperid=73207> accessed 13 August 2022.
[88] (2008) 34 NSCQR 1325; [2008] 9 MJSC 86 [107 para A].
[89] Matthew Enya Nwocha, (n86).

features of the marriages that are different. One is polygamous in nature and the other is monogamous.

Statutory marriage has the feature of monogamy by virtue of section 33(1) and section 46 of the Marriage Act which also makes it an offence to breach its monogamous nature. Although the Marriage Act prohibits contracting a subsequent customary marriage after a statutory marriage has been contracted,[90] customary marriage is no less a marriage than statutory marriage. It is somewhat discriminatory to regard a couple that contracted a valid customary marriage as being less of a married couple than the ones who contracted statutory marriage. The Marriage Act does recognise the validity of customary marriage in Nigeria and provides for its protection[91] despite the fact that its provisions do not apply to customary marriages contracted in the different ethnic groups in Nigeria.[92] Although customary marriage in Nigeria is potentially polygynous, there are still customary marriage husbands who do not have more than one wife.

Customary marriage can be dissolved extra-judicially (non-judicially) or by recourse to the court. Thus, both statutory and customary marriages can be dissolved in recognised courts in Nigeria. While customary marriage can be dissolved in customary courts, the Matrimonial Causes Act provides that statutory marriage can be dissolved in the High court. Although the High court is a superior court of record as opposed to customary court, the dichotomy of superiority or otherwise is between the courts and not the marriages.

Dual Marriage - Effect of Dissolution of one Marriage on the other

Since customary and statutory marriages are not inferior to each other, an attempt shall now be made to consider the question whether dissolution of the latter marriage contracted between couple also dissolves the former marriage, where a dual marriage was contracted between the same couple. A few authors have attempted proffering an answer to this question, and their suggestions would be replicated below.

One author addressed this issue from the standpoint of death of a spouse. According to him, although the death of a wife terminates a customary marriage, the death of a husband does not terminate the customary marriage whereas in a statutory marriage, the death of either spouse terminates the statutory marriage.[93] He opined that, what the effect of a

[90] Marriage Act (Cap M6) LFN 2004, ss 35 and 47.
[91] Marriage Act (Cap M6) LFN) 2004, s 33(1).
[92] Marriage Act (Cap M6) LFN 2004, s 35.
[93] SN Chinwuba Obi, (n74) 378 [380].

husband's death would be on the legal capacity of his widow, who was married to him by both customary law and statutory law is not clear. According to Obi, two conflicting views have been suggested namely - that the two marriages are independent of each other for all purposes so that the dissolution of one does not affect the existence of the other and secondly, that the customary marriage merges with the statutory marriage irrespective of the order in which they were contracted. Thus, dissolution of the statutory marriage means the simultaneous dissolution of the customary marriage. He concluded that both suggestions are plausible in their different ways and must await the verdict of the courts.[94]

Another author, on the other hand went a step further by taking a particular stance. Nwogugu considered two cases before taking a stance[95] – the case of *Asiata v Goncallo*[96] and the case of *Ohochukwu v Ohochukwu*.[97] In Asiata's case, one Alli Elese, a Muslim from Yoruba tribe was taken as slave to Brazil where he married Selia, an African freed woman, by Muslim rights and later under Christian rites in a Church in Brazil. They had two daughters. On Alli Elese's return to Nigeria with Selia, and during her lifetime, after the Marriage Ordinance had been passed into law in 1884, Alli Elese married Asatu according to Muslim rites and had Asiata; the plaintiff in the case. On the death of Alli Elese, the question arose as to which of his children should be entitled to his estate. The court had to decide whether the marriage to Asatu was legal - that if the Christian marriage between Alli Elese and Selia superseded the Muslim marriage between them, then the marriage with Asatu was invalid. On the other hand, if the Muslim marriage between Alli Elese and Selia was not superseded by the subsequent Christian marriage, then his marriage to Asatu was valid. The Divisional Court held that the second marriage (to Asatu) was invalid. On appeal, the Full Court held that the Christian marriage between Alli Elese and Selia was merely one as to form since Alli Elese was taken against his will to Brazil; he lived and died as a Muslim; and only complied with the local form of marriage in Brazil which was Christian marriage. Nwogugu concluded that Asiatu's case is not an authority for the proposition that a subsequent statutory or Christian marriage does not supersede a customary marriage.[98] In the second case; Ohochukwu's case, the parties were married by customary law in 1949, and in 1953 when the wife went to join her husband who proceeded to England in 1950 for studies, another marriage was contracted between the parties under Christian rites in order for the

[94] ibid 380-381.
[95] EI Nwogugu, (n5) 66.
[96] (1900) 1 NLR 41.
[97] [1960] 1 ALL ER 253.
[98] EI Nwogugu, (n5) 67.

wife to produce a marriage certificate in England. In a petition for divorce later brought by the wife, the court per Wrangham J., ordered a decree nisi for the statutory marriage contracted in England and not for the customary marriage contracted in Nigeria on the ground that English courts of divorce have no jurisdiction to dissolve polygamous marriages. Nwogugu opined that Ohochukwu's case cannot be regarded as an authority for the view that a decree of dissolution of statutory or Christian marriage does not dissolve a previous customary marriage because it involves issues of conflict of laws. However, the attitude of Nigerian court faced with such similar facts would be different.[99] On this basis, the author submitted that according to Nigerian law, a decree nisi would dissolve both statutory and customary marriages. Furthermore, it was submitted that with regard to incidents of marriage, whatever customary law rights parties acquired from the previous customary marriage are suspended upon celebration of statutory marriage.[100] The stance taken by the author is that a subsequent statutory marriage supersedes a previous customary marriage based on the reasons that solemnisation of statutory marriage is unknown to customary law so a different system of law will apply to the parties, and statutory marriage clothes the parties with rights and obligations which are unknown to customary law.[101] This stance implies conversion of a previous customary marriage into the subsequent statutory marriage.

This paper takes a different stance - the two marriages are independent of each other. Consequently, the dissolution of one does not affect the existence of the other. There are two separate or distinct marriages existing between the couple and the modes of contracting these marriages are governed by different laws. The Marriage Act regulates statutory marriage but does not apply to marriages contracted under customary law.[102] Furthermore, the two marriages require different procedures to be taken before they can be dissolved. While statutory marriage can only be dissolved through judicial means, customary marriage can be dissolved either judicially or extra-judicially. The law regulating dissolution of statutory marriage is different from that of customary marriage. While the Matrimonial Causes Act regulates dissolution of statutory marriage, the various indigenous customary laws regulate dissolution of customary marriages contracted therein. More so, the courts where divorce proceedings are filed also differ. Thus, since the laws regulating the marriages and their divorce are different, contracting a statutory marriage subsequent to

[99] ibid.
[100] ibid.
[101] ibid 67-68.
[102] Marriage Act (Cap M6) LFN 2004, s 35.

contracting a customary marriage does not convert or subsume the customary marriage under the statutory marriage. They are two separate marriages with two different features which cannot be subsumed under each other. Customary marriage is potentially polygamous while statutory marriage is outright monogamous in nature. However, by contracting a subsequent statutory marriage, the potentially polygamous feature of customary marriage is only kept in abeyance pending the dissolution of the latter marriage since the different features of the two marriages cannot co-exist. Thus, contracting a statutory marriage after having contracted a customary marriage only keeps the customary marriage in abeyance pending the termination of the statutory marriage. It is submitted that where customary marriage was contracted prior or subsequent to statutory marriage by the same couple, the dissolution of the statutory marriage does not dissolve the customary marriage. In the Supreme Court case of *Olowu v Olowu*,[103] the court held that change of personal law choice is not new to Nigerian legal system. That the classical case[104] which has been followed by a plethora of cases since 1898, *converts into an English man or woman for the purpose of distribution of his or her estate upon his or her death intestate* any Nigerian irrespective of his or her customary law who contracts a marriage by Christian rites or according to English law,[105] [emphasis mine]. The Court reiterated this in the following words:

> It is pertinent to note that the mere choice by the spouses to marry by Christian rites or according to English law or in accordance with the provisions of the Act coupled with the celebration of the marriage, without having any connection or association with England whatever, render the spouses to become English spouses for the purpose of the distribution of their estate if either dies intestate. It is in order to ensure that spouses voluntarily and with full knowledge of the consequences contract such a marriage that section 36(2) of the Act enjoins the Registrar to explain to both parties the effect of the provisions of the Section.[106]

[103] [1985] 3 NWLR (Pt 13) 372.
[104] *Cole v Cole* (1898) 1 NLR 15.
[105] *Olowu v Olowu* [1985] 3 NWLR (Pt 13) 372 [390 paras C-E].
[106] ibid 372 [391 paras A-B per Bello JSC].

In considering the classical case; *Cole v Cole*,[107] which from the facts and circumstances of the case it was held that English Law of succession will prevail over Customary Law, the Supreme Court in *Olowu v Olowu* opined that much will depend on the facts and circumstances of each individual case.[108] A close look at this Supreme Court decision reveals that conversion into an English man or woman by contracting a Christian marriage is for the sole purpose of distribution of the deceased estate where he or she dies intestate, and not for all purposes. The decision does not convert customary marriage into Christian marriage or statutory marriage. Neither of the marriages is inferior to the other. It is rather the disposition of some Nigerians towards customary marriage when compared to the inclination towards statutory marriage that created this paradox. The same attitude is displayed towards our customary laws and reflected in statutes. According to Nwocha, Nigerian customary law has suffered certain attitudinal setbacks right from colonial era.

This was pointed out in the following words:

> Since the introduction of English law in the administration of justice in Nigeria ... customary law has been fighting for breath and a large chunk of it has not survived the conflict that was the necessary outcome of the contact.…In the colonial era African customary law was generally regarded by the euro-centric colonial operators as barbaric, inordinate and inapplicable save those ones that have passed the repugnancy tests set by them whereas several aspects of the common law of England were transported to apply directly to the colonial territories as statutes of general application without let or hindrance.[109]

The Supreme Court has also decried this attitude towards customary law, which is usually treated like foreign law, in the following words:

> I must pause here to register my regret that our customary law is still bogged down by this annoying vestige of colonialism. There is strictly no difference or at least a clear divide between customary law and custom as such:

[107] (1898) 1 NLR 15.
[108] *Olowu v Olowu* (n104) 372 [403 paras H-A per Oputa JSC].
[109] Matthew Enya Nwocha, (n86).

> both are subjected to the same treatment. The result is that our customary law is still treated like foreign law in our own country … decades after our independence from colonial rule. This is far from satisfactory.[110]

There would be the need for a change of attitude towards customary law and customary marriage in Nigeria. Since the procedure for dissolution of customary marriage is different from the procedure for statutory marriage, it is therefore reiterated that dissolution of statutory marriage does not divorce all marital ties between couple in a dual marriage. It is expedient that a non-judicial procedure for dissolving the customary marriage between the couple should be done. A request for refund of bride price or an agreed quantum of it, or a waiver where it is impracticable for the time being to refund the bride price, or an actual refund would suffice.

CONCLUSION AND RECOMMENDATIONS

Marriage is a recognised institution which creates status in society. It is basically in two categories - monogamy and polygamy. While persons in monogamous marriage are entitled to just a spouse during the subsistence of their marriage, persons in polygamous marriage are entitled to have as many spouses as they wish. The aspect of polygamy generally accepted in Nigeria is polygyny. Polyandry which is the marriage of one woman to two or more husbands at the same time is quite rare, and even prohibited by indigenous customs. More so, in Nigeria, the persons on whom marriage status is conferred with must be persons of the opposite sex.

The general law does not give legal effect to cohabitation. However, as stated earlier, where parties have lived together over a long period of time so that they are regarded as husband and wife, there is usually a presumption of customary or Islamic marriage, but such presumption is rebuttable. Customary marriage and statutory marriage are basically the two types of marriage legally recognised in Nigeria. Although there is Islamic marriage, which some authors regard as a type of customary marriage, this paper focused on just customary marriage and statutory marriage, with particular reference to their dissolution. This paper dealt with customary and statutory marriages contracted by the same couple and the effect of dissolution of one marriage on the other.

[110] *Ugo v Obiekwe* [1989] 1 NWLR (Pt 99) 566 [583, paras G-H per Nnaemeka-Agu JSC].

Dissolution of marriage is obtainable both in statutory and customary marriages. Just as the procedures for contracting the two types of marriage differ so also the procedures for their dissolution differ. A statutory marriage is said to be dissolved when it is terminated by death or divorce. But a customary marriage may likely be regarded as terminated at the death of the wife and not at the death of the customary law husband. More so, where a Customary Court makes an order dissolving the marriage on refund of bride price or a quantum of it, the marriage can be said to be dissolved. While statutory marriage can be dissolved by judicial means, customary marriage can be dissolved either by judicial or non-judicial means. The courts charged with the responsibility of dissolving statutory marriage is the High Court. This is different from the court responsible for the dissolution of customary marriage, that is, the Customary Court. It is the Courts responsible for dissolution of the different marriages that are superior or inferior to each other and not the marriages. Persons married under customary law are no less married couples than those married under the Marriage Act. There seems to be a pervasive attitude among some Nigerians that customary marriage is inferior to statutory marriage. This has also been observed by a learned author. According to him, it seems there is a legislative and judicial conspiracy to relegate polygamy to an inferior position in Nigeria.[111] There is scarcely any justification for the dichotomy between the status created by statutory marriage and that created by customary law marriage.[112] The polygamous nature of customary marriage tends to be equated with inferiority while the monogamous nature of statutory marriage appears to connote superiority. Consequently, some married couples contract a dual marriage – one under customary law and another marriage under the Marriage Act. In a situation where there are irreconcilable differences between the couple and where divorce is inevitable, does the dissolution of one form or type of marriage have any effect on the other type of marriage? As stated earlier, there are two conflicting views about the effect of dissolution of statutory marriage on customary marriage. One view is that customary marriage is converted into statutory marriage irrespective of which marriage is contracted first. This implies that dissolution of the statutory marriage separates all marital ties between the couple. The other view is that both marriages are independent of each other. It therefore implies that a statutory divorce does not separate all marital ties between the couple.

This paper takes the position of this latter view. It was submitted that, although the features of both marriages are different, none of the marriages can be regarded as inferior or superior

[111] LOC Chukwu, 'The Metamorphosis of Polygamy in Private International Law' (2011) 15 (1) Nig.LJ 179.
[112] ibid.

to the other. Furthermore, the dissolution of statutory marriage does not *ipso facto* dissolve a customary marriage. Dissolution of statutory marriage would not affect the subsistence of the customary marriage contracted between the same couple either prior or subsequent to the statutory marriage. Each marriage has to be specifically dissolved in accordance with its procedure. The divergent views await an express verdict of the apex court. Although the Supreme Court has made notable pronouncement which, to an extent, addresses the issue, it is recommended that to avoid any doubt, a clear-cut decision by the Court is required on this issue. Currently, there is a dearth of decided cases which address these divergent views. Consequently, there may likely be dichotomous decisions of the Courts on this issue depending on the particular divergent view that appeals to and appears more persuasive to the Judge. It is therefore reiterated that in order for there to be a binding precedent on lower courts, a final decision of the Supreme Court is required. Thus, parties to a dispute on the subject matter should not relent until an appeal is heard by the apex court and a binding precedent is established. It is also recommended that since customary marriage is dissolved either judicially or extra-judicially, a statutorily divorced spouse should continue to assert his or spousal rights until a customary divorce is done. Where several statutorily divorced spouses assert their spousal rights pending their customary divorce, more awareness of the necessity to commence customary divorce will be achieved. This can also trigger more cases requiring court decisions on the matter, and certainly, in no distant time, a decision by the apex court will then be given. Lastly, it is my opinion that decisions of courts have a way of swaying the minds of people in a particular direction which can result in perceptive or attitudinal change. There ought to be a change in the disposition of Nigerians towards regarding customary marriage as inferior to statutory marriage. A pronouncement of the court on the equal status of these two marriages would be necessary and it is therefore recommended.

REFERENCES

African Studies Centre Leiden, 'Islam in Nigeria' <https://www.ascleidon.nl/content/webdossiers/islam-nigeria> accessed 26 June 2022

Ajogwu F, *Law and Society* (Centre for Commercial Law Development 2013)

Akinbola BR, 'Islamic Law as an Aspect of Customary Law in Nigeria- A Call for Review' (2006) 5 UIJPL 193

Ayemieye MA, 'The Illegality of Cohabitation' being a paper delivered on the occasion of International Federation of Women Lawyers (FIDA) Workshop tagged "Towards a Better Tomorrow" held at Yenagoa, Bayelsa State on 6 June, 2012

Barking & Dagenham, 'Changes to Marriage' <https://www.lbbd.gov.uk/changes-to-marriage#> accessed 18 April 2022.

Blake SH, *Law of Marriage* (Barry Rose Publishers Ltd 1982)

Bromley PM, *Family Law* (3rd edn, Butterworths & Co Ltd 1966)

Carnegie Council for Ethics in International Affairs, 'Cultural Relativism' <https://www.carnegiecouncil.org/ explore-engage/key-terms/cultural-relativism> accessed 13 July 2022

Chukwu LOC, 'The Metamorphosis of Polygamy in Private International Law' (2011) 15 (1) Nig.LJ 179

Eekelaar J, *Family Security and Family Breakdown* (Penguin Books Ltd 1971)

Eimunjeze FO, 'Illegality of Pre-Marital Cohabitation', being a paper delivered on the occasion of the 2013 International Federation of Women Lawyers (FIDA) Week on the Theme – "Today's Woman and Her Family Life: Raising the Child, held at Yenagoa

Ezewu EE and others, *Sociological and Philosophical Foundations of Education* (Heinemann Educational Books (Nigeria) Limited 1981)

Freeman M, *Human Rights: An Interdisciplinary Approach* (2nd edn, Polity Press 2012)

Maricopa Community Colleges, 'Ethnocrentrism and Cultural Relativism – Culture and Psychology', <https://open.maricopa.edu/culturepsychology/chapter/ethnocentrism-and-cultural-relativism/ > accessed 18 July 2022.

Mary-Ann O Ajayi, 'The Dissolution of Customary Law Marriage in Nigeria and Intestate Inheritance: A Review of the Supreme Court Decision in Okonkwo v Ezeaku' <https://www.researchgate.net/publication/350663639_
The_Dissution_of_Customary_Law_Marriage_in_Nigeria_and_Intestate_Inheritance_A_Review_of_the_Supreme_Court_ Decision_in_Okonkwo_v_Ezeaku> accessed 6 August 2022

Momoh CS 'Nature, Issues and Substance of African Philosophy' in J. Unah (ed), *Metaphysics, Phenomenology and African Philosophy* (Hope Publishers 1996) 309
Mostyn FE, *Marriage and the Law: The Law of the Family* (Oyez Publishing Limited 1976)
Nduwimana F, Rehman IA, 'Universality and Cultural Relativism' [June 13 2003] <www.equitas.org/english/programs/downloads/ihrtp-proceedings/24th/universality.pdf> accessed 11 June 2019.
Nicki Lisa Cole, 'Definition of Cultural Relativism in Sociology' <https://www.thoughtco.com/cultural-relativism-definition-3026122> accessed 13 July 2022.
Nigerian Marriages: A Historical Background including Divorce Laws' <https://onlinenigeria.com/marriages-in-nigeria/> accessed 24 June 2022
Nwocha ME, 'Customary Law, Social Development and Administration of Justice in Nigeria' <https://www.scirp.org/journal/paperinformation.aspx?paperid=73207> accessed August 13, 2022
Nwogugu EI, *Family Law in Nigeria* (revised edn, Heinemann Educational Books (Nigeria) Plc 1990)
Obi SNC, *Modern Family Law in Southern Nigeria* (African Universities Press 1966)
Obilade AO, *The Nigerian Legal System* (Sweet & Maxwell 1979)
Onokah MC, *Family Law* (Spectrum Books Limited 2003)
Sebastian Poulter, 'The Definition of Marriage in English Law' (1979) 42 (4) MLR 409
Social Science LibreTexts, 'Cultural Relativism' <https://socialsci.libretexts.org/to/Cultural_Anthropology/Book%3A_Cultural_Anthropology_(Evans)/01%3A_What_is_Anthropology/1.06%3A_Cultural_Relativism> accessed 12 June 2022
UK Parliament, 'The Law of Marriage' <https://www .parliament.uk/about/living-heritage/transformingsociety /private-lives/relationships/overview/lawofmarriage-/> accessed 18 April 2022

CASES

Aku v Aneku (1991) 8 NWLR (Pt 209) 280
Asiata v Goncallo (1900) 1 NLR 41
Chawere v Aihenu (1935) 12 NLR 4
Chinweze v Masi [1989] 1 NWLR (Pt 97) 254
Cole v Cole (1898) 1 NLR 15
Egri v Uperi [1974] 4 ECSNLR 632

Esuwoye v Bosere [2017] 1 NWLR (Pt 1546) 256
Hyde v Hyde (1866) LR 1 P & D 130
Lawal-Osula v Lawal-Osula [1993] 2 NWLR (Pt 274) 158
Nwaigwe v Okere (2008) 34 NSCQR 1325; [2008] 9 MJSC 86
Ohochukwu v Ohochukwu [1960] 1 ALL ER 253
Olowu v Olowu [1985] 3 NWLR (Pt 13) 372
Oyewumi Ajagungbade III v Ogunsesan (1990) 3 NWLR (Pt 137) 207
Ugo v Obiekwe [1989] 1 NWLR (Pt 99) 566

STATUTES

Customary Courts Law of Bayelsa State 2022
Customary Court of Appeal Law (Cap C16) Laws of Bayelsa State of Nigeria 2006
Customary Court of Appeal Law (Cap C24) Laws of Delta State of Nigeria 2008
Evidence Act 2011
Marriage Act (Cap M6) LFN 2004
Matrimonial Causes Act (Cap M7) LFN 2004
Same Sex Marriage (Prohibition) Act 2013
Marriage (Same Sex Couples) Act 2013
Marriages, Civil Partnerships, Marriages and Deaths (Registration Etc) Act 2019