

AM I LEGALLY MARRIED
UNDER NIGERIAN LAW?

THE INTERPLAY BETWEEN CUSTOMARY AND STATUTORY MARRIAGES IN NIGERIA.



BY DEINMA DIBI & CHINASA AKACHUKWU

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ABSTRACT

“A man married his 1st wife traditionally, his 2nd wife through white wedding and his 3rd wife through Court. Please who is the Real/Legal Wife?” This question had social media on a buzz, with different dissenting views about who should be recognised as the “real/legal wife.” Bear in mind that the question as captioned is not an accurate representation of how a valid marriage is categorised under Nigerian law, however, this article analysed this scenario by identifying what a valid marriage is under the Nigerian law. For context, there are two types of marriages recognized in Nigeria; statutory and customary marriages. A statutory marriage is regulated by the Marriage Act and the Matrimonial Causes Act and Matrimonial Causes Rules .

Keywords: Marriage, Marriage Act, Validity of Marriage

INTRODUCTION

The article delves into the legal complexities surrounding marriage in Nigeria; a culturally diverse nation with rich traditions. It highlights the significance of Nigerian laws governing marriage, focusing on the Marriage Act¹ and the Matrimonial Causes Act.² This article further interrogates the validity of marriages conducted under both customary and statutory laws. In determining the true position of the law, we examined some landmark cases in Nigeria, which sheds light on this issue. Finally, the article examines the effect of marriages celebrated in a ‘place of worship’ under the provisions of the Marriage Act, highlighting the requirements and implications of such a union within the Nigerian legal system. The exploration of Nigeria's marriage laws will not only inform, but also provoke thoughts and discussions among readers.

Nigeria being a culturally diverse nation, recognizes the dichotomy in the traditions and cultures of the citizens. The Nigerian legislations on marriage have attempted to cover the field on matters pertaining to the contract or sanctity of marriage as most of the provisions were formed on the basis of the dynamic nature of Nigerian cultures, religions and standard practices.

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¹ CAP M6 Laws of the Federation of Nigeria, 2004.

² CAP M7 Laws of the Federation of Nigeria, 2004.

To critically examine what amounts to a valid marriage in Nigeria, recourse must be made to the Marriage Act, considering that the Matrimonial Causes Act deals majorly with matters of procedure, dissolution of marriage, grounds for dissolution, etc. Since the courts cannot dissolve a marriage that was void *ab initio*³, the question on what amounts to a valid marriage would arise during the dissolution of a marriage, death of a spouse, or where a testator⁴ married more than one wife.

Validity of a Marriage

It is imperative to establish what a valid marriage is under the law. Marriage has been defined by the Supreme Court of Nigeria in *Amobi V. Nzegwu & Ors*⁵, as the legal union of a couple as spouses. In other words, it is “the voluntary union for life of one man and one woman to the exclusion of all others.”⁶ Additionally, a marriage is valid if it is a marriage between a man and a woman thereby creating the status of husband and wife.⁷ The marriage must also be conducted by two people who are legally capable of marrying each other and in accordance with the custom or provisions of the Marriage Act for it to be a valid marriage.

There is no argument regarding the above position. However, the question that remains unsettled in the minds of many Nigerians, despite the courts’ attempts to address it, is this:

In a scenario where a man marries three wives - the first through customary marriage, the second through a church ceremony (often referred to as a "white wedding"), and the third through a statutory marriage or "court marriage" - which of the wives is legally recognized as the man's wife?

In addressing this scenario reference is made to the case of *Nola & Ors V. Graham-Douglas & Anor*⁸ which although not a replica of the above scenario, may be applicable to the case at hand.

In *Nola & Ors (supra)*⁹, the Respondent, Mr. Duboye Graham-Douglas, instituted an action at the High Court of Rivers State (as the claimant) for himself and as the Legal Representative of the Estate of Mrs. Gladys Claudiana Douglas, and sought declaratory and other reliefs concerning the Will of late Chief Donald Graham-Douglas (late Chief Douglas).

Chief Donald Graham-Douglas (the testator) during his lifetime, married his first wife, late Mrs. Claudiana Douglas under the “Iya” Customary Marriage of the Kalabari clan in Rivers

³ “*Ab initio*” means “From the beginning; from the first act; from the inception. An agreement is said to be "void ab initio" if it has at no time had any legal validity”, See Black’s Law Dictionary 10th Edition. A contract is void ab initio if it is legally **unenforceable** from the moment it was created.

⁴ Someone who has made a will; especially, a person who dies leaving a will. See Black’s Law Dictionary, 10th Edition.

⁵ (2013) LPELR-21863(SC),

⁶ Per Olukayode Ariwoola, JSC (P. 61, paras. D-E) supra. Also See: See: *Hyde vs. Hyde and Woodmansee (1866)* LRP & D 130, per Lord Penzance

⁷ *Meribe V. Egwu (1976)* LPELR-1861(SC)

⁸ (2019) LPELR-48285(CA)

⁹ Supra.

State in 1975, and also under the Marriage Act. Years later, their marriage, suffered a major torpedo and eventually sank. Following an application for dissolution of marriage, the marriage was dissolved by the High Court of Rivers State on 18th July, 1989. Late Chief Douglas thereafter married a second wife under the Act, specifically at the marriage Registry in Port Harcourt on 20th April, 1995. After the death of the late Chief Douglas, his Will bequeathing some of the properties he acquired jointly with Mrs. Claudiana Douglas to his recent family, was contested by Mr. Duboye Graham-Douglas (who took over the case on the demise of Mrs. Claudiana Douglas), on the grounds that:

1. The late Chief Douglas marriage to his supposed second wife is void since Chief Douglas married the second wife during the subsistence of the Iya customary marriage which the late Chief Douglas never dissolved.

At the trial court, the learned Judge, having considered the evidence led by the representative of late Mrs. Claudiana Douglas (the Claimants), resolved the case in favour of the Claimants, granted the declaratory reliefs and perpetual injunction sought by the Claimants and dismissed the counter-claim of the Defendants.

Dissatisfied with the judgement of the trial court, the Defendants appealed to the Court of Appeal on 6 grounds, two of which are relevant to the subject of this article:

- a. Whether the learned trial Judge was right when he held that Mrs. Mina Derebo Graham-Douglas (the second wife) was in law not the wife of late Chief Donald Graham-Douglas and therefore cannot be described as the sole surviving wife of the late Chief Donald Graham-Douglas.
- b. Whether the learned trial Judge was right when he held that the late Mrs. Gladys Claudiana Douglas was the Iya wife of the late Chief Donald Graham-Douglas, and therefore entitled to the rights and privileges in that regard.

In addressing the above grounds of appeal, the Court of Appeal cited the provision of **Section 33 (1) of the Marriage Act** which provides that:

“No Marriage in Nigeria shall be valid where either of the parties thereto at the times of the celebration of such marriage is married under the customary law to any person other than the person with whom such marriage is had”.

Furthermore, the court restated that:

“The above provision is very clear; it gives due respect and credence to a pre-existing customary marriage. It provides no dichotomy between a marriage under the Act and under Customary Law in the sense of one being main and the other minor. In view of the clear provision of Section 33 (1) of the Marriage Act and having regard to the fact that there was an existing customary Iya marriage between the late Chief Donald Graham-Douglas and the late Mrs. Gladys Claudiana Graham-Douglas, it is very clear that the marriage between the late Chief Donald Graham-Douglas

and the 2nd defendant was invalid. That being the case, it follows that the 2nd defendant was in law, not the wife of the late chief Donald Graham-Douglas and therefore cannot be described as the sole surviving wife of the late chief Donald Graham-Douglas.

Having been well reasoned and based on the evidence before the Court and the applicable law I accept the foregoing findings of the learned trial judge and I resolve this issue against the Appellants”.

Flowing from the above decision, it suffices to say that customary marriage is recognised in Nigeria and it is not less than a marriage conducted under the Act. Marriages conducted under the Act and under custom, are recognized and given credence under the Nigerian Law and being validly married under one does not allow a person to marry a third-party under the other. **Section 35 of the Marriage Act** buttresses the point that any person who is married under the Act, or whose marriage is declared valid by the act, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law.¹⁰ A person who is married under the Marriage Act cannot contract a valid marriage under native law or custom and vice versa.¹¹

Another interesting aspect of this topic which has also been the centre of argument is the validity of marriages conducted in a place of worship; generally known as church ceremonial wedding or white wedding in Nigeria.

What is the validity of marriage conducted in a place of worship?

In particular, **Section 21 of the Marriage Act** provides that a marriage may be celebrated in any ‘licensed place of worship’ by any recognized minister of the church, denomination or body to which such place of worship belongs, and according to the rites or usages of marriage observed in such church, denomination or body. Provided that the marriage be celebrated with open doors between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and in the presence of two or more witnesses besides the officiating minister. In the case of *Motoh v Motoh*¹², the Court of Appeal was confronted with the same question and in expatiating the above provisions of Section 21 of the Marriage Act, the court quoted the wordings of **Oputa J.** (as he then was) in the case of *Patience Nwanyinwa Afonne v. Emmanuel Chidi Afonne (1975) 5 ECSR 159 at 162-163* – thus:

“The history of marriage and marriage celebrations is very closely bound up with the church, with ecclesiastical or canon law and with church rites. Under the canon law and before the Reformation and the break with Rome, marriages in Christian countries were usually celebrated by a service in a church. This was known as a celebration in facie ecclesiae. The civil laws of many Christian countries retain this aspect of marriage and marriage celebrations. Under Section 21 of our Marriage Act (Cap.

¹⁰ See *Mgbodu V. Mgbodu (2018) LPELR-43770(CA)*.

¹¹ *Aniomwu & Anor V. Aniomwu & Anor (2009) LPELR-8754(CA)*, *Motoh V Motoh (2010) LPELR-8643(CA) (2010)*.

¹² *Supra*.

115 of 1958), "Marriage may be celebrated in any licensed place of worship by any recognized minister of the church ... To which such a place of worship belongs, and according to the rites and usages of marriage observed be celebrated with open door between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and in the officiating presence of two or more witnesses besides the minister".

It follows that a marriage conducted in a church or a place of worship is valid provided the following conditions are met:

- i. The church or place of worship must be licensed to conduct such marriage;
- ii. The officiating minister conducting the marriage must be a recognized minister of the respective church, denomination, or body;
- iii. There must be an adherence to the rites or usages observed by that church, denomination, or body;
- iv. The celebration of the marriage must have been done with open doors between the hours of eight o'clock in the forenoon and six o'clock in the afternoon; and
- v. Finally, there must be at least two or more witnesses besides the officiating minister during the ceremony.¹³

Compliance with the above conditions is necessary for the recognition of a statutory marriage conducted in a licensed place of worship.

CONCLUSION

The law recognises the validity of a customary marriage and marriage under the Act (statutory marriage). Whichever is conducted first, is recognised as the only valid marriage and any subsequent marriage is void.¹⁴ However, it must be noted that in some customs, polygamy is an acceptable norm; thus, where a man takes a wife under customary rites, he can take a second and subsequent wife, under customary marriage. He cannot however take a subsequent wife under a church marriage or registry/court marriage as the subsequent marriage will be seen as void. In the same vein, because registry/court marriages only recognise the union between one man and one woman, where a man marries a woman under the Act (registry/court marriage), he cannot conduct a subsequent marriage to another woman under customary marriage.¹⁵

In order to put to rest the initial question this paper sought to address: **In a scenario where a man has married three wives - the first through customary/native marriage, the second through a church ceremony (often referred to as a "white wedding"),**

¹³ Section 21 and Section 33 (2) of the Marriage Act CAP M6 Laws of the Federation of Nigeria 2004.

¹⁴ The offence of Bigamy is committed where a subsequent marriage is contracted during the pendency of an existing marriage. Section 47 of the Marriage Act provides that "Whoever, having contracted marriage under this Act, or any modification or re-enactment thereof, or under any enactment repealed by this Act, during the continuance of such marriage contracts a marriage in accordance with customary law, shall be liable to imprisonment for five years."

¹⁵ *ibid.*

and the third through a civil wedding or "court marriage" under the Act - which of the three wives is legally recognized as the man's wife?

In view of the cases and principles cited above, when a man being married to a woman customarily, goes ahead to marry another woman in a licensed place of worship, the second marriage is void on the grounds that the man has a subsisting marriage. Such a man is not legally capable of getting married to the second woman. The same principle applies where he takes a third wife and marries her under the Act without dissolving the customary marriage first.¹⁶ His subsequent marriages are void *ab initio* and cannot be remedied under the law. The reason is because when a marriage is void, the marriage is said to have no legal consequences. That is to say, it is a marriage that never took place.¹⁷ Therefore, the legal wife of such a man is the first wife which he married under the customary law. It is immaterial that the second or third wife was married under the Act or in a licensed place of worship, provided that the customary marriage took place and is proved, the law recognizes the first wife married under the native law and custom as the legal wife.

¹⁶ *Nola & Ors V. Graham-Douglas & Anor (Supra)*

¹⁷ See *Section 3(1) of the Matrimonial Cause Act*. See also *Oghoyone V. Oghoyone* (2010) LPELR-4689(CA)

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