

MATRIMONIAL CAUSES ACT

1971 (ACT 367)

Section 1-Petition for Divorce.

(1) A petition for divorce may be presented to the court by either party to a marriage.

(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

Section 2-Proof of Breakdown of Marriage.

(1) For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the court of one or more of the following facts:—

(a) that the respondent has committed adultery and that by reason of such adultery the petitioner finds it intolerable to live with the respondent; or

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; or

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or

(d) that the parties to the marriage have not lived as man and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce; provided that such consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph notwithstanding the refusal; or

(e) that the parties to the marriage have not lived as man and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or

(f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

(2) On a petition for divorce it shall be the duty of the court to inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

(3) Notwithstanding that the court finds the existence of one or more of the facts specified in subsection (1), the court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation.

Section 3-Adultery of Respondent.

Where with a view to reconciliation the parties to the marriage have lived with each other as man and wife for a period or periods after it became known to the petitioner that the respondent had since the celebration of the marriage, committed adultery, then—

(a) if the length of that period or of those periods together was six months or less, their living with each other as man and wife during that period or those periods shall be disregarded in determining whether for the purposes of section 2 (1) (a) the petitioner finds it intolerable to live with the respondent; but

(b) if the length of that period or those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of section 2 (1) (a).

Section 4-Unreasonable Behaviour of Respondent.

For the purposes of section 2 (1) (b), in determining whether the petitioner cannot reasonably be expected to live with the respondent, the court shall disregard any period or periods not exceeding six months in the aggregate during which the parties to the marriage lived with each other as man and wife after the date of the occurrence of the final incident relied on by the petitioner and proved to the court in support of his allegation.

Section 5-Desertion of Respondent.

(1) For the purposes of section 2 (1) (c), in determining whether the period for which the respondent has deserted petitioner has been continuous, the court shall disregard any period or periods not exceeding six months in the aggregate during which the parties resumed living as man and wife.

(2) For the purposes of section 2 (1) (c) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that his desertion continued at that time.

Section 6-Consent of Respondent.

(1) For the purposes of section 2 (1) (d) the court must be satisfied that a consent to divorce has been given by the respondent only after the respondent has been given such information as will enable him to understand the consequences of his consent.

(2) Where the only fact specified in section 2 upon which the petitioner relies in support of his petition is that mentioned in section 2 (1) (d), the court may, on application by the respondent at any time before the decree is made, dismiss the proceedings if it is satisfied that the petitioner misled the respondent, intentionally or unintentionally, about any matter which the respondent took into account in deciding to consent to the grant of a decree.

Section 7-Failure of Parties to Live as Man and Wife.

For the purposes of section 2 (1) (d) and (e), in determining whether the period for which the parties to a marriage have not lived as man and wife has been continuous, the court shall disregard any period or periods not exceeding six months in the aggregate during which the parties resumed living as man and wife.

Section 8-Promotion of Reconciliation.

(1) On the hearing of a petition for divorce, the petitioner or his counsel shall inform the court of all efforts made by or on behalf of the petitioner, both before and after the commencement of the proceedings, to effect a reconciliation.

(2) If at any stage of the proceedings for divorce it appears to the court that there is a reasonable possibility of reconciliation, the court may adjourn the proceedings for a reasonable time to enable attempts to be made to effect a reconciliation, and may direct that the parties to the marriage, together with representatives of their families or any conciliator appointed by the court and mutually agreeable to the parties, attempt to effect a reconciliation.

(3) When proceedings are resumed after an adjournment under subsection (2), the conciliator, or if no conciliator has been appointed, counsel for the petitioner, shall make a report to the court of the result of the adjournment, and the report shall be limited to a statement that the parties have been reconciled or have not been reconciled or that more time is needed to effect a reconciliation.

(4) Evidence of statements or other actions of the parties or their representatives in connection with attempts at reconciliation under subsection (2) shall not be admissible in court in the divorce proceedings.

Section 9-Restriction on Petitions Within Two Years of Marriage.

(1) Subject to subsection (2), no petition for divorce shall be presented to the court within two years from the date of the marriage.

(2) The court may, on application, allow the presentation of a petition for divorce within two years from the date of the marriage on the ground of substantial hardship suffered by the petitioner or depravity on the part of the respondent.

(3) In determining the application under subsection (2) the court shall have regard to the interest of any child of the household and to the question whether there is a reasonable possibility of reconciliation between the parties.

(4) If it appears to the court that leave under subsection (2) was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the court may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the period of two years from the date of that marriage upon the same, or substantially the same, facts as those proved in support of the dismissed petition.

(5) This section shall not be deemed to prohibit the presentation of a petition based upon matters which occurred within two years from the date of the marriage.

Section 11-Respondent Entitled to Divorce Without Cross-Petition.

If in any proceedings for divorce the respondent alleges against the petitioner and proves the facts required by sections 1 (2) and 2 (1), the court may in those proceedings give to the respondent the relief to which the respondent would have been entitled if the respondent had presented a separate petition seeking that relief.

Section 12-Alleged Adulterer may be Joined.

On a petition for divorce in which adultery is alleged, the person alleged to have committed adultery with the party to the marriage may be, but need not be, made a party to the proceedings

Section 13-Nullity.

(1) Any person may present a petition to the court for a decree annulling his marriage on the ground that it is by law void or voidable (in this Act referred to as "a decree of nullity").

(2) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall, subject to subsection (3), be voidable on the ground—

(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or

(b) that at the time of the marriage either party to the marriage was of unsound mind or subject to recurrent attacks of insanity; or

(c) that the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(d) that the respondent was at the time of the marriage suffering from an incurable venereal disease in a communicable form.

(3) The court shall not grant a decree of nullity in a case falling within paragraphs (b), (c) or (d) of subsection (2) unless it is satisfied that—

(a) the petitioner was at the time of the marriage ignorant of the facts making the marriage voidable; and

(b) proceedings were instituted within a year from the date of the marriage; and

(c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the facts making the marriage voidable.

(4) Nothing in this section shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

Section 14-Children of Annulled Marriages.

Where a decree of nullity is granted, any child of the parties to the decree shall be deemed to have the same status and rights as if the marriage of his parents had been dissolved rather than annulled.

Section 15-Presumption of Death and Dissolution of Marriage.

(1) Any married person may present a petition to the court to have it presumed that the other party to the marriage is dead and to have the marriage dissolved.

(2) The court may, if it is satisfied that reasonable grounds for the application of the presumption exist, make a decree of presumption of death and dissolution of marriage.

(3) In any proceedings under this section, the fact that for a period of seven years or more the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.

Section 17-Unreasonable Conduct Towards Spouse or Child.

Either party to a marriage may petition the Court for a child custody order on the ground that the other party to the marriage has persistently behaved in an unreasonable manner towards either the petitioner or any child of the household.

Section 18-General Powers.

In any proceedings under this Act, the court may exercise any of the powers specified in this Part.

Section 19-Financial Provision for Spouse.

The court may, whenever it thinks just and equitable, award maintenance pending suit or financial provision to either party to the marriage, but no order for maintenance pending suit or financial provision shall be made until the court has considered the standard of living of the parties and their circumstances.

Section 20-Property Settlement.

(1) The court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision as the court thinks just and equitable.

(2) Payments and conveyances under this section may be ordered to be made in gross or by instalments.

Section 21-Conveyance of Title.

(1) When a decree of divorce or nullity is granted, if the court is satisfied that either party to the marriage holds title to movable or immovable property part or all of which rightfully belongs to the other, the court shall order transfer or conveyance of the interest to the party entitled to it upon such terms as the court thinks just and equitable.

(2) When a transfer or conveyance of movable or immovable property is ordered by the court and the party ordered to make the transfer or conveyance is either unable or unwilling to do so, the court may order the registrar of the court to execute the appropriate transfer or conveyance on the part of that party.

Section 22-Custody and Financial Provision for Children.

(1) In all proceedings under this Act, it shall be the duty of the court to inquire whether there are any children of the household.

(2) The court may, either on its own initiative or on application by a party to any proceedings under this Act, make any order concerning any child of the household which it thinks reasonable and for the benefit of the child.

(3) Without prejudice to the generality of subsection (2), an order under that section may—

(a) award custody of the child to any person;

(b) regulate the right of access of any person to the child;

(c) provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage.

Section 23-Security for Payment.

Where the court has reason to believe that a party ordered to make a payment or payments may be unwilling or unlikely to pay, the court may order that party to give reasonable security for any payment or payments ordered.

Section 23-Payment of Costs.

At any time after the commencement of the proceedings, the court may require either party to the marriage to pay to the other party such sum or sums of money as are reasonable to enable that party to maintain or defend the suit.

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Section 25-Orders of Restraint, Etc.

(1) The court may by order restrain—

(a) either party to the marriage from leaving the jurisdiction until the court is satisfied that that party has made adequate provision to satisfy any award the court has made or may make in the proceedings;

(b) any person from removing any child of the household from the jurisdiction,

(c) any party to the marriage from imposing any restraint on the personal liberty of, or from harming or interfering with, the other party to the marriage or any child of the household, for as long as it thinks necessary.

(2) The court may order any person to return any child of the household to the jurisdiction.

Section 26-Orders Relating to Assets.

(1) The court may by order restrain either party to the marriage, or any other person, from permitting the disposition of the assets or property of either party to the marriage, and the court may rescind any disposition of such assets or property that has been made with the intention of defeating the financial provision or property settlement of the other party, except that a disposition for value to a purchaser in good faith may not be rescinded.

(2) The court may make any order concerning the property of either party to the marriage or of any child of the household that is appropriate to preserve or maintain that asset or property while the suit is pending before the court.

Section 27-Modification of Financial Provision, Custody and Support.

(1) Subject to subsection (2), the court may from time to time rescind or vary any order in respect of maintenance pending suit and financial provision, or the care, custody and support of any child, as it thinks fit.

(2) No order of financial provision for a party to the marriage may be made subsequent to a decree of divorce or nullity in any case in which—

(a) the decree contains, an express waiver of financial provision; or

(b) the decree provides for a money or property settlement in lieu of financial provision and that settlement has been executed; or

(c) the decree does not grant liberty to apply for financial provision in the future.

Section 28-Financial Provision to Cease on Remarriage or Death.

(1) A party to the marriage shall not be entitled to financial provision for himself in respect of any period after his remarriage.

(2) The death of a party for whose benefit an order for financial provision has been made, or the death of the party adversely affected by such order, shall automatically terminate the order.

(3) The provisions of this section shall be without prejudice to the right of any party ordered to make financial provision to apply to the Court under section 27 (1), at any time subsequent to such order, to rescind or vary such order for any sufficient cause.

Section 29-Orders Terminating on Child Reaching Majority.

An order for care, custody or support of a child shall automatically terminate when the child reaches the age of twenty-one years, unless the order provides otherwise with a view to making reasonable provision for the further education of

such a child, or for the care, custody and support of such a child who is so incapacitated that he cannot be expected to care for himself.

Section 30-Failure to Comply with Order to Make Financial Provision.

Failure to comply with an order of the Court to make financial provision under this Act for a spouse or child shall, in addition to any other effect it might have, be deemed to commence a period of desertion by the party to the marriage who has failed to comply with the order.

Section 31-General Matrimonial Jurisdiction.

The court shall have jurisdiction in any proceedings under this Act where either party to the marriage—

(a) is a citizen of Ghana; or

(b) is domiciled in Ghana; or

(c) has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings.

Section 32-Domicile of Married Women.

For the sole purpose of determining jurisdiction under this Act, the domicile of a married woman shall be determined as if the woman was above the age of twenty-one and not married.

Section 33-Additional Jurisdiction Relating to Financial Provision.

In addition to any other jurisdiction conferred by this Act, the court shall have jurisdiction, where a party who may be ordered to make financial provision has assets in Ghana, to order that party to make financial provision not exceeding the value of those assets.

Section 34-Additional Jurisdiction Relating to Child Custody.

In addition to any other jurisdiction conferred by this Act, the court shall have jurisdiction to make child custody arrangements whenever the child whose custody is in question is present in Ghana.

Section 35-Choice of Law.

In any proceedings under this Act, except in proceedings for a decree of nullity of a void marriage, the issues shall be determined as if both parties to the marriage were domiciled in Ghana at the commencement of the proceedings.

Section 36-Recognition of Foreign Decrees.

The court shall recognize as valid a decree of divorce, nullity or presumption of death and dissolution of marriage, obtained by judicial process or otherwise, which is not contrary to natural justice, and which—

(a) has been granted by any tribunal which had a significant and substantial connection with the parties to the marriage; or

(b) is in accordance with the law of the place where both parties to the marriage were ordinarily resident at the time of the action dissolving or annulling the marriage.

Section 37-Decrees to be Final.

Every decree of divorce, nullity and presumption of death and dissolution of marriage under this Act shall take effect from the date on which the court gave judgment.

Section 38-Bequest to Divorced Spouse to be Invalid.

Any gift to or appointment in favour of one spouse in the will of the other shall be invalidated if the marriage has been terminated under this Act by divorce or annulment, unless the will contains an express provision to the contrary.

Section 39-Privacy of Proceedings.

The court may direct that any proceedings under this Act be heard in private and may exclude all persons except officers of the court, the parties and their witnesses and lawyers where the court is satisfied that the interests of the parties or the children of the household so require.

Section 40-Transfer of Undefended Actions.

The Chief Justice may by writing under his hand transfer any undefended action under this Act from the High Court or a Circuit Court to a District Court, and that court shall have jurisdiction.

Section 41-Application of this Act.

(1) This Act shall apply to all monogamous marriages.

(2) On application by a party to a marriage other than a monogamous marriage, the court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the Court may—

(a) have regard to the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;

(b) grant any form of relief recognised by the personal law of the parties to the proceedings, either in addition to or in substitution for the matrimonial reliefs afforded by this Act.

(3) In the application of section 2 (1) of this Act to a marriage other than a monogamous marriage, the court shall have regard to any facts recognised by the personal law of the parties as sufficient to justify a divorce, including in the case of a customary law marriage (but without prejudice to the foregoing) the following—

(a) wilful neglect to maintain a wife or child;

(b) impotence;

(c) barrenness or sterility;

(d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship;

(e) persistent false allegations of infidelity by one spouse against another:

Provided that this subsection shall have effect subject to the requirements of justice, equity and good conscience.

(4) In the application of this Act to any marriage under customary law, the words "child of the household" shall be construed as including any child recognised under customary law as a child of the parties.

Section 41-Application of this Act.

(1) This Act shall apply to all monogamous marriages.

(2) On application by a party to a marriage other than a monogamous marriage, the court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the Court may—

(a) have regard to the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;

(b) grant any form of relief recognised by the personal law of the parties to the proceedings, either in addition to or in substitution for the matrimonial reliefs afforded by this Act.

(3) In the application of section 2 (1) of this Act to a marriage other than a monogamous marriage, the court shall have regard to any facts recognised by the personal law of the parties as sufficient to justify a divorce, including in the case of a customary law marriage (but without prejudice to the foregoing) the following—

- (a) wilful neglect to maintain a wife or child;
- (b) impotence;
- (c) barrenness or sterility;
- (d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship;
- (e) persistent false allegations of infidelity by one spouse against another:

Provided that this subsection shall have effect subject to the requirements of justice, equity and good conscience.

(4) In the application of this Act to any marriage under customary law, the words "child of the household" shall be construed as including any child recognised under customary law as a child of the parties.

Section 42-Abolition of Right to Claim Restitution of Conjugal Rights.

After the commencement of this Act no person may petition the court for restitution of conjugal rights.

Section 43-Interpretation.

In this Act—

"adultery" means the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse;

"child of the household" means any child, whether the natural or adopted child of both or either of the parties, or any other child who is treated by both parties as a permanent member of their household;

"court" means (subject to section 40) the High Court or a Circuit Court;

"financial provision" includes maintenance and all other forms of financial support provided by one spouse to the other or to any child of the household;

"maintenance pending suit" includes all forms of financial support provided by one spouse to the other or to any child of the household from the commencement to the determination of the proceedings;

"marriage" except as otherwise provided in section 41 of this Act means a monogamous marriage;

"monogamous marriage" does not include a potentially polygamous marriage.

Section 44-Enactments Ceasing to have Effect.

(1) Any English statute relating to matrimonial causes which was in force in Ghana immediately before the commencement of this Act shall cease to apply.

(2) This Act shall not apply to any proceedings commenced before the coming into force of this Act, and accordingly notwithstanding subsection (1) of this section, any such proceedings may be continued and determined after the commencement of this Act in accordance with the law in force immediately before such commencement.