

CHAPTER 6:

FINANCIAL PROVISIONS AND PROPERTY ADJUSTMENTS: ORDERS THAT CAN BE MADE

A - Introduction

In the preceding chapter of this work a study was carried out to determine the criteria for granting custody of a child to a spouse on the breakdown of a marriage. That the exercise was important cannot be doubled if we were to consider the incidental consequences of financial provisions to spouses and children. It is crucial to note that a spouse who has custody of three children, for example, will need financial assistance from the other party, than one who goes away without any responsibilities.

Financial provisions were previously governed by the Matrimonial Causes Act 1973. Criticisms of the relevant provisions have today received statutory approval in the Matrimonial and Family Proceedings Act 1984. Since this later Act also deals with matrimonial causes, it is indeed applicable in former West Cameroon. The Matrimonial Causes Act 1973 did give the courts powers to “place the parties, so far as it is practicable and with regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had property discharge his or her financial obligations and responsibilities towards the other”.²⁰⁶ This provision was highly castigated for incorporating into English law the right to life-long maintenance for ex-spouses. Critics maintain that this should be replaced with an order which will place more emphasis on the parties becoming more self-sufficient. Following these strictures, the Matrimonial and Family Proceeding Act 1984, today enacts that the welfare of the child is the first consideration in financial decisions²⁰⁷. And this is only so, as long as the children are minors. Secondly, in its attempt to encourage ex-spouses to become more self-sufficient, the court now has to consider a ‘clean break’ when examining any application for financial relief²⁰⁸. There different types of ‘clean break’ orders. (1) Such an order could be immediate, that is, it will ensure a once and for all settlement of the spouses’ liability for one another²⁰⁹. (2) In another case, the order could take the form of periodic payments for a limited term only. And in this connection the court has the power to make a ‘new clean break’ order, thus, excluding a party from applying for an extension of a fixed term periodical payment order²¹⁰. A clean break order will also apply if the courts were to dismiss a spouse’s claim for periodical payments, a power which the courts can now exercise even the applicants consent is not sought²¹¹. Summarising the changes in the new law one commentator writes:²¹²

The new Act now puts the principle of the clean break into statutory form. It does this in a number of ways: a) the court must take into account in deciding on financial relief not only the earning capacity of the spouses, but also any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the

²⁰⁶ S. 25 (1)

²⁰⁷ S. 3 amending S. 25 (1) of MCA 1973

²⁰⁸ S. 25 A (2) (3)

²⁰⁹ S 25 A (1)

²¹⁰ S. 28 A (1)

²¹¹ S. 25 A (3)

²¹² Susan Maidment, Annual Survey of Family Law (1983 – 84) Vol. 8. Pp 49 – 50.

marriage to take steps to acquire; b) it is the duty of the court in any case to decide whether the clean break i.e. the termination of the financial obligations of each party to the other is possible; c) the court also has a duty in every case to consider whether a fixed term maintenance order, is possible, i.e. a period of rehabilitative maintenance for such a term as would in the opinion of the court be sufficient enough to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party; d) the court may order a clean break without the consent of the applicant for maintenance unlike the previous law.

It will now be instructive to examine the powers of the court by looking at the orders that can be made.

B - The Various Orders

Although this area of the law has developed extensively in England, the courts in the former British Southern Cameroon have not successfully kept pace, with a result that there is a paucity of local decisions on this matter. And although various orders have occasionally been made, the interpretation and incidental development of the law has not been very encouraging. In any case, the orders have turned on financial provisions and property adjustment. Today these orders will be made mindful of the new principles introduced by the Matrimonial and Family Proceedings Act 1984.

1 - Financial Provisions

(i) - Maintenance Pending Suit

By the provision of section 22 of the Matrimonial Causes Act of 1973 the court hearing a petition for divorce, nullity of marriage or judicial separation “may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the order such prodigal payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the courts think reasonable”. And this the court will do only if the other spouse or any child of the family is in need. And so in **Atem v. Atem**²¹³ the court the husband to pay to the wife the sum of 30,000 francs CFA a month pending the decree absolute of divorce. It should be pointed out that, it is not a final settlement and so might be overtaken by any other order after the final determination of the petition before the court.²¹⁴

(ii) - Periodical Payments

The power to order periodical payments is governed by section 23(1) of the Matrimonial Causes Act 1973. It is therein provided that:

On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of nullity of

²¹³ Suit No. HCSW/77mc/82 (unreported)

²¹⁴ In *Atem v. Atem*, *ibid*, the court cancelled the order for alimony pending suit after the decree absolute. The court substituted the order with a lump sum payment.

marriage, before or after the decree is made absolute), the court may make any one of the following orders, that is to say:

- a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order.
- b) an order that either party to the marriage shall secure to the order to the satisfaction of the court such periodical payments, for such term, as may be specified.
- d) An order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments for such term, as may be specified.
- e) An order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court such periodical payments, for such term as may be so specified.

It should be noted outright that the Act makes a distinction between secured and unsecured periodical payments. Unsecured Periodical Payments, as the name implies, could raise difficulty of enforcement should the party against whom the order is made default. They continue only for as long as both the payee and the payer are alive. In awarding the wife 45,000 francs CFA a month, the judge in *Mbiaffie v. Mbiaffie*²¹⁵ pointed out that the order continued only during the joint lives of the parties or until the wife remarried. Same too in *Enie v. Enie*²¹⁶ the court declared that the unsecured monthly award of 45,000 francs to the wife will continue “until she remarries or dies, whichever is the sooner”.

But in *Ndanjo v. Ndanjo*²¹⁷, the court found that the petitioner was a civil servant and so ordered the family allowance usually paid to the respondent be paid forthwith to the petitioner who had been given custody of the four girls of the family.

It would however appear that the courts in the former west Cameroon do not specifically draw a line between secured and unsecured payments. In *Agbortoko v. Agbortoko*²¹⁸ the court simply declared that “the respondent will pay the petitioner 25,000frs a month for the upkeep of the children”. In *Shu v. Shu*²¹⁹ the court ordered that the respondent pays the petitioner the sum of 35,000frs alimony per month while in *Mahop v. Mahop*²²⁰, the Justice Deba ordered that “the petitioner pays the respondent the sum of 50,000frs CFA alimony per month and 50,000frs CFA for the maintenance of the five children per month”. And this was even so in *Tambe Agbor Arrey Cecilia v. Thebaux Jean*²²¹, and *Donfack Marie v. Kouati Daniel*²²² where the sum awarded was a reasonably high figure of 100,000 francs CFA a month.²²³

If this silence implies that the payments are unsecured, then one can rightly say that the right of enforcing the orders by our Cameroonian judges are absent. The advantages to a recipient

²¹⁵ Suit No. HCSW/30mc/85 (unreported)

²¹⁶ Suit No. HCSW/65mc/83 (unreported)

²¹⁷ Suit No. HCB/91mc/87 (unreported)

²¹⁸ Suit No. HCF/60mc/89 (unreported)

²¹⁹ Suit No. HCSB/16/85 (unreported)

²²⁰ Suit No. HCSW/21mc/78 (unreported)

²²¹ Suit No. HCSW/81mc/84 (unreported)

²²² Suit No. HCSW/12mc/83 (unreported)

²²³ See also *Tona v. Tona* Suit No. HCSW/102mc/84 (unreported)

when the payment is secured cannot be over emphasised. In this case, property could be vested in trustees, so that should the payer defaults there will already be in existence, secured property upon which the maintenance can be procured. All the payee has to do is to turn to the capital in the possession of the trustees. Another advantage is that the payment will not necessarily lapse with the death of the payer since the latter's personal representatives will be called upon to continue with the execution of the court orders.

Whether the payment is secured or unsecured the cases show that a spouse has been ordered to make periodical payments to the other spouse and to make a second sum periodical payment to this same spouse, since she had been given custody of the children²²⁴. This was so in *Ngaleu Jean Baptiste v. Pouambe Kouaney Justine*²²⁵ and *Mahop v. Mahop*²²⁶.

What the court must do in any case is to conduct a proper investigation before arriving at an award. In *Tarh v. Tarh*²²⁷ the Court of Appeal in Bamenda had occasion to examine an appeal based on the allegation that the trial court had failed to conduct a proper investigation of the financial situation of the parties before ordering the husband to pay the sum of 37,000 francs CFA a month for the maintenance of the children. It was later found as a fact that in addition to her salary of 59,000 francs CFA the wife received a rent allowance and family allowances for all five children of the marriage. In allowing the appeal Justice Ndoping observed that:

From studying the records of proceedings, we notice that the trial judge did not conduct a proper investigation of the appellant's financial commitments before he made the maintenance order and so the inescapable result is that we agree that the trial judge did not have sufficient material before him to guide him in determining whether or not the maintenance order should be made and the appropriate amount if one was necessary.

(iii) - Lump Sum Payments

Section 23 (1) of the Matrimonial Causes Act 1973 provides that the court can make:

- c) an order that either party to the marriage shall pay to the other such Lump sum or sums as may be specified.*
- f) An order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified.*

It may happen that, before a decree absolute is pronounced, a spouse must have incurred certain expenses in maintaining himself or herself or any child of the family. A lump sum payment could be made to enable such a spouse to make good the deficit²²⁸. This is usually the best choice for a judge in a case where the spouse against whom the application is made has no income, but is in the possession of some capital. And in the prevalent changes discussed above, where a clean break is always contemplated the parties' capital assets may be the best alternative especially as they could be used for property adjustment. Such a sum could help the wife start a new life. This was the reason for the lump sum award of 3.500.000

²²⁴ *Ngaleu Jean Baptiste v. Pouambe Kouaney Justine*, Suit No. HCSW/32mc/85 (unreported)

²²⁵ *Ibid.*

²²⁶ Suit No. HCSW/21mc/78 (unreported)

²²⁷ Appeal No. BCA/17/87 (unreported)

²²⁸ S. 23 (3) (a) (b) of the MCA1973

francs CFA by Justice Mbuagbaw to the respondent in the Buea High Court case of *Ndumu v. Ndumu* (No. 1).²²⁹

Periodical payment may be good, but they cause the spouses to remain in contact with each other, and this could be very painful to some spouses who have nursed a strong sense of great bitterness against each other. A lump sum payment will obviously wipe off such a possibility. Such an atmosphere of bitterness had reigned between the spouses in *Atem v. Atem*²³⁰. Small wonder that Justice Monekosso preferred the term a “parting gift”, instead of “Lump sum” of 350.000 francs CFA to be paid by the husband to the wife.

It is possible for the person against whom the order is made to apply to the court praying that the court should authorise that the payments be made instalmentally. Such instalments do not in any way change the fact that the order is one for a lump sum payment.

As it is specifically specified in section 23, “an order for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court”²³¹.

2 - Adjustment of Property

Section 24(1) of the Matrimonial Causes Act 1973 gives the courts powers in granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation to make an order that:

- a) *A party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first mentioned party is entitled, either in possession or reversion;*
- b) *A settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court to the benefit of the other party of the marriage and the children of the family or either or any of them.*

Section 24(1) is a very far-reaching order. This is especially so because in making such a transfer the court is not guided by the simple question of whether or not the transferee contributed in the purchase of the property. Instead the court would have to take into consideration “the contribution each of the parties has made or is likely in the foreseeable future to make the welfare of the family, including any contributions by looking after the home or caring for the family”.²³² It could therefore be argued that the wife, for example could be compensated for the welfare she has shown towards the family even if she did not contribute in cash to the purchase of the property. One is tempted to contend here that section 24 and 25 of the Matrimonial Causes Act 1973 have seriously undermined the provisions of section 17 of the Married Women Property Act of 1882. And if strictly applied in Former

²²⁹Suit No. HCSW/78mc/82 (unreported)

²³⁰ Suit No. HCSW/77mc/82 (unreported)

²³¹ S. 23 (3) (c) MCA 1973

²³² S. 25 (2) (f) MCA 1973 as amended by the Matrimonial and Family Proceedings Act 1984.

West Cameroon, it could result in burying once and for all the view that women cannot own property. But Justice Inglis recently observed in *Ndumu v. Ndumu* (No. 2)²³³ that:

It will be unjust to the parties to conform strictly with part II of the Matrimonial Causes Act of 1973 which deals with financial provisions and property adjustment.

The Judge indeed, suggested that, in this connection, we could fall behind section 27 of the Southern Cameroons High Court Law of 1955 which refers to our applicable customary law. But ten years earlier, the court had in *Munji v. Munji*²³⁴ ordered the respondent to transfer three dwelling houses to the children and an undeveloped building plot to the petitioner (the wife). Another striking judgement was delivered by the court of appeal in *Alice Fodje v. Ndansi Kette*²³⁵ in which the court ordered the wife to continue living in the matrimonial home and to also collect rents from two other houses built by the husband notwithstanding the fact that he was on retirement and had got married to another woman.

Such an order could be made on the matrimonial home or to any other property. Today, the court may also make:

*A further order for the sale of that property as may be specified in the order, bring property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.*²³⁶

It could be very disturbing if the court had to decide on whether or not to sell the matrimonial home and share the proceeds between the parties. The court usually tends to ask either party to transfer his or her share to the other party while ordering the transferee to pay a lump sum equal to its value²³⁷. There also the possibility of making a Mesher Order derived from the Court of Appeal case of *Mesher v. Mesher*²³⁸. In this case the parties intended to remarry after their divorce and the effect of an absolute transfer of the home to the wife would indirectly have benefited the wife's new husband while depriving the husband of any appreciation in value of the house which was the spouses' asset. The wife applied for the matrimonial home to be transferred to her. As pointed out earlier both parties intended to remarry, the husband having bought a house with his cohabitee on which half the purchase price was outstanding in the form of a mortgage. The wife's intended partner had transferred his house to his former wife. The incomes of both families were about equal. It was held that it would be unfair totally to deprive the husband of his interest in the property and so it was ordered the property should be held by the parties in equal shares on trust for sale but that the sale should be postponed until the daughter of the marriage attained 17 or until further order was made²³⁹.

A Mesher Order therefore is one that defers the sale of property to some future specified date.

²³³ Suit No. HCB/97mc/86 (unreported)

²³⁴ Suit No. HCB/29/76 (unreported)

²³⁵ Appeal No. BCA/45/1986 (unreported)

²³⁶ S. 24 A of the MCA 1973. Novelty of the Matrimonial Homes and Property Act 1981, S. 7

²³⁷ Bromley: Family Law Op. Cit. p. 705

²³⁸ (1980) 1 ALL E.R. 126 C.A.

²³⁹ Facts extracted from P. Seago & Alastair Bissett – Johnson, Cases and Materials on Family Law, Op Cit p. 296

3 - Variation of ante - and post - nuptial Settlements

It was noted that the court could order that a settlement of property be made for the benefit of the other spouse or the children of the family²⁴⁰. But the Matrimonial Causes Act also gives the court powers to vary any ante-nuptial or post nuptial settlement (including such settlements made by will or codicil) made on the parties to the marriage. It would be instructive to note here that parties to the marriage are free to agree on the financial provision and property adjustment to be made. The court, if satisfied that none of the parties has suffered from undue influence, would respect their wishes. This will also be the case with settlements. It is only when the court is satisfied that one of the parties would ultimately lose that it would order a variation. This power is provided in section 24(1) (c) of the Matrimonial Causes Act 1973.

C - The Guiding Principles

The Matrimonial Causes Act 1973 has provided some guiding principles which the courts shall have regard to when exercising its powers under section 23(1) (a) (b) (c) and section 24. These principles are found in section 25 (2) of the Matrimonial Causes Act 1973 as amended by the Matrimonial and Family Proceedings Act 1984. They are as follows:

- a) *...the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of any capacity and increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire.*
- b) *The financial needs, obligations and responsibilities which each of the parties to marriage has or is likely to have in the foreseeable future.*
- c) *The standard of living enjoyed by the family before the breakdown of the marriage.*
- d) *The age of each party and the duration of their marriage.*
- e) *Any physical or mental disability of the parties to the marriage.*
- f) *The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family including any contribution by looking after the home or caring for the family.*
- g) *The conduct of each of the parties, if that conduct is such that to the opinion of the court be inequitable to disregard it.*

Although most of these guidelines are self-explanatory, it will be helpful if an examination is made of paragraph (g) which deals with conduct of the parties and any factor which will help the court to arrive at a conclusion.

1 - The Conduct of the Parties

The Matrimonial and Family Proceedings Act 1984 has now codified the relevance of conduct to financial decisions. Before this date, section 25 (1) of the Matrimonial Causes Act of 1973 did provide *inter alia* that the court was to exercise its powers

...as to place the parties, so far as it is practicable and having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage

²⁴⁰ S. 24 (1) (b) M.C.A. 1973

had not broken down and each had property discharged his or her financial obligations and responsibilities towards the other.

Before the passing of the 1984 Act, the courts applied this provision only in cases where the conduct of one of the parties was “both obvious and gross”. Hence, adultery²⁴¹ and infrequent brutality²⁴² did not pass the test. It has been argued that the English Judges have not changed the status quo despite the Matrimonial and Family Proceeding Act of 1984²⁴³.

Even before the passing of the 1984 Act, the courts in the Former West Cameroon placed much relevance on the conduct of the parties when considering the question of financial provisions. In *Body Lawson v. Body Lawson*²⁴⁴, the wife had shown gross indifference, when the husband's sight started failing him, and even abandoned him when he eventually became blind. Justice Epuli held that the divorce was as a result of her conduct and that “it would be injustice” to award her anything²⁴⁵. While in *Ndumu v. Ndumu (No. 1)*²⁴⁶ and *Tambe Agbor Arrey Cecilia v. Thebaux Jean*²⁴⁷, Justice Mbuagbaw emphatically pointed out that:

The parties conduct and the responsibility of each for the break-up of the marriage will be relevant in determining the amount of alimony to be ordered.

Now that the element of “conduct” has been codified, it goes without saying that the courts in the Former West Cameroon will place much weight on it if in their opinion it will be “inequitable to disregard it”.

Another helpful principle, though not codified, is what today is known as the one-third rule.

2 - The One-Third Rule

In calculating what amount of money should be paid by one spouse to the other, the courts have developed a rule which serves mainly as a starting point. The rule simply states that the payer should pay the payee such a sum as to bring the payee's income up to one-third of their joint income. The rule was heavily criticised at one time and indeed Sir Jocelyn Simon P. once said it was a “discredited” rule²⁴⁸. But Phillimore L. J. secured its re-introduction in *Ackerman v. Ackerman*²⁴⁹ when he emphasized that the ‘one-third rule’ was not a rule in the strict sense of the term, but merely a starting point. This approach was confirmed by Lord Denning in *Wachtel v. Wachtel*²⁵⁰ where he remarked that:

There was... much good sense in taking one-third as a starting point. When a marriage breaks up, there will thenceforth be two households instead of one. The husband will have to go out to work all day and must get some woman to look after the house – either a wife, if he remarries, or a housekeeper, if he does not. He will also

²⁴¹ *Harnett v. Harnett* (1973) 2 ALL E. R. 593, *Trippas v. Trippas* (1973) 2 ALL E. R. 932

²⁴² *Griffiths v. Griffiths* (1974) 1 ALL E. R. J, C. A.

²⁴³ Bromley's Family Law Op. cit p 703

²⁴⁴ Suit No HCF/128mc/86 (unreported)

²⁴⁵ See also the English cases of *Courtney v. Courtney* (1966) 1ALL E. R. 53; *Wachtel* (1973) 1 ALL E. R. 829 C. A

²⁴⁶ Suit No. HCSW/18mc/83 (unreported)

²⁴⁷ Suit No. HCSW/81mc/84 (unreported)

²⁴⁸ *Kershaw v. Kershaw* (1966) P.13 at p. 17

²⁴⁹ (1972) 2 ALL E. R. 420

²⁵⁰ (1973) 1 ALL E. R. 829 C. A.

*have to provide maintenance for the children. The wife will not usually have such expense. She may go out to work herself, perhaps with some help. So she may remarry, in which case her new husband will provide for her. In any case, when there are two households, the greater expense will in most cases, will fall on the husband rather than the wife. As a start has to be made somewhere, it seems to us that in the past it was quite fair to start with one third...*²⁵¹

That the English Courts will apply the one-third rule as a starting point can be seen in recent decisions²⁵². Its application is very simple. If for example, the husband earns a salary of 350.000 francs CFA a month and the wife earns 100.000 francs CFA a month, their joint income will give a total of 450.000 francs CFA. One third of this total sum is 150.000 francs CFA. Since the wife earns 100.000 francs, applying the principle of the one-third rule, the court will order the husband to pay the wife the sum of 50.000 francs so as to bring her income to one-third of their joint incomes, that is, 150.000 francs CFA.

The court in Former West Cameroon also seem to respect this guide-line. And so in *Engo v. Engo*²⁵³, Chief Endeley applied it in a very swift manner. He simply ordered that the husband should pay to the wife, one-third of his salary. He earned 150.000 francs and the court made an order for 50.000 francs. The reports do not disclose whether or not the wife earned a salary. If mention was made of her salary because she had none, then the sum of 50.000 francs could be considered minimal in view of the fact that custody of two children of the marriage was given to her. In any case the order must have turned on the other facts of the case and has been pointed out already the one-third rule is equally subject to the other guiding principles enumerated in section 25 (2) of the Matrimonial Causes Act of 1973, as amended.

D - Enforcement of a Court Order

The spouse in whose favour an order is made could encounter enormous difficulties if the periodical payments are unsecured. The other spouse could be in arrears, or even default in making subsequent payments. This is not the case when the periodical payments are secured since arrangements are usually made to guard against non-payment. A case of enforcement arose in *Enie v. Enie*²⁵⁴ in which the petitioner was ordered to make 45.000 francs monthly payments to the respondent, and was in arrears of 840.000 francs CFA. It was argued on her favour that the sum of 45.000 francs should be deducted from the husband's salary and should find ways and means which were not harsh and hard to recover the arrears of 840.000 francs CFA. Starting with the second prayer first, the court noted that the issue was not whether or not the order of the court should be enforced but rather the mode of enforcement to be employed. It was pointed out that the arrears of payment could be regarded as liquidated damages which warranted the applicant to proceed by way of a writ of *Fifa*, which she failed to do. The court therefore ruled that it was not its business to recover the judgement debt, for any judgement creditor. In order words it was the duty of the applicant to have initiated such proceedings for the court to act.

²⁵¹ Ibid at p. 839

²⁵² See *Bullock v. Bullock* (1986) Fam. Law 129 C. A. *Dew v. Dew* (1985) Fam. Law 355.

²⁵³ (1971 – 1973) U.Y. L.R. 22

²⁵⁴ Suit No HCSW/65mc/83 (unreported)

As to the application for the deduction of 45.000 francs monthly from the salary of the petitioner, the court felt that there was a remedy although it regretted the fact that there was no precedent to follow. On this point, Justice Eyole – Monono declared:

It seems to me that although the applicant did not say so, the procedure intended by the court is that used in garnishee proceedings. These are proceedings employed in actions in the High Court where a judgment for the payment of money has been obtained by a debtor to whom money is owing by another person (called the garnishee). In such a case, the judgement creditor on application ex-parte at chambers may obtain an order that all debts owing or accruing from the garnishee to the judgement debtor shall be attached to answer the judgement debt²⁵⁵.

Answering the question whether an employer could be said to be the person from whom a debt is due, Justice Eyole – Monono observed that:

For this purpose... as long as an employee has earned his wages or salary for the month or for the week, as the case may be, his wages or salary becomes a debt in the hands of the employer²⁵⁶.

On this reasoning therefore, the court ordered a standing garnishee order to operate from month to month as long as the employee remained in the employment of the garnishee (the employer) and until the applicant remarried or died, whichever occurred first²⁵⁷.

At this point it should be remarked that the court has powers, mindful of subsequent changes in the financial strength of the parties to vary, discharge or suspend or even revive any order made²⁵⁸. In fact, it is common to find invitations from judges in Former West Cameroon to ex-spouses asking them to apply for variations should the need arise²⁵⁹.

Following the Law Commission's recommendations, financial relief can now be obtained after a divorce overseas. The recognition of such foreign judgement has been codified in the Matrimonial and Family Proceedings Act of 1984²⁶⁰. For the recognition to take place, the divorce must have been obtained by judicial or other proceedings.

E - The Customary Law Position

It is clear that the husband and the wife do not go to the judgement seat on the basis of equality under customary law. The wife is always considered to be the husband's property. Although there are no clear-cut guide-lines the court will never hesitate to consider the interest of any children of the family. It is however rare to find the court awarding a wife prodigal payment. In the first place, the parties usually survive under the subsistence system and secondly a clean break will be preferred so that the parties start leading sufficient lives. This explains why a lump sum is almost always awarded to a wife. And since the jurisdiction of the court does not go beyond 69.000 francs²⁶¹, the sums awarded usually fall below this

²⁵⁵ Ibid

²⁵⁶ Enie v. Enie Suit No. HCSW/65mc/83 (unreported)

²⁵⁷ Mbiaffie v. Mbiaffie Suit No. HCSW/30mc/85 (unreported)

²⁵⁸ S. 31 (1), (2) M.C.A. 1973 as amended by the Matrimonial Homes and Property Act 1981. S. 8(2)

²⁵⁹ Shu v. Shu Suit No. HCB/16/85 (unreported) Mahop v. Mahop Suit No. HCSW/21mc/78 (unreported)

²⁶⁰ Part III

²⁶¹ Section 8, Customary Courts Ordinance, Cap 142 of the revised laws of the federation of Nigeria 1958.

figure. So, in *Awah Patrick Chefor v. Siriwah Atanga Justine*²⁶², the Mankon customary court awarded the wife 69.000 francs to enable her “start a new life”. While in *Nnah Christopher Fonchingong v. Nchang Mary*²⁶³, she was awarded 50.000 francs.²⁶⁴

It would appear that the court prefers prodigal payments when making financial orders for children. In cases where custody of the children is given to the wife there is usually a proviso stating that they would be returned to their father in due course. The Manual of Practice and Procedure for Court Clerks, provides that the father will eventually take custody in such a case, when the female child is 9 years old. For a male child, this will happen when he is no longer being breastfed²⁶⁵. The courts tend to award very low figures mindful of the fact that the husband does not earn a secured income as such. But where the circumstances warrant that a reasonable sum be awarded, the court will not hesitate to do so. Usually however, the sum ranges from 10.000 francs²⁶⁶ to 15.000 francs²⁶⁷ a month.

The fixing of maintenance allowance is different in non-judicial divorce. The elders in the village are usually consulted and in an amicable manner, conclusions are arrived at. In the event of failure, the opinion of the Traditional Council is sought.

F - Failure To Provide Reasonable Maintenance

At common law, a husband is bound to maintain his wife and his legitimate children. This duty has been given statutory recognition in section 27 of the Matrimonial Causes Act 1973. The section is significant because it makes the duty reciprocal to both husbands and wives. It is stated in section 27 (1) that:

Either party to the marriage may apply to the court for an order under this section on the grounds that the order party to the marriage (in this section referred to as the respondent)

- a) Being the husband has wilfully neglected*
 - 1) To provide reasonable maintenance for the applicant, or*
 - 2) To provide, or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies.*
- b) Being the wife, ha wilfully neglected to provide, or to make a proper contribution towards, reasonable maintenance*
 - 1) For the applicant in the case where, by reason of the impairment of the applicant's earning capacity through age, illness or disability of mind or body, and having regard to any resources of the applicant and the*

²⁶² CS No. 82/86-87 CRB II P. 58 (unreported) Mankon Customary Court.

²⁶³CS No. 53/87-88. CRB 1/87-88 P. 213 (unreported) Mankon Customary Court

²⁶⁴See also *Teneng Lucas v. Nchang Irene*, CS, No. 257/85-86 CRB 1/86-87 P. 37 (unreported) Mankon Customary Court, where the court awarded the wife 69.200 francs; *Ambahe v. Ambahe*, CS No. 192/85-86 CRB 1/86-87 P. 41 (unreported) Mankon Customary Court, the plaintiff was ordered to pay alimony of 68.200 francs to the defendant to enable her start a new life; *Tamukong Joseph Azie v. Viruyih Akumba Marvel* Cs. No. 165/86-87 CRB P. 199 (unreported) Mankon Customary Court.

²⁶⁵ Chapter 10, para 11

²⁶⁶ *Awah Patrick Chefor v. Siriwah Atanga Justine* CS. No. 82/86-87. CRB II P. 58 (unreported) Mankon Customary Court.

²⁶⁷ *Teneng Lucas v. Nchang Mary*, Cs No. 53/87-88 CRB 1/87-88 P. 213 (unreported), Mankon Customary court.

respondent respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide, or contribute or
2) *For any child of the family to whom this section applies.*

What is most significant about this section is the fact that an application can be made under it without the spouse asking for divorce or any other relief.

In Cameroon the 1981 Ordinance seems to give this right only to a woman whose husband has deserted her. It is provided in section 76 (1) that:

A wife who has been deserted by her husband may bring an action before the court in order to obtain alimony for both the children left under her care and herself.

The Ordinance is silent in the case where the parties are living under the same roof and the husband fails to provide reasonable maintenance. Under the Matrimonial Causes Act 1973, the husband can also seek an order against his wife only if his earning capacity was impaired by age, illness or disability²⁶⁸. This restriction is not found in the 1981 Ordinance which simply provides in its section 76(5) that a woman exercising a separate trade or possessing a personal income may, at the request of the husband, be obliged to contribute to the cost of running the home.

²⁶⁸ S. 27 (1) (b)