MATRIMONIAL CAUSES ACT

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MATRIMONIAL CAUSES ACT

An Act to make provisions for matrimonial causes.

[1970 No. 18.]

[17th March, 1970]

[Commencement.]

PART I

Jurisdiction

1.Institution of matrimonial cause proceedings only under this Act

(1) After the commencement of this Act, a matrimonial cause shall not be instituted otherwise than under this Act.

(2) If a matrimonial cause has been instituted before the commencement of this Act but not completed, it shall be continued and dealt with only in accordance with the provisions of this Act.

(3) Where before or after the commencement of this Act a matrimonial cause has been or is instituted, and whether or not it has been completed, proceedings in relation thereto for any relief or order of a kind that could be sought under this Act shall be instituted after the commencement of this Act only under this Act, so however that, subject to the succeeding provisions of this and the next section--

(a) any jurisdiction of a court of summary jurisdiction of a State or of a court of appeal from such a court, under the law of that State, to make—

(i) orders with respect to the maintenance of wives or children or the custody of or access to children; or

(ii) separation orders or other orders having the effect of relieving a party to a marriage from any obligation to cohabit with the other party,

shall not be affected by this Act or any proceedings thereunder; and

(b) proceedings for or in respect of such an order, or for its enforcement, may be continued or instituted as if this Act had not been made.

(4) Where a marriage is dissolved or annulled by a decree of a court of cornpetent jurisdiction under this Act-

(a) any jurisdiction of such a court or of a court on appeal from such a court, to make orders of the kind specified in subsection (3) *(a)* of this section shall, by virtue of this subsection, cease to be applicable in relation to the parties to the marriage or the children of the marriage; and

(b) any order of that kind (unless it is a maintenance order, when subsection (6) of this section will apply) made by such a court in relation to those parties or children shall cease to have effect.

(5) A court in the exercise of its jurisdiction under this Act may at any time by order direct that an order of the kind specified in subsection (3) *(a)* of this section made by a court of summary jurisdiction, or by a court on appeal from such a court, shall cease to have effect; and that order shall cease to have effect accordingly.

(6) Where an order of the kind specified in subsection (3) *(a)* of this section made with respect to the maintenance of a wife or of children ceases to have effect under subsection (4) or (5) of this section, the order made may, in so far as it relates to any period before it so ceased to have effect, be enforced as if this Act had not been made.

2. Jurisdiction in matrimonial causes

(1) Subject to this Act, a person may institute a matrimonial cause under this Act in the High Court of any State of the Federation; and for that purpose the High Court of each State of the Federation shall have jurisdiction to hear and determine--

(a) matrimonial causes instituted under this Act; and

(b) matrimonial causes (not being matrimonial causes to which section 101 of this Act applies) continued in accordance with the provisions of Part IX of this Act, so however that jurisdiction under this Act in respect of matrimonial causes within this paragraph shall be restricted to the court in which the matrimonial cause was instituted,

and in any case where maintenance is ordered in proceedings in a High Court, a court of summary jurisdiction in any State shall have jurisdiction to enforce payment in summary manner.

(2) Proceedings for a decree--

(a) of dissolution of marriage; or

(b) of nullity of a voidable marriage; or

(c) of nullity of a void marriage; or

(d) of judicial separation; or

(e) ofrestitution of conjugal rights; or

(f) of jactitation of marriage,

may be instituted under this Act only by a person domiciled in Nigeria.

(3) For the avoidance of doubt it is hereby declared that a person domiciled in any State of the Federation is domiciled in Nigeria for the purposes of this Act and may

institute proceedings under this Act in the High Court of any State whether or not he is domiciled in that particular State.

3. Void marriages and prohibited degrees of consanguinity

(1) Subject to the provisions of this section, a marriage that takes place after the commencement of this Act is void in any of the following cases but not otherwise, that is to say, where-

(a) either of the parties is, at the time of the marriage, lawfully married to some other person;

(b) the parties are within the prohibited degrees of consanguinity or, subject to section 4 of this Act, of affinity;

(c) the marriage is not a valid marriage under the law of the place where the marriage takes place, by reason of a failure to comply with the requirements of the law of that place with respect to the form of solemnisation of marriages;

(d) the consent of either of the parties is not a real consent because--

(i) it was obtained by duress or fraud; or

(ii) that party is mistaken as to identity of the other party, or as to the nature of the ceremony performed;

(iii) that party is mentally incapable of understanding the nature of the marriage contract;

(e) either of the parties is not of marriageable age.

(2) The prohibited degrees of consanguinity and affinity respectively on and after the commencement of this Act shall be those set out in the First Schedule to this Act, and none other.

[First Schedule.]

(3) A marriage solemnised before the commencement of this Act shall not be voidable on the grounds of consanguinity or affinity of the parties unless the parties were, at the time of the marriage, within one of the degrees of consanguinity or affinity set out in the First Schedule to this Act but nothing in this subsection shall make voidable a marriage that would not, apart from this provision, be voidable.

4. Marriage of persons within prohibited degrees of affinity

(1) Where two persons who are within the prohibited degrees of affinity wish to marry each other, they may apply, in writing, to ajudge for permission to do so.

(2) If the judge is satisfied that the circumstances of the particular case are so exceptional as to justify the granting of the permission sought he may, by order, permit the applicants to marry one another.

(3) Where persons marry in pursuance of permission granted under this section, the validity of their marriage shall not be affected by the fact that they are within the prohibited degrees of affinity.

(4) The President may arrange with the Governor of a State for the performance by judges of the High Court of that State of functions under this section.

(5) In this section, **"judge"** means a judge in respect of whom an arrangement made under subsection (4) of this section is applicable.

(6) Rules made under section 112 of this Act may make provision for the practice and procedure in and in connection with applications under this section, and may include provision for or in relation to the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation, and the payment of expenses of witnesses.

5. Voidable marriage

(1) Subject to this Act, a marriage that takes place after the commencement of this Act not being a marriage that is void, shall be voidable in the following cases but not otherwise, that is to say, where at the time of marriage----

(a) either party to the marriage is incapable of consummating the marriage;

(b) either party to the marriage is--

(i) of unsound mind; or

(ii) a mental defective; or

(iii) subject to recurrent attacks of insanity or epilepsy;

(c) either party to the marriage is suffering from a venereal disease in a communicable form; or

(d) the wife is pregnant by a person other than the husband.

(2) For the purposes of this section, **"mental defective"** means a person who, owing to an arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, requires oversight, care or control for his own protection or for the protection of others and is, by reason of that fact, unfitted for the responsibilities of marriage.

6. Validity, etc., of certain marriages not affected

(1) Save as expressly provided in this Part of this Act, nothing in this Part shall affect the validity or invalidity of a marriage that took place before the commencement of this Act.

(2) A provision of this Act shall not affect the validity or invalidity of a marriage where it would not be in accordance with the rules of private international law to apply that provision in relation to that marriage.

7. Special provisions as to wife's domicile

For the purposes of this Act-

(a) a deserted wife who was domiciled in Nigeria either immediately before her marriage or immediately before the desertion shall be deemed to be domiciled in Nigeria; and

(b) a wife who is resident in Nigeria at the date of instituting proceedings under this Act and has been so resident for the period of three years immediately preceding that date shall be deemed to be domiciled in Nigeria at that date.

8. Law to be applied

The jurisdiction conferred on a court by this Act shall be exercised in accordance with this Act, and any law in force immediately before the commencement of this Act which confers jurisdiction in divorce or matrimonial causes on the High Court of a State or provides for the law and practice to be applied in the exercise of that jurisdiction shall, to the extent that it does so, cease to have effect.

9. Staying and transferring of proceedings

(1) Where it appears to a court in which a matrimonial cause has been instituted under this Act that a matrimonial cause between the parties to the marriage or purported marriage has been instituted in another court having jurisdiction under this Act, the court may in its discretion stay the matrimonial cause for such time as it thinks fit.

(2) Where it appears to a court in which matrimonial cause has been instituted under this Act (including a matrimonial cause in relation to which subsection (1) of this section applies) that it is in the interest of justice that the matrimonial cause be dealt with in another court having jurisdiction to hear and determine that cause, the court may transfer the matrimonial cause to the other court.

(3) The court may exercise its powers under this section at any time and at any stage either on application by any of the parties, or of its own motion.

(4) Where a matrimonial cause is transferred from a court in pursuance of this section--

(a) all documents of record filed in that court shall be transmitted by the registrar or other proper officer of that court to the registrar or other proper officer of the court to which the cause is transferred; and

(b) the court to which the cause is transferred shall proceed as if the cause had been originally instituted in that court, and as if the same proceedings had been taken in that court from which the cause was transferred, but all subsequent proceedings shall be in accordance with the practice and procedure of the court to which the cause is transferred.

10. Courts to aid one another

All courts having jurisdiction under this Act shall severally act in aid of and be auxiliary to one another in all matters under this Act.

PART II

Matrimonial relief

Reconciliation

11. Reconciliation

(1) It shall be the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so), and if at any time it appears to the judge constituting the court, either

from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel, that there is a reasonable possibility of such a reconciliation, the judge may do all or any of the following, that is to say, he may-

(a) adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with either of the next two succeeding paragraphs;

(b) with the consent of those parties, interview them in chambers, with or without counsel, as the judge thinks proper, with a view to effecting a reconciliation;

(c) nominate a person with experience or training in marriage conciliation, or in special circumstances, some other suitable person, to endeavour with the consent of the parties, to effect a reconciliation.

(2) If, not less than fourteen days after an adjournment under subsection (1) of this section has taken place, either of the parties to the marriage requests that the hearing be proceeded with, the judge shall resume the hearing, or the proceedings may be dealt with by another judge, as the case may require, as soon as practicable.

12. Hearing when reconciliation fails

Where a judge has acted as conciliator under section 11 (1) *(b)* of this Act but the attempt to effect a reconciliation has failed, the judge shall not, except at the request of the parties to the proceedings, continue to hear the proceedings, or determine the proceedings; and, in the absence of such a request, the proceedings shall be dealt with by another judge.

13. Statements, etc., made in course of attempt to effect reconciliation

Evidence of anything said or of any admission made in the course of an endeavour to effect a reconciliation under this Part of this Act shall not be admissible in any court (whether exercising federal jurisdiction or not) or in proceedings before a person authorised by any enactment, federal or state, or by consent of parties, to hear, receive and examine evidence.

14. Marriage conciliator to take oath of secrecy

A marriage conciliator shall, before entering upon the performance of his functions as such a conciliator, make and subscribe, before a person authorised in Nigeria to take affidavits, an oath or affirmation of secrecy in accordance with the form in the Second Schedule to this Act.

[Second Schedule.]

Dissolution of marriage

15. Grounds for dissolution of marriage

(1) A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts-

(a) that the respondent has wilfully and persistently refused to consummate the marriage;

(b) that since the marriage the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

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

(d) that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;

(e) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;

(*if)* that the parties to the marriage have lived apart for a continuous period of a least three years immediately preceding the presentation of the petition;

(g) that the other party to the marriage has, for a period of not less than one year, failed to comply with a decree or restitution of conjugal rights made under his Act;

(h) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

(3) For the purposes of subsection (2) *(e)* and (*f)* of this section the parties to a marriage shall be treated as living apart unless they are living with each other in the same household.

16. Provisions supplementary to section 15

(1) Without prejudice to the generality of section 15 (2) of this Act, the court hearing a petition for a decree of dissolution of marriage shall hold that the petitioner has satisfied the court of the fact mentioned in the said section 15 (2) *(c)* of this Act if the petitioner satisfies the court that-

(a) since the marriage, the respondent has committed rape, sodomy, or bestiality; or

(b) since the marriage, the respondent has, for a period of not less than two years-

(i) been a habitual drunkard; or

(ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation,

or has, for a part or parts of such a period, been a habitual drunkard and has, for the other part or parts of the period, habitually been so intoxicated; or

(c) since the marriage, the respondent has within a period not exceeding five years-

(i) suffered frequent convictions for crime in respect of which the respondent has been sentenced in the aggregate to imprisonment for not less than three years; and

(ii) habitually left the petitioner without reasonable means of support; or

(d) since the marriage, the respondent has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition; or

(e) since the marriage and within a period of one year immediately preceding the date of the petition, the respondent has been convicted of-

(i) having attempted to murder or unlawfully to kill the petitioner; or

(ii) having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the petitioner or the intent to inflict grievous harm or grievous hurt on the petitioner; or

(f) the respondent has habitually and wilfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the petitioner-

(i) ordered to be paid under an order of, or an order registered in, a court in the Federation; or

(ii) agreed to be paid under an agreement between the parties to the marriage providing for their separation; or

(g) the respondent-

(i) is, at the date of the petition, of unsound mind and unlikely to recover; and

(ii) since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution.

(2) Where a petition is based on the fact mentioned in section 15 (2) *(h)* of this Act-

(a) proof that, for a period of seven years immediately preceding the date of the petition, the other party to the marriage was continually absent from the petitioner and that the petitioner has no reason to believe that the other party was alive at any time within that period, is sufficient to establish the fact in question, unless it is shown that the other party to the marriage was alive at a time within that period; and

(b) a decree made pursuant to the petition shall be in the form of a decree of dissolution of marriage by reason of presumption of death.

17. Additional provisions to encourage reconciliation

(1) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of section 15 (2) *(c)* of this Act whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(2) In considering for the purposes of section 15 (2) of this Act whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of anyone period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(3) References in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

18. Constructive desertion

A married person whose conduct constitutes just cause or excuse for the other party to the marriage to live separately or apart, and occasions that other party to live separately or apart, shall be deemed to have wilfully deserted that other party without just cause or excuse, notwithstanding that that person may not in fact have intended the conduct to occasion that other party to live separately or apart.

19. Refusal to resume cohabitation

(1) Where husband and wife are parties to an agreement for separation, whether oral, in writing or constituted by conduct, the refusal by one of them, without reasonable justification, to comply with the other's *bona fide* request to resume cohabitation shall constitute, as from the date of the refusal, wilful desertion without just cause or excuse on the part of the party so refusing.

(2) For the purposes of this section, "reasonable justification" means justification that is reasonable in all the circumstances, including the conduct of the other party to the marriage since the marriage, whether that conduct took place before or after the agreement for separation.

20. Desertion continuing after insanity

Where a party to a marriage has been wilfully deserted by the other party, the desertion shall not be deemed to have been terminated by reason only that the deserting party has become incapable of forming or having an intention to continue the desertion, if it appears to the court that the desertion would probably have continued if the deserting party had not become so incapable.

21. Restriction on finding of non-consummation

The court shall not find that a respondent has wilfully and persistently refused to consummate the marriage unless the court is satisfied that, as at the commencement of the hearing of the petition, the marriage had not been consummated.

22. Aggregation of concurrent sentences in reckoning imprisonment

Whertr-

(a) a person has been sentenced to imprisonment in respect of each of two or more crimes that, in the opinion of the court hearing the petition, arose substantially out of the same acts or omissions; and

(b) the sentences were ordered to be served, in whole or in part, concurrently,

then in reckoning for the purposes of section 16 (1) *(c)* of this Act the period for which that person has been sentenced in the aggregate, any period during which two or more of those sentences were to be served concurrently shall be taken into account once only.

23. Restriction on finding of non-maintenance

A finding in accordance with section 16 (1) *(f)* of this Act shall not be made unless the court is satisfied that reasonable attempts have been made by the petitioner to enforce the order or agreement under which maintenance was ordered or agreed to be paid.

24. Restriction on finding of insanity

A finding in accordance with section 16 (1) *(g)* of this Act shall not be made unless the court is satisfied that, at the commencement of the hearing of the petition, the respondent was still confined in an institution referred to in the said section 16 (1) *(g)* and was unlikely to recover.

25. Power to refuse to make decree without maintenance, etc., in proper case

On the application of the respondent made in the course of proceedings for a decree of dissolution of marriage, the court may, if it considers it just and proper in the circumstances of the case to make provision for the maintenance of the respondent or other provision for the benefit of the respondent, refuse to make a decree unless and until it is satisfied that the petitioner has made arrangements satisfactory to the court to provide the maintenance of other benefit as aforesaid upon the decree becoming absolute.

26. Condonation and connivance

Except where section 16 (1) *(g)* of this Act applies, a decree of dissolution of marriage shall not be made if the petitioner has condoned or connived at the conduct constituting the facts on which the petition is based.

27. Collusion

A decree of dissolution of marriage shall not be made if the petitioner, in bringing or prosecuting the proceedings, has been guilty of collusion with intent to cause a perversion of justice.

28. Discretionary bars

The court may, in its discretion, refuse to make a decree of marriage if since the marriage--

(a) the petitioner has committed adultery that has not been condoned by the respondent or, having been so condoned, has been revived;

(b) the petitioner has wilfully deserted the respondent before the happening of the matters relied upon by the petitioner or, where those matters involve other matters occurring during, or extending over, a period, before the expiration of that period; or

(c) the habits of the petitioner have, or the conduct of the petitioner has, conduced or contributed to the existence of the matters relied upon by the petitioner.

29. No dissolution where petition for nullity before court

Where both a petition for a decree of nullity of a marriage and a petition for a decree of dissolution of that marriage are before a court, the court shall not make a decree of dissolution of the marriage unless it has dismissed the petition for a decree of nullity of the marriage.

30. Petition within two years of marriage

(1) Subject to this section, proceedings for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by leave of the court.

(2) Nothing in this section shall apply to the institution of proceedings based on any of the matters specified in section 15 (2) *(a)* or *(b)* or 16 (1) *(a)* of this Act, or to the institution of proceedings for a decree of dissolution of marriage by way of cross-proceedings.

(3) The court shall not grant leave under this section to institute proceedings except on the ground that to refuse to grant the leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage.

(4) In determining an application for leave to institute proceedings under this section, the court shall have regard to the interest of any children of the marriage, and to the question whether there is any reasonable probability of a reconciliation between the parties before the expiration of the period of two years after the date of the marriage.

(5) Where, at the hearing of proceedings that have been instituted by leave of the court under this section, the court is satisfied that the leave was obtained by misrepresentation or concealment of material facts, the court may-

(a) adjourn the hearing for such period as the court thinks fit; or

(b) dismiss the petition on the ground that the leave was so obtained.

(6) Where, in a case to which subsection (5) of this section applies, there is a cross-petition, if the court adjourns or dismisses the petition under that subsection, it shall also adjourn for the same period, or dismiss as the case may be, the cross-petition; but if the court, having regard to the provisions of this section, thinks it proper to hear and

determine the cross-petition, it may do so, and in that case it shall also hear and determine the petition.

(7) The dismissal of a petition or a cross-petition under subsection (5) or (6) of this section shall not prejudice any subsequent proceedings on the same, or substantially the same, facts as those constituting the ground on which the dismissed petition or cross-petition was brought.

(8) Nothing in this section shall prevent the institution of proceedings, after the period of two years from the date of the marriage, based upon matters which have occurred within that period.

(9) In this section, a reference to the leave of the court shall be deemed to include a reference to leave granted by a court on appeal.

31. Claim for damages

(1) A party to a marriage, whether husband or wife, may, in a petition for a decree of dissolution of the marriage alleging that the other party to the marriage has committed adultery with a person or including that allegation, claim damages from that person on the ground that that person has committed adultery with the other party to the marriage and, subject to this section, the court may award damages accordingly.

(2) The court shall not award damages against a person where the adultery of the respondent with that person has been condoned, whether subsequently revived or not, or if a decree of dissolution of the marriage based on the fact of the adultery of the respondent with that person, or on facts including that fact, is not made.

(3) Damages shall not be awarded under this Act in respect of an act of adultery committed more than three years before the date of the petition.

(4) The court may direct in what manner the damages awarded shall be paid or applied and may, if it thinks fit, direct that they shall be settled for the benefit of the respondent or the children of the marriage.

32. Joinder of adulterers, etc.

(1) Where, in a petition for a decree of dissolution of marriage or in an answer to such a petition, a party to the marriage is alleged to have committed adultery with a specified person, whether or not a decree of dissolution of marriage is sought on the basis of that allegation, that person shall, except as provided by rules of court, be made a party to the proceedings.

(2) Where, in a petition for a decree of dissolution of marriage or in an answer to such a petition, a party to the marriage is alleged to have committed rape or sodomy on or with a specified person, whether or not a decree of dissolution of marriage is sought on the basis of that allegation that person shall, except as provided by rules of court, be served with notice that the allegation has been made and is thereupon entitled to intervene in the proceedings.

(3) Where a person has been made a party to proceedings for a decree of dissolution of marriage in pursuance of subsection (1) above, the court may, on the application of that person, if it is satisfied after the close of the case for the party to the marriage who alleged the adultery that there is not sufficient evidence to establish that that person

committed adultery with the other party to the marriage, dismiss that person from the proceedings.

33. Effect of dissolution of marriage

Where a decree of dissolution of marriage under this Act has become absolute, a party to the marriage may marry again as if the marriage had been dissolved by death.

Nullity of marriage

34. Ground for decree of nullity of marriage

Subject to the following provisions of this Part of this Act, a petition under this Act for nullity of marriage may be based on the ground that the marriage is void, or on the ground that the marriage is voidable at the suit of the petitioner.

35. Who may institute proceedings

A decree of nullity of marriage shall not be made upon the petition-s-

(a) of the party suffering from the incapacity to consummate the marriage, on the ground that the marriage is voidable by virtue of section 5 (1) *(a)* of this Act, unless that party was not aware of the existence of the incapacity at the time of the marriage;

(b) of the party suffering from the disability of the disease, on the ground that the marriage is voidable by virtue of section 5 (1) *(b)* or (c) of this Act; or

(c) of the wife, on the ground that the marriage is voidable by virtue of section 5 (1) *(d)* of this Act.

36. Incapacity to consummate marriage

(1) A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of section 5 (1) *(a)* of this Act unless the court is satisfied that the incapacity to consummate the marriage also existed at the time when the hearing of the petition commenced and that--

(a) the incapacity is not curable;

(b) the respondent refuses to submit to such medical examination as the court considers necessary for the purpose of determining whether the incapacity is curable; or

(c) the respondent refuses to submit to proper treatment for the purpose of curing the incapacity.

(2) A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of section 5 (1) *(a)* of this Act where the court is of opinion that-

(a) by reason of-

(i) the petitioner's knowledge of the incapacity at the time of the marriage; or

(ii) the conduct of the petitioner since the marriage; or

(iii) the lapse of time; or

(b) for any other reason,

it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest, to make a decree.

37. Restrictions on certain grounds

A decree of nullity of marriage shall not be made on the ground that the marriage is voidable by virtue of section 5 (1) *(b), (c)* or *(d)* of this Act unless the court is satisfied that-

(a) the petitioner was, at the time of the marriage, ignorant of the facts constituting the ground;

(b) the petition was filed not later than twelve months after the date of the marriage; and

(c) marital intercourse has not taken place with the consent of the petitioner since the petitioner discovered the existence of the facts constituting the grounds.

38. Effect of decree of nullity of a voidable marriage

(1) A decree of nullity under this Act of a voidable marriage shall annul the marriage from and including the date on which the decree becomes absolute.

(2) Without prejudice to the operation of subsection (1) of this section in other respects, a decree of nullity under this Act of a voidable marriage shall not render illegitimate a child of the parties born since, or legitimated during, the marriage.

Judicial separation

39. Grounds for judicial separation

Subject to this Part, a petition under this Act by a party to a marriage for a decree of judicial separation may be based on one or more of the facts and matters specified in sections 15 (2) and 16 (1) of this Act.

40. Application to judicial separation of sundry sections of this Part

The provisions of sections 18 to 24 and sections 26 to 32 of this Act shall apply to and in relation to a decree of judicial separation and proceedings for such a decree and, for the purposes of those provisions as so applying, a reference in those provisions to a decree of dissolution of marriage shall be read as a reference to a decree of judicial separation.

41. Effect of decree of judicial separation

A decree of judicial separation relieves the petitioner from the obligation to cohabit with the other party to the marriage while the decree remains in operation, but, except as provided by this Part, it shall not otherwise affect the marriage or the status, rights and obligations of the parties to the marriage.

42. Effect on rights to sue, devolution of property, etc.

(1) While a decree of judicial separation is in operation, either party to the marriage may bring proceedings in contract or in tort against the other party.

(2) Where a party to a marriage dies intestate as to any property while a decree of judicial separation is in operation, that property shall devolve as if that party had survived the other party to the marriage.

(3) Where upon, or in consequence of, the making of a decree of judicial separation a husband is ordered to pay maintenance to his wife, and the maintenance is not duly paid, the husband shall be liable for necessaries supplied for the wife's use.

43. Exercise of joint powers not affected

Nothing in this Part shall prevent a wife, during separation under a decree of judicial separation, from joining in the exercise of any power given to herself and her husband jointly.

44. Decree of judicial separation not to bar subsequent proceedings for dissolution of marriage

(1) A decree of judicial separation shall not prevent the institution by either party to the marriage of proceedings for a decree of dissolution of marriage.

(2) Subject to the next succeeding subsection, the court may, in any proceedings for a decree of dissolution of marriage on the same, or substantially the same, facts as those on which a decree of judicial separation has been made, treat the decree of judicial separation as sufficient proof of the facts constituting the ground on which that decree was made.

(3) The court shall not grant a decree of dissolution of marriage without receiving evidence by the petitioner in support of the petition.

45. Discharge of decree of jndicial separation on resumption of cohabitation

Where, after the making of a decree of judicial separation the parties voluntarily resume cohabitation, either party may apply for an order discharging the decree, and the court shall, if both parties consent to the order, or if the court is otherwise satisfied that the parties have voluntarily resumed cohabitation, make an order discharging the decree accordingly.

46. Application of section 41 to 45 to certain decrees

The provision of sections 41 to 45 of this Act shall apply to and in relation to a decree of judicial separation made before the commencement of this Act by a court in Nigeria as well as to such a decree made after the commencement of this Act.

Restitution of conjugal rights

47. Ground for decree of restitution of conjugal rights

A petition under this Act by a party to a marriage for a decree of restitution of conjugal rights may be based on the ground that the parties to the marriage, whether or not they have at any time cohabited, are not cohabiting and that, without just cause or excuse, the party against whom the decree is sought refuses to cohabit with, and render conjugal rights to, the petitioner.

48. Agreement for separation

An agreement for separation, whether entered into before or after the commencement of this Act, shall not constitute a defence to proceedings under this Act for a decree of restitution of conjugal rights.

49. Sincerity of petitioner

The court shall not make a decree of restitution of conjugal rights unless it is satisfied-

(a) that the petitioner sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent; and

(b) that a written request for cohabitation, expressed in conciliatory language, was made to the respondent before the institution of the proceedings, or that there are special circumstances which justify the making of the decree notwithstanding that such a request was not made.

50. Notice as to home

Where the court makes a decree of restitution of conjugal rights on the petition of a husband, the petitioner shall, as soon as practicable after the making of the decree, and at such other times as rules of court so require, give to the respondent notice, in accordance with rules of court, of the provision made by the petitioner, or which the petitioner is willing to make, with respect to a home, for the purpose of enabling the respondent to comply with the decree.

51. Enforcement of decree

A decree of restitution of conjugal rights shall not be enforceable by attachment.

Jactitation of marriage

52. Ground for decree of jactitation of marriage, and discretion of court

A petition under this Act for a decree of jactitation of marriage may be based on the ground that the respondent has falsely boasted and persistently asserted that a marriage

has taken place between the respondent and the petitioner, but the making of the decree shall be in the discretion of the court, notwithstanding anything contained in this Act.

General

53. Facts, etc., occurring before commencement of Act or outside Nigeria

(1) A decree may be made, or refused, under this Part of this Act by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement of this Act or outside Nigeria.

(2) For the purposes of this section, the provision of sections 18, 19 and 20 of this Act shall be deemed to extend to matters which occurred before the commencement of this Act.

54. Institution of proceedings

(1) Subject to the next succeeding subsection, a matrimonial cause of a kind referred to in paragraph *(a)* or *(b)* of the definition of "matrimonial cause" in section 114 (1) of this Act shall be instituted by petition.

(2) A respondent may, in the answer to the petition, seek any decree or declaration that the respondent could have sought in a petition.

(3) Proceedings of a kind referred to in paragraph *(c)* of the definition of "matrimonial cause" in section 114 (1) of this Act that are in relation to proceedings under this Act for a decree or declaration of a kind referred to in paragraph *(a)* or *(b)* of that definition--

(a) may be instituted by the same petition as that by which the proceedings for that decree or declaration are instituted; and

(b) except as permitted by the rules or by leave of the court, shall not be instituted in any other manner.

(4) The court shall, so far as is practicable, hear and determine at the same time all proceedings instituted by the one petition.

55. Duty of court

Save where other provisions in that behalf are made by this Act, the court, upon being satisfied of the existence of any ground in respect of which relief is sought, shall make the appropriate decree.

56. Decree *nisi* in first instance

A decree of dissolution of marriage or nullity of a voidable marriage under this Act shall, in the first instance, be a decree *nisi.*

57. Decree absolute where children under sixteen years, etc.

(1) Where there are children of the marriage in relation to whom this section applies, the decree *nisi* shall not become absolute unless the court, by order, has declared--

(a) that it is satisfied that proper arrangements in all the circumstances have been made for the welfare and, where appropriate, the advancement and education of those children; or

(b) that there are special circumstances that the decree *nisi* should become absolute notwithstanding that the court is not satisfied that such arrangements have been made.

(2) In this section, **"children of the marriage in relation to whom this section applies"** means--

(a) the children of the marriage who are under the age of sixteen years at the date of the decree *nisi;* and

(b) any children of the marriage in relation to whom the court has, in pursuance of the next succeeding subsection, ordered that this section shall apply.

(3) The court may, in a particular case, if it is of opinion that there are special circumstances which justify its so doing, order that this section shall apply in relation to a

child of the marriage who has attained the age of sixteen years at the date of the decree *nisi.*

58. When decree becomes absolute

(1) Subject to this section, where in relation to a decree *nisi-*

(a) section 57 above applies, the decree *nisi* shall become absolute by force of this section at the expiration of-

(i) a period of three months from the making of the decree; or

(ii) a period of 28 days from the making of an order under subsection (1) of that section,

whichever is the later; and

(b) section 57 of this Act does not apply,

the decree *nisi* shall become absolute by force of this section upon the expiration of a period of three months from the making of the decree.

(2) Where a decree *nisi* has been made in any proceedings, the court of first instance (whether or not it made the decree), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection--

(a) having regard to the possibility of an appeal or further appeal, make an order extending the period at the expiration of which the decree *nisi* will become absolute; or

(b) if it is satisfied that there are special circumstances which justify its so doing, make an order reducing the period at the expiration for which the decree *nisi* will become absolute.

(3) Where an appeal is instituted (whether or not it is the first appeal) before a decree *nisi* has become absolute, then, notwithstanding any order in force under the last preceding subsection at the time of the institution of the appeal, the decree *nisi,* unless reversed or rescinded, shall become absolute by force of this section--

(a) at the expiration of a period of 28 days from the day on which the appeal is determined or discontinued; or

(b) on the day on which, in the particular circumstances, the decree would have become absolute under subsection (1) above if no appeal had been instituted,

whichever is the later.

(4) A decree *nisi* shall not become absolute by force of this section where either of the parties to the marriages has died.

(5) **In** this section, **"appeal",** in relation to a decree *nisi,* means--

(a) an appeal, application for leave to appeal or intervention, against or arising out of-

(i) the decree *nisi;* or

(ii) an order under the last preceding section in relation to the proceedings in which the decree *nisi* was made; or

(b) an application under section 60 or 61 of this Act for rescission of the decree or an appeal or application for leave to appeal arising out of such an application.

59. Certificate as to decree absolute

(1) Where a decree *nisi* becomes absolute, the registrar or other proper officer of the court by which the decree was made shall prepare and file a memorandum of the fact and of the date upon which the decree became absolute.

(2) Where a decree *nisi* has become absolute, any person shall be entitled, on application to the registrar or other proper officer of the court by which the decree was made on payment of the appropriate fee, to receive a certificate signed by the registrar or other proper officer that the decree *nisi* has become absolute, and a certificate given under this subsection shall in all courts and for all purposes be evidence of the matters specified in the certificate.

60. Rescission of decree *nisi* where parties are reconciled, etc.

Notwithstanding anything contained in this Part, where a decree *nisi* has been made in proceedings for a decree of dissolution of marriage, the court may, at any time before the decree becomes absolute, upon the application of either of the parties to the marriage, rescind the decree on the ground that the parties to the marriage have become reconciled.

61. Rescission of decree *nisi* on ground of miscarriage of justice

Where a decree *nisi* has been made but has not become absolute, the court by which the decree was made may, on the application of a party to the proceedings, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstances, rescind the decree and, if it thinks fit, order that the proceedings be reheard.

PART III

Intervention

62. Intervention by Attorney-General on request from court

In any proceedings under this Act where the court requests him to do so, the Attorney-General of the Federation may intervene in, and contest or argue any question arising in, the proceedings.

63. Intervention of Attorney-General in other cases

In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, or in relation to the custody or guardianship of children, where the Attorney-General of the Federation has reason to believe that there are matters relevant to the proceedings that have not been, or may not be, but ought to be, made known to the court, he may, at any time before the proceedings are finally disposed of, intervene in the proceedings.

64. Delegation by Attorney-General

(1) The Attorney-General of the Federation may, either generally or in relation to a matter or class of matters and either in relation to the whole of the Federation or to a State, by writing under his hand, delegate all or any of his powers and functions under this Part of this Act (except this power of delegation) to the person occupying from time

to time, while the delegation is in force, the office of Attorney-General of a State, and a power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(2) A delegation under this section shall be revocable at will and the fact that any power or function has been delegated shall not prevent the exercise of the power or the performance of the function by the Attorney-General of the Federation.

(3) More than one delegation may be in force under this section at the one time in relation to the whole of Nigeria or in relation to the same part of Nigeria; and a delegation in relation to the whole of Nigeria may be in force at the same time as a delegation in relation to parts of Nigeria.

65. Intervention by other persons

(1) In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, where a person applies to the court for leave to intervene in the proceedings and the court is satisfied that that person may be able to prove facts relevant to the proceedings that have not been, or may not be, but ought to be, made known to the court, the court may, at any time before the proceedings are finally disposed of, make an order entitling that person to intervene in the proceedings.

(2) An order under this section may be made upon such conditions as the court thinks fit, including the giving of security for costs.

66. Rescission of decree *nisi* in consequence of intervention

Where an intervention takes place under this Part of this Act after a decree *nisi* has been made and it is proved that the petitioner has been guilty of collusion with intent to cause a perversion of justice, or that material facts have not been brought before the court, the court may rescind the decree.

67. When proceedings finally disposed of

Where a decree *nisi* has been made in any proceedings, for the purpose of this Part of this Act, the proceedings shall not be taken to have been finally disposed of until the decree *nisi* has become absolute.

68. Procedure on intervention

A person intervening under this Part or Part II of this Act shall be deemed to be a party in the proceedings with all the rights, duties and liabilities of a party.

PART IV

Maintenance, custody and settlement

69. Interpretation of "marriage" etc., in the application of this Part

In this Part of this Act-

"marriage" includes a purported marriage that is void, but does not include one entered into according to Muslim rites or other customary law, and **"children of the marriage"** includes--

(a) any child adopted since the marriage by the husband and wife or by either of them with the consent of the other;

(b) any child of the husband and wife born before the marriage, whether legitimated by the marriage or not; and

(c) any child of either the husband or wife (including an illegitimate child of either of them and a child adopted by either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife,

so however that a child of the husband and wife (including a child born before the marriage, whether legitimated by the marriage or not) who has been adopted by another person or other persons shall be deemed not to be a child of the marriage;

"relevant time" means in relation to proceedings under this Part of this Act either-

(a) the time immediately preceding the time when the husband and wife ceased to live together or, if they have ceased on more than one occasion to live together, the time immediately preceding the time when they last ceased to live together before the institution of the proceedings; or

(b) if the husband and wife were living together at the time when the proceedings were instituted, the time immediately preceding the institution of the proceedings.

70. Powers of court in maintenance proceedings

(1) Subject to this section, the court may, in proceedings with respect to the maintenance of a party to a marriage, or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(2) Subject to this section and to rules of court, the court may, in proceedings for an order for the maintenance of a party to a marriage, or of children of the marriage, pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earnings capacity and conduct of the parties to the marriage and all other relevant circumstances.

(3) The court may make an order for the maintenance of a party notwithstanding that a decree is or has been made against that party in the proceedings to which the proceedings with respect to maintenance are related.

(4) The power of the court to make an order with respect to the maintenance of children of the marriage shall not be exercised for the benefit of a child who has attained the age of 21 years unless the court is of opinion that there are special circumstances that justify the making of such an order for the benefit of that child.

71. Powers of court in custody, etc., proceedings

(1) In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the court shall regard the interests of those children as the paramount consideration; and subject thereto, the court may make such order in respect of those matters as it thinks proper.

(2) The court may adjourn any proceedings within subsection (1) of this section until a report has been obtained from a welfare officer on such matters relevant to the proceedings as the court considers desirable, and any such report may thereafter be received in evidence.

(3) In proceedings with respect to the custody of children of a marriage, the court may, if it is satisfied that it is desirable to do so, make an order placing the children, or such of them as it thinks fit, in the custody of a person other than a party to the marriage.

(4) Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be.

72. Power of court in proceedings with respect to settlement of property

(1) The court may, in proceedings under this Act, by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the court considers just and equitable in the circumstances of the case.

(2) The court may, in proceedings under this Act, make such order as the court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of, the marriage of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements on the parties to the marriage, or either of them.

(3) The power of the court to make orders of the kind referred to in this section shall not be exercised for the benefit of a child who has attained the age of 21 years unless the court is of opinion that there are special circumstances that justify the making of such an order for the benefit of that child.

73. General powers of court

(1) The court, in exercising its powers under this Part of this Act, may do any or all of the following, that is to say, it may-

(a) order that a lump sum or a weekly, monthly, yearly or other periodic sum be paid;

(b) order that a lump sum or a weekly, monthly, yearly or other periodic sum be secured;

(c) when a periodic sum is ordered to be paid, order that its payment be wholly or partly secured in such manner as the court directs;

(d) order that any necessary deed or instrument be executed, and that the documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(e) appoint or remove trustees;

(f) order that payments be made direct to a party to the marriage, or to a trustee to be appointed or to a public officer or other authority for the benefit of a party to the marriage;

(g) order that payment of maintenance in respect of a child be made to such persons or public officer or other authority as the court specifies;

(h) make a permanent order, an order pending the disposal of proceedings, or an order for a fixed term or for a life or during joint lives, or until further order;

(i) impose terms and conditions;

(j) in relation to an order made in respect of a matter referred to in section 70, 71 or 72 of this Act, whether made by the court or by another court, and whether made before or after the commencement of this Act-

(i) discharge the order if the party in whose favour it was made marries again or if there is any other just cause for so doing;

(ii) modify the effect of the order or suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;

(iii) revive wholly or in part an order suspended under sub-paragraph (ii) of this paragraph; or

(iv) subject to subsection (2) of this section, vary the order so as to increase or decrease any amount ordered to be paid by the order;

(k) sanction an agreement for the acceptance of a lump sum or periodic sums or other benefits in lieu of rights under an order made in respect of a matter referred to in section 70, 71 or 72 of this Act, or any right to seek such an order;

(l) make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs of this subsection, and whether or not it is in accordance with the practice under any other enactment or law before the commencement of this Act) which it thinks it is necessary to make to do justice;

(m) include in its decree under another Part of this Act its order under this Part; and

(n) subject to this Act, make an order under this Part of this Act at any time before or after the making of a decree under another Part thereof.

(2) The court shall not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied--

(a) that, since the order was made or last varied, the circumstances of the parties or either of them, or of any child for whose benefit the order was made, have changed to such an extent as to justify its so doing; or

(b) that material facts were withheld from the court that made the order or from a court that varied the order or material evidence previously given before such a court was false.

(3) The court shall not make an order increasing or decreasing-

(a) the security for the payment of a periodic sum ordered to be paid; or

(b) the amount of a lump sum or periodic sum ordered to be secured, unless it is satisfied that material facts were withheld from the court that made the order, or from a court that varied the order, or that material evidence given before such a court was false.

74. Execution of deeds, etc., by order of court

(1) Where a person who is directed by an order under this Part of this Act to execute a deed or instrument, refuses or neglects to do so, the court may appoint an officer of the court or other person to execute the deed or instrument in his name and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) The execution of the deed or instrument by the person so appointed shall have the same force and validity as if it had been executed by the person directed by the order to execute it.

(3) Where a deed or instrument is executed pursuant to this section, the court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation and execution of the deed or instrument.

75. Power of court to make orders on dismissal of petition

(1) Save as provided by this section, the court shall not make an order under this Part of this Act where the petition for the principal relief has been dismissed.

(2) Where-

(a) the petition for the principal relief has been dismissed after a hearing on the merits; and

(b) the court is satisfied that-

(i) the proceedings for the principal relief were instituted in good faith to obtain that relief; and

(ii) there is no reasonable likelihood of the parties becoming reconciled,

the court may, if it considers that it is desirable to do so, make an order under this Part of this Act, other than an order under section 72 of this Act.

(3) The court shall not make an order by virtue of subsection (2) of this section unless if has heard the proceedings for the order at the same time as, or immediately after, the proceedings for the principal relief.

(4) In this section, **"principal relief'** means relief of a kind referred to in paragraph *(a)* or *(b)* of the definition of "matrimonial cause" in section 114 (1) of this Act.

PART V

Appeals

76. General right of appeal

(1) Subject to section 77 of this Act, an appeal shall lie as of right from a decision of the High Court of a State in the exercise of its jurisdiction under this Act to the Court of Appeal and thence to the Supreme Court.

(2) In this section, **"decision"** means any decree, order or other determination.

77. Appeals with leave

An appeal under this Act-

(a) from any order made *ex parte;*

(b) from any order relating only to costs;

(c) from any order made with the consent of the parties; or

(d) in the case of a party to proceedings for dissolution or nullity of marriage who, having had time and opportunity to appeal from any decree nisi in the proceedings, has not so appealed, from any decree absolute founded upon the decree nisi,

shall lie only with the leave of the court from which, or the court to which, the appeal is sought to be made.

78. Appeal from court of summary jurisdiction

Subject to section 77 of this Act, where---

(a) a maintenance order is registered in a court of summary jurisdiction under section 91 (1) of this Act; and

(b) in relation to the maintenance order-

(i) that court makes any order or does any other thing by way of enforcement of the maintenance order; or

(ii) that or another court of summary jurisdiction makes an attachment of earnings order under paragraph 4 of the Third Schedule to this Act,

[Third Schedule.]

then, without prejudice to any right of appeal which may exist against the making of the maintenance order, there shall exist in respect of the order made or other thing done by the court such rights of appeal (if any) as would have existed if the order had been made or the other thing done in the exercise of the court's ordinary civil jurisdiction.

79. Appellate jurisdiction and powers

The court hearing an appeal under this Part-

(a) is hereby invested with the necessary jurisdiction;

(b) may confirm, vary or reverse any decree, judgment, order or other determination appealed from, order a re-hearing or make such other order as it considers proper to determine the real issue of the appeal; and

(c) subject to this Part, shall otherwise have the same powers as it has in its ordinary appellate jurisdiction in civil proceedings.

PART VI

Recognition of decrees

80. Effect of decrees

Where a decree is made under this Act it shall have effect in all States of the Federation.

81. Recognition of other decrees

(1) A decree of dissolution or nullity of marriage made before the commencement of this Act by a court in Nigeria or made after the commencement of this Act by such a court in accordance with the transitional provisions of this Act shall be recognised as valid in all States of the Federation.

(2) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country shall be recognised as valid in Nigeria where, at the date of the institution of the proceedings that resulted in the dissolution or annulment, the party at whose instance the dissolution or annulment was effected (or, if it was effected at the instance of both parties, either of those partiesr-

(a) in the case of the dissolution of a marriage or the annulment of a voidable marriage, was domiciled in that foreign country; or

(b) in the case of the annulment of a void marriage, was domiciled or resident in that foreign country.

(3) For the purposes of subsection (2) of this section--

(a) where a dissolution of a marriage was effected in accordance with the law of a foreign country at the instance of a deserted wife who was domiciled in that foreign country either immediately before her marriage or immediately before the desertion, she shall be deemed to have been domiciled in that foreign country at the date of the institution of the proceedings that resulted in the dissolution; and

(b) a wife who, at the date of the institution of the proceedings that resulted in a dissolution or annulment of her marriage in accordance with the law of a foreign country, was resident in that foreign country and had been so resident for a period of three years immediately preceding that date shall be deemed to have been domiciled in that foreign country at that date.

(4) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country, not being a dissolution or annulment to which subsection (2) of this section applies, shall be recognised as valid in Nigeria if its validity would have been recognised under the law of the foreign country in which, in the case of a dissolution, the

parties were domiciled at the date of the dissolution or in which, in the case of an annulment, either party was domiciled at the date of the annulment.

(5) Any dissolution or annulment of a marriage that would be recognised as valid under the rules of private international law but to which none of the preceding provisions of this section applies shall be recognised as valid in Nigeria, and the operation of this subsection shall not be limited by any implication from those provisions.

(6) For the purpose of this section, a court in Nigeria, in considering the validity of a dissolution or annulment effected under the law of a foreign country, may treat as proved any facts found by a court of the foreign country or otherwise established for the purposes of the law of the foreign country.

(7) A dissolution or annulment of a marriage shall not be recognised as valid by virtue of subsection (2) or (4) of this section where, under the rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice or that the dissolution or annulment had been obtained by fraud.

(8) Subsections (2) to (7) of this section shall apply in relation to dissolutions and annulments effected, whether by decree, legislation or otherwise, before or after the commencement of this Act.

(9) In this section, **"foreign country"** means a country, or part of a country, outside the Federation.

PART VII

Evidence

82. Standard of proof

(1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the court.

(2) Where a provision of this Act requires the court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.

83. Evidence of husbands and wives

(1) Subject to this Part of this Act, all parties and the wives and husbands of all parties are competent and compellable witnesses in proceedings under this Act.

(2) Subject to subsection (3) of this section, in proceedings under this Act, a husband is competent, but not compellable, to disclose communications made between him and his wife during the marriage, and a wife is competent, but not compellable, to disclose communications made between her and her husband during the marriage.

(3) Where a husband and wife are both parties to proceedings under this Act each of them is competent and compellable to disclose communications made between them during the marriage.

(4) Subsections (2) and (3) of this section shall apply to communications made before, as well as to communications made on or after, the commencement of this Act.

84. Evidence of non-access

Notwithstanding any rule of law, in proceedings under this Act either party to a marriage may give evidence proving or tending to prove that the parties to the marriage did not have sexual relations with each other at any particular time, but shall not be compellable to give such evidence if it would show or tend to show that a child born to the wife during the marriage was illegitimate.

85. Evidence as to adultery

(1) A witness in proceedings under this Act who, being a party, voluntarily gives evidence on his own behalf or, whether he is a party or not, is called by a party, may be asked, and shall be bound to answer, a question the answer to which may show, or tend to show, adultery by or with the witness, where proof of that adultery would be material to the decision of the case.

(2) Except as provided by subsection (1) of this section, a witness in proceedings under this Act (whether a party to the proceedings or not) shall not be liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that the witness has committed adultery.

86. Proof of marriage, etc.

In proceedings under this Act the court may receive as evidence of the facts stated in it, a document purporting to be either the original or a certified copy of any certificate, entry or record of a birth, death or marriage alleged to have taken place, whether in Nigeria or elsewhere.

87. Evidence of rape, etc.

(1) **In** any proceedings under this Act-

(a) evidence that a person, being a party to a marriage, was after the marriage convicted, whether in Nigeria or elsewhere, of the crime or offence of rape or any other crime or offence in which sexual intercourse with a person of the opposite sex is an element, shall be evidence that the former person committed adultery with the person on whom the rape or other crime or offence was committed; and

(b) evidence that a person, being a party to a marriage, was after the marriage convicted, whether in Nigeria or elsewhere, of the crime or offence of sodomy or bestiality shall be evidence that that person committed sodomy or bestiality.

(2) **In** proceedings under this Act a certificate of the conviction of a person for a crime or offence, on a date specified in the certificate, by a court of a State of the Federation, being a certificate purporting to be signed by the registrar or other appropriate officer of that court, shall be evidence of the fact and date of the conviction and, if the certificate shows that a sentence of imprisonment was imposed, of the fact that that sentence was imposed.

PART VIII

Enforcement of decrees

88. Attachment

(1) Subject to rules of court, a court having jurisdiction under this Act may enforce by attachment or other process an order made by it under this Act for payment of maintenance or costs or in respect of the custody of, or access, to children.

(2) The court shall order the release from custody of a person who has been attached under this section upon being satisfied that that person has complied with the order in respect of which he was attached and may, at any time, if the court is satisfied that it is just and equitable to do so, order the release of such a person notwithstanding that he has not complied with that order.

(3) Where attachment or other process remains unsatisfied for not less than six weeks, the person who has been attached under this section in consequence of his failure to comply with an order for the payment of maintenance or costs shall be deemed to be an insolvent person and may be kept in custody under the attachment for a period not exceeding six months after the expiry of the period of six weeks aforesaid, unless the court otherwise orders.

89. Enforcement of decrees by other High Courts

(1) A decree made under this Act by a court having jurisdiction under this Act may, in accordance with rules of court, be registered in another court having jurisdiction under this Act.

(2) A decree registered in a court under this section may, subject to rules of court, be enforced as if it had been made by the court in which it is registered.

(3) A reference in this Part of the Act to the court by which a decree was made shall be construed as including a reference to a court in which the decree is registered under this section.

90. Recovery of moneys as judgment debt

(1) Where a decree made under this Act orders the payment of money to a person, any moneys payable under the decree may be recovered as a judgment debt in a court of competent jurisdiction.

(2) A decree made under this Act may be enforced, by leave of the court by which it was made (or in which it is registered) and on such terms and conditions as the court thinks fit, against the estate of a party after that party's death.

91. Summary enforcement of orders for maintenance

(1) Where pursuant to this Act, a court has made an order for payment of maintenance, the order may be registered in accordance with rules of court in a court of summary jurisdiction of a State of the Federation, and an order so registered may, subject to rules of court, be enforced in the same manner as if it were an order for maintenance of a deserted wife made by the court of summary jurisdiction.

(2) The several courts of summary jurisdiction of the States of the Federation are hereby authorised to do all things necessary for the purposes of subsection (I) of this section.

92. Enforcement of maintenance orders by attachment or earnings

An order under this Act for the payment of maintenance may be enforced in accordance with the Third Schedule to this Act and the provisions of that Schedule shall have effect in relation to the enforcement of any such order.

[Third Schedule.]

93. Enforcement by other means

Subject to this Act, rules of court may make provision for the enforcement of decrees made under this Act by means other than those specified in the preceding provisions of this Part of this Act.

94. Enforcement of existing decrees

A decree made in a matrimonial cause before the commencement of this Act by a court in Nigeria or by an officer of such a court may be enforced--

(a) in the manner in which it could be enforced if this Act had not been made; or

(b) subject to rules of court, in the manner in which a like decree made by that court under this Act may be enforced.

95. Power to make rules of court for purposes of this Part

Section 112 of this Act shall include power to make rules of court for the purposes of this Part and shall apply in relation to any such rules.

PART IX

Transitional provisions

96. Definitions

In this Part of this Act-

"pending proceedings" means proceedings instituted in the High Court of a State before the date of commencement of this Act but not completed before that date;

"the court", in relation to pending proceedings, means the court in which the proceedings were instituted.

97. Pending proceedings generally

Pending proceedings constituting a matrimonial cause may be continued and dealt with in accordance with and by virtue of this Part of this Act and not otherwise.

98. Continuance of proceedings for dissolution or nullity of marriage, or judicial separation

(1) Except as provided by this Part of this Act, the law to be applied, and the practice and procedure to be followed, in and in relation to pending proceedings, being proceedings for a decree of dissolution or nullity of marriage or of judicial separation, shall be the same as if this Act had not been made.

(2) Without prejudice to any power that the court has by virtue of subsection (1) of this section to amend or permit the amendment of a petition, the court may in any such proceedings, upon application by the petitioner and on such conditions, if any, as the court thinks fit, permit the petitioner to amend the petition so as to include a ground of relief provided by this Act and not already included in the petition; and where such a ground is so included, then in relation to that ground, the provisions of this Act applicable in relation to that ground shall apply as if the proceedings had been instituted under this Act.

(3) Notwithstanding section 114 (4) of this Act, a reference in this Act to the date of the petition or the date of institution of proceedings shall, in relation to a ground of relief included or sought to be included in a petition by virtue of subsection (2) of this section, be read as a reference to the date on which the application for leave to amend the petition was instituted.

(4) Where, in pending proceedings for a decree of dissolution of marriage, the facts and circumstances that have been established, whether before or after the commencement of this Act, by the petitioner in support of a ground included in the petition are such that they would have established a ground or grounds for the same relief under this Act if this Act had been in force at the date of the petition and the proceedings had been instituted under this Act, the bars to relief applicable in relation to the ground included in the petition shall be those that would be applicable in proceedings on the ground that would have been established under this Act, or, if more than one ground would have been established, such one of those grounds as most nearly corresponds to the ground included in the petition, and no other bars.

(5) In the case of pending proceedings, being proceedings for a decree of nullity of marriage on the ground that the marriage is voidable by reason of the parties being within the prohibited degrees of consanguinity or affinity under the law of a State, a decree of nullity of the marriage shall not be made after the commencement of this Act if the parties were not at the time of the marriage within one of the degrees of consanguinity or affinity set out in the First Schedule to this Act.

(6) A decree of dissolution or nullity of marriage or of judicial separation may be made in pending proceedings either-

(a) on any basis of jurisdiction that would have been applicable to the proceedings if this Act had not been made; or

(b) on any basis of jurisdiction applicable to proceedings under Part II of this Act for the same relief.

(7) A reference in this section to a bar to relief shall be read as a reference to a bar to the granting of the relief sought, whether absolute or in the discretion of the court, other than a bar arising by virtue of section 30 of this Act.

(8) In this section-s-

"date of the petition", in relation to a petition, means the date on which the petition was filed in, or issued out of, a court;

"petition" includes a writ of summons, a cross-petition, a counter-petition, a counter-claim and an answer;

"petitioner" includes a plaintiff, a cross-petitioner, a counter-petitioner, a defendant counter-claiming and a respondent seeking relief in an answer.

99. Application of this Act to pending proceedings for dissolution or nullity of marriage, or judicial separation

(1) Subject to section 101 of this Act, the provisions of sections 1][1] to 14, 18 to 20 (including in respect of sections 18 to 20 those sections as applying to proceedings for a decree of judicial separation by virtue of section 40), sections 33, 38, 41 to 45 and 53, sections 62 to 95, and sections 103 to 112 of this Act apply, so far as they are capable of application, to and in relation to pending proceedings, being proceedings for a decree of dissolution or nullity of marriage or judicial separation, as if those proceedings had been instituted under this Act and any decree made in the proceedings had been made in proceedings so instituted.

(2) Subject to section 101 of this Act, the provisions of sections 56 to 61 of this Act shall apply to and in relation to pending proceedings, being proceeding for a decree of dissolution of marriage or nullity of a voidable marriage other than proceedings in which a decree *nisi* has been pronounced before the commencement of this Act, as if those pending proceedings had been instituted under this Act and any decree made in the proceedings had been made in proceedings so instituted.

100. Continuance of other pending proceedings

Subject to section 101 of this Act, pending proceedings constituting a matrimonial cause, not being proceedings for a decree of dissolution or nullity of marriage or of judicial separation, shall be deemed to have been instituted and dealt with under this Act and may be continued and dealt with under this Act.

101. Special provisions as to pending appeals or existing rights to appeal

(1) Notwithstanding section 97 of this Act, where in any proceedings constituting a matrimonial cause a decree has been made before the commencement of this Act, the following provisions of this subsection shall have effect as if it had not been made, that is to say-

(a) any appeal in respect of that decree may be continued or instituted;

(b) any new trial or rehearing ordered upon the hearing of such an appeal, or upon an appeal heard before the commencement of this Act, may be heard and completed; and

(c) any decree may be made upon any such appeal, new trial or rehearing, and, if a decree so made is a decree *nisi,* the decree may be made or become absolute.

(2) In this section, **"appeal"** includes--

(a) an application for leave or special leave to appeal;

(b) an application for a new trial or a rehearing; and

(c) an intervention.

102. Decrees of restitution of conjugal rights under previous law

(1) Subject to this section, section 15 (2) *(g)* of this Act shall be deemed to apply in relation to the decree of restitution of conjugal rights made by a court in Nigeria before the commencement of this Act in like manner as it applies in relation to decrees made under this Act.

(2) Where there has been, whether before or after the commencement of this Act, a failure to comply with a decree referred to in subsection (1) of this section made before the commencement of this Act and that failure enabled, or would, if this Act had not been made, have enabled, the party in whose favour the decree of restitution of conjugal rights was made to institute proceedings for dissolution of marriage forthwith upon that failure, proceedings for the dissolution of marriage may be instituted by that party under this Act as if the words "for a period of not less than one year" were omitted from the said section 15 (2) (g) and as if section 30 of this Act had no application to proceedings on the ground specified in that paragraph.

(3) For the purposes of proceedings brought by virtue of this section (other than proceedings under subsection (2) of this section), the requirements of a decree of restitution of conjugal rights made before the commencement of this Act shall, notwithstanding that any time limited by law for compliance with those requirements has expired, be deemed to have continued so long as the decree did not, by order of a competent court, cease to have effect.

PART X

Miscellaneous

103. Hearings to be in open court

(1) Except to the extent to which rules of court make provision for proceedings or part of proceedings to be heard in chambers, the jurisdiction of a court under this Act shall, subject to the next succeeding subsection, be exercised in open court.

(2) Where in proceedings under this Act the court is satisfied that there are special circumstances that make it desirable in the interests of the proper administration of justice that the proceedings or any part of the proceedings should not be heard in open court, the court may order that any persons not being parties to the proceedings or their legal advisers shall be excluded during the hearing of the proceedings or the part of the proceedings, as the case may be.

104. Proceedings to be heard by judge alone

Proceedings at first instance constituting a matrimonial cause shall be heard and determined by a judge sitting alone as the court.

105. Transactions intended to defeat claims

(1) In proceedings under this Act, the court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party,

if it is made or proposed to be made to defeat an existing or anticipated order in those proceedings for costs, damages, maintenance or the making or variation of a settlement.

(2) The court may order that any money or real or personal property dealt with by any such instrument or disposition may be taken in execution or charged with the payment of such sums for costs, damages or maintenance as the court directs, or that the proceeds of a sale shall be paid into court to abide its order.

(3) The court shall have regard to the interest, and shall make any order proper for the protection, of a *bona fide* purchaser or other person interested.

(4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party, or of a *bona fide* purchaser or other person interested, of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(5) In this section, "disposition" includes a sale and a gift.

106. Service of process

Service of process of a court under this Act may be effected in or outside the Federation in accordance with rules of court, so however that the court, where it thinks it necessary or expedient to do so, may dispense with service of process.

107. Position of clergy as to re-marriage

A minister of religion shall not be bound to solemnise the marriage of a person whose former marriage has been dissolved, whether in Nigeria or elsewhere, otherwise than by death.

108. Restriction on publication of evidence

(1) Except as provided by this section, a person shall not in relation to any proceedings under this Act print or publish, or cause to be printed or published, any account of evidence in the proceedings, or any other account or particulars of the proceedings, other than--

(a) the names, addresses and occupations of the parties and witnesses, and the name or names of the member or members of the court and of the legal advisers of the parties;

(b) a concise statement of the nature and grounds of the proceedings and of the charges, defences and counter-charges in support of which evidence has been given;

(c) submissions on any points of law arising in the course of the proceedings, and the decision of the court on those points; or

(d) the judgment of the court and observations made by the court in giving judgment.

(2) The court may, if it thinks fit in any particular proceedings, order that none of the matters referred to in subsection (1) *(a)* to *(d)* of this section shall be printed or published, or that any matter or part of a matter so referred to shall not be printed or published.

(3) Any person who contravenes subsection (1) of this section, or prints or publishes, or causes to be printed or published, any matter, or part of a matter, in contravention of an order of a court under subsection (2) of this section shall be guilty of an offence punishable on conviction--

(a) in the case of a first offence (or a second or subsequent offence if prosecuted summarily) by a fine not exceeding ₦1,000 or imprisonment for a term not exceeding six months; and

(b) in the case of a second or subsequent offence, being an offence prosecuted otherwise than in a summary manner, by a fine not exceeding ₦2,000 or imprisonment for a term not exceeding one year.

(4) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Attorney-General of the Federation.

(5) The preceding provisions of this section shall not apply to or in relation to--

(a) the printing of any pleading, transcript of evidence or other document for use in connection with proceedings in any court or the communication of any such document to persons concerned in the proceedings;

(b) the printing or publishing of a notice or report in pursuance of the direction of a court;

(c) the printing or publishing of any publication *bona fide* intended primarily for the use of members of the le-gal or medical profession, being--

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character; or

(d) the printing or publishing of a photograph of any person, not being a photograph forming part of the evidence in proceedings under this Act.

(6) In this section, **"court"** includes an officer of a court investigating a matter in accordance with rules of court and "judgment of the court" includes a report made to a court by such an officer.

109. Injunctions

A court exercising jurisdiction under this Act may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court thinks just.

110. Costs

In proceedings under this Act the court may, subject to rules of court, make such order as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court thinks just.

111. Frivolous or vexatious proceedings

(1) The court may at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious, dismiss the proceedings.

(2) The court may at any stage of proceedings under this Act, if it is satisfied that the allegations made in respect of a party to the proceedings are frivolous or vexatious, order that that party be dismissed from the proceedings.

112. Rules of court

(1) The Chief Justice of Nigeria, after consultation with the Chief Judges of the States and the President of the Court of Appeal therein, may make rules for or in relation to the practice and procedure of the courts (including courts of summary jurisdiction) having jurisdiction under this Act, or any of them, and without prejudice to the generality hereof, the rules may-

(a) prescribe matters relating to the costs of proceedings and the assessment or taxation of those costs;

(b) prescribe the court fees to be charged in respect of proceedings under this Act or in relation to declarations, affidavits, instruments, documents, searches or extracts;

(c) authorise a court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to the custody of children or maintenance or any other matter before the court;

(d) authorise an officer making an investigation referred to in paragraph *(c)* of this subsection to take evidence on oath or atfi.rmation and to obtain and receive in evidence a report from a welfare officer, and provide for the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing books and documents;

(e) regulate the procedure of a court upon receiving a report of an officer who has made an investigation referred to in paragraph *(c)* of this subsection;

(f) authorise an officer of a court to perform and exercise on behalf of the court or otherwise, in relation to proceedings under this Act, functions and powers not involving the exercise of the judicial power of the Federation or of a State and enable the court to review the decision of that officer in relation to the performance or exercise of any function or power;

(g) provide for proceedings *in forma pauperis* and the remission of court fees in the case of persons authorised to proceed *informa pauperis;* and

(h) prescribe matters incidental to the matters specified in the preceding paragraphs of this subsection.

(2) Subject to subsection (3) of this section, the power of the appropriate authority under the law of a State to make rules of court in relation to the practice and procedure of courts of summary jurisdiction, the High Court of the State shall extend to the making for that State of rules of court for any maner in respect of which rules may be made under subsection (1) of this section.

(3) Rules made under subsection (2) of this section shall be subject to rules made under subsection (1) of this section; and, if there is any inconsistency between rules made under those subsections, the rules made under subsection (1) of this section shall prevail and the rules made under subsection (2) of this section shall be void to the extent of the inconsistency.

113. Savings for sundry domestic and foreign decrees, etc.

For the avoidance of doubt it is declared-

(a) that a decree, judgment, order or sentence of the High Court of a State of the Federation given, made or pronounced before the commencement of this Act in the exercise of jurisdiction invested or conferred upon it in respect of matrimonial causes and in force immediately before the commencement of this Act shall, notwithstanding the repeal of any legislation under which the decree, judgment, order or sentence was given, made or pronounced, continue to have effect throughout the Federation; and

(b) that the validity of a decree, judgment, order or sentence given, made or pronounced by a court of competent jurisdiction in the Commonwealth (elsewhere than Nigeria) before the commencement of this Act by virtue of any enactment passed or made in respect of a marriage entered into during the war of 1939-45 and in force immediately before the commencement of this Act shall, if reciprocal arrangements are made for the recognition of the like decrees, judgments, orders or sentences given, made or pronounced in Nigeria in respect of any such marriages, be accorded in Nigeria the same recognition as if they were decrees, judgments, orders or sentences given, made or pronounced by a court of competent jurisdiction in Nigeria .

114. Interpretation

(1) In this Act unless the contrary intention appears--

"adopted", in relation to a child, means adopted under the law of any place (whether in or out of Nigeria) relating to the adoption of children;

"appeal" includes an application for a rehearing;

"court" or **"the court",** in relation to any proceedings, means the court and includes the High Court of the Federal Capital Territory, Abuja exercising jurisdiction in those proceedings by virtue of this Act;

"court of summary jurisdiction" means a magistrate's court or district court;

"**crime"** means an offence punishable by imprisonment;

"cross-petition" includes an answer in which the respondent to a petition seeks a decree or declaration of a kind referred to in paragraph *(a)* or *(b)* of the definition of "matrimonial cause" of this subsection;

"decree" (not being an Act having effect as an enactment made by the Federal Government) includes a decree absolute or decree nisi, a judgment, and any order dismissing a petition or application or refusing to make a decree or order;

"marriage conciliator" means a person authorised to endeavour to effect marital reconciliations or a person nominated by a judge, in pursuance of section **11** of this Act, to endeavour to effect a reconciliation;

"matrimonial cause" means-

(a) proceedings for a decree of-

(i) dissolution of marriage;

(ii) nullity of marriage;

(iii) judicial separation;

(iv) restitution of conjugal rights; or

(v) jactitation of marriage;

(b) proceedings for a declaration of the validity of the dissolution or annulment of a marriage by decree or otherwise or of a decree of judicial separation, or for a declaration of the continued operation of a decree of judicial separation, or for an order discharging a decree of judicial separation;

(c) proceedings with respect to the maintenance of a party to the proceedings, settlements, damages in respect of adultery, the custody or guardianship of infant children of the marriage or the maintenance, welfare, advancement or education of children of the marriage, being proceedings in relation to concurrent, pending or completed proceedings of a kind referred to in paragraph *(a)* or *(b)* of this subsection, including proceedings of such a kind pending at, or completed before, the commencement of this Act;

(d) any other proceedings (including proceedings with respect to the enforcement of a decree, the service of process or costs) in relation to concurrent, pending or completed proceedings of a kind referred to in paragraph *(a), (b)* or *(c)* of this subsection, including proceedings of such a kind pending at, or completed before, the commencement of this Act; or

(e) proceedings seeking leave to institute proceedings for a decree of dissolution of marriage or of judicial separation, or proceedings in relation to proceedings seeking such leave;

"petition" includes a cross-petition;

"petitioner" includes a cross-petitioner;

"proceedings" includes cross-proceedings;

"respondent" includes a petitioner against whom there is a cross-petition;

"State" means a State of the Federation;

"welfare officer" means a person authorised by the Attorney-General of the Federation by instrument in writing to perform duties as a welfare officer for the purposes of this Act, being-

(a) a person who is permanently or temporarily employed in the public service of the Federation; or

(b) a person who is permanently or temporarily employed in the public service of a State and whose services have been made available for the purposes of this Act in pursuance of an arrangement between the Federation and the State; or

(c) a person nominated by an organisation undertaking child welfare activities.

(2) A reference in this Act to a court having jurisdiction under this Act or exercising jurisdiction under this Act, shall be deemed not to include a reference to a court having jurisdiction under this Act or exercising jurisdiction under this Act by virtue only of section 91 or 92 of this Act or the Third Schedule to this Act.

[Third Schedule.]

(3) **In** this Act, **"this Division"** occurring in a group of sections under an italicised cross-heading means that group of sections.

(4) For the purposes of this Act, the date of a petition shall be taken to be the date on which the petition was filed in a court having jurisdiction under this Act.

(5) For the purposes of this Act, a person shall be deemed to have been convicted of an offence if he has been convicted of that offence otherwise than by a court in its exercise of summary jurisdiction or on appeal from such a court.

(6) Nothing in this Act shall have effect in relation to a marriage which is not a monogamous marriage or which is entered into in accordance with Muslim rites or with any customary law in force in Nigeria.

115. Short title

This Act may be cited as the Matrimonial Causes Act.

SCHEDULES

FIRST SCHEDULE
[Section 3.]

Prohibited degrees of consanguinity and affinity

Marriage of a man is prohibited if the woman is, or has been his--

Consanguinity	*Affinity*
Ancestress	Wife's mother
Descendant	Wife's grandmother
Sister	Wife's daughter
Father's sister	Wife's son's daughter
Mother's sister	Wife's daughter's daughter

Brother's daughter	Father's wife
Sister's daughter	Grandfather's wife
	Son's wife
`	Son's son's wife
	Daughter's son's wife

Marriage of a woman is prohibited if the man is, or has been, her-

Ancestor	Husband's father
Descendant	Husband's grandfather
Brother	Husband's son
Father’s Brother	Husband's son's son
Mother’s Brother	Husband's daughter's son
Brother’s Son	Mother's husband
Sister’s Son	Grandmother's husband
	Daughter's husband
	Son's daughter's husband
	Daughter's daughter's husband

For the purposes of this Schedule, it is immaterial whether the relationship is of the whole blood or half-blood, or whether it is traced through, or to any person of illegitimate birth.

SECOND SCHEDULE

[Section 14.]

Oath or affirmation by marriage conciliator

I, A.B., do swear by Almighty God (or solemnly and sincerely affirm and declare) that I will not disclose to any person any communication or admission made to me in my capacity as a marriage conciliator except in so far as it is necessary for me to do so for the proper discharge of my function as a marriage conciliator.

THIRD SCHEDULE

[Section 92.]

Enforcement of orders for maintenance

1. In this Schedule, unless the contrary intention appears--

"attachment of earnings order" means an order under paragraph 4 below;

"defendant", in relation to a maintenance order, means the person liable to make payments under the order;

"earnings", in relation to a defendant, means any sums payable to the defendant-

(a) by way of wages or salary (including any fees, bonus, commission, overtime payor other emoluments payable in addition to wages or salaries);

(b) by way of pension, including-

(i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and

(ii) periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but not including any pension payable to the defendant in respect of injury, disablement or disability;

"employer", in relation to a defendant, means a person (including the Federal Republic or a State thereof as the case may be) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the defendant;

"maintenance order" means an order under this Act for the payment of maintenance, and includes such an order that has been discharged if any arrears are recoverable under the order;

"**net earnings"**, in relation to a pay-day, means the amount of the earnings becoming payable on that pay-day, less any sum deducted from those earnings under any law relating to income tax;

"normal deduction", in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant's employer;

"pay-day" means an occasion on which earnings to which an attachment of earnings order relates become payable;

"protected earnings", in relation to an attachment of earnings order and in relation to a pay-day, means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant's employer.

2. In this Schedule--

(a) a reference to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive payments under the maintenance order either directly or through another person or for transmission to another person;

(b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made; and

(c) a reference to costs incurred in proceedings relating to a maintenance order shall be read, in the case of a maintenance order made by the High Court of a State, as a reference to such costs as are included in an order for costs relating solely to that maintenance order.

3. Subject to this Schedule, a person entitled to receive payments under a maintenance order may apply to-

(a) the court that made the order; or

(b) the court in which the order is for the time being registered under section 89 or 91 of this Act,

for an attachment of earnings order.

4. If the court is satisfied that the defendant is a person to whom earnings are payable or are likely to become payable and--

(a) that, at the time when the application was made, there was due under the maintenance order and unpaid an amount equal to not less than--

(i) four payments in the case of an order for weekly payments; or

(ii) two payments in any other case; or

(b) that the defendant has wilfully and persistently failed to comply with the requirement of the order,

the court may in its discretion by an order require a person who appears to the court to be the defendant's employer in respect of those earnings or a part of those earnings to make out of those earnings or that part of those earnings payments in accordance with paragraph 11 below.

5. The court shall not make an attachment or earnings order if it appears to the court, in a case to which paragraph 4 *(a)* above applies, that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.

6. An attachment of earnings order shall specify the normal deduction rate, that is to say, the rate at which the court considers it to be reasonable that the earnings to which the order relates should be applied in satisfying the requirements of the maintenance order but not exceeding the rate that appears to the court to be necessary for the purpose of-

(a) securing payment of the sums from time to time falling due under the maintenance order; and

(b) securing payment within a reasonable time of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order that are payable by the defendant.

7. An attachment of earnings order shall also specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and of any person for whom he must or reasonably may provide, the court considers it to be reasonable that the net earnings of the defendant should not be reduced by a payment under the order.

8. An attachment of earnings order shall provide that payments under the order are to be made to an officer of the court specified in the order.

9. An attachment of earnings order shall contain such particulars as the court thinks proper for the purpose of enabling the person to whom the order is directed to identify the defendant.

10. An attachment of earnings order does not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed.

11. An employer to whom an attachment of earnings order is directed, being an attachment of earnings order that is in force, shall in respect of each pay-day, if the net earnings of the defendant exceed the sum of-

(a) the protected earnings of the defendant; and

(b) so much of any amount by which the net earnings that became payable on any previous pay-day were less than the protected earnings for the purposes of that pay-day as has not been made good on any other previous pay-day,

pay, so far as that excess permits, to the officer specified for the purpose in the order both the normal deduction and so much of the normal deduction for the purpose of any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

12. A payment made by the employer under the last preceding paragraph is a valid discharge to him as against the defendant to the extent of the amount paid.

13. Where proceedings for attachments are brought in a court under section 88 of this Act, or where proceedings are taken in a court of summary jurisdiction to enforce an order registered in that court under section 91 of this Act, the court may, instead of making any other order, make an attachment of earnings order.

14. Where an attachment of earnings order has been made, no writ, order or warrant of commitment or attachment shall be issued or made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order.

15. The court by which an attachment of earnings order has been made may in its discretion, on the application of the defendant or a person entitled to receive payments under the maintenance order, make an order discharging or varying the attachment of earnings order.

16. An order varying an attachment of earnings order shall not come into force until the expiration of seven days after the date on which the order is served on the person to whom the attachment of earnings order is directed.

17. An attachment of earnings order ceases to have effect-

(c) upon the issuing or making of a writ, order or warrant of commitment or attachment for the enforcement of the maintenance order in relation to which the attachment of earnings order applies; or

(b) subject to the next succeeding paragraph, upon the discharge or variation of that maintenance order.

18. Where it appears to the court discharging a maintenance order that arrears under the order will remain to be recovered under the order, the court may in its discretion direct that the attachment of earnings order shall not cease to have effect until those arrears have been paid.

19. Where an attachment of earnings order ceases to have effect, the proper officer of the court by which the order was made shall forthwith give notice accordingly to the person to whom the order was directed.

20. Where an attachment of earnings order ceases to have effect or is discharged, the person to whom the attachment of earnings order is directed does not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days after the date on which the notice required by the last preceding paragraph or a copy of the discharging order, as the case may be, is served on him.

21. A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law, but subject to this Schedule, comply with the order or, if the order is varied, with the order as varied.

22. Where, on any occasion on which earnings become payable to a defendant there are in force two or more attachment of earnings orders in relation to those earnings, the person to whom the orders are directed--

(a) shall comply with those orders according to the respective dates on which they came into force and shall disregard any order until an earlier order has been complied with; and

(b) shall comply with any order as if the earnings to which the order relates were the residue of the defendant's earnings after the making of any payment under any earlier order.

23. A person who makes a payment in compliance with an attachment of earnings order shall give to the defendant a notice specifying particulars of the payment.

24. A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time after the time, has not on any occasion during the period of four weeks immediately preceding that time been the defendant's employer, shall forthwith give notice in writing accordingly to the proper officer of the court that made the order.

25. Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or after the hearing--

(a) order the defendant to furnish to the court, within a specified period, a statement signed by the defendant specifying--

(i) the name and address of his employer or, if he has more employers than one, of each of his employers;

(ii) particulars as to the defendant's earnings; and

(iii) such particulars as are necessary to enable the defendant to be identified by any of his employers; and

(b) order any person who appears to the court to be an employer of the defendant to give to the court, within a specified period, a statement signed by him or on his behalf, containing such particulars as are specified in the order of all earnings of the defendant that became payable by the person during a specified period.

26. A document purporting to be a statement referred to in the last preceding paragraph shall, in any proceedings relating to an attachment of earnings order, be received in evidence and shall, unless the contrary is shown, be presumed without further proof to be such a statement.

27. The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed or of the defendant or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purposes of that order.

28. (1) A person to whom an attachment of earnings order is directed who makes an application under paragraph 27 above shall not incur any liability for failing to comply with the order with respect to any payments of the class or description specified in the application that are made by him to the defendant while the application, or any appeal from a determination made on the application, is pending.

(2) The foregoing sub-paragraph shall not apply in respect of any payment made after the application has been withdrawn or any appeal from a determination made on the application has been abandoned.

29. The officer to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum to such person entitled to receive payments under the maintenance order as is specified by the attachment of earnings order.

30. Any sum received by virtue of an attachment of earnings order by the person entitled to receive shall be deemed to be a payment made by the defendant to that person, so as to discharge first any sum due and unpaid under the maintenance order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the maintenance order that were payable by the defendant when the attachment of earnings order was made or last varied.

31. On any occasion on which an employer makes a payment under this Schedule in respect of a defendant, the employer may retain for his own use out of any balance of the defendant's earnings remaining after the making of that payment the sum of five kobo or, if on that occasion the employer makes payments in pursuance of two or more attachment of earnings order relating to the defendant, the sum of five kobo in respect of each such payment.

32. (1) Any person who-

(a) fails to comply with any requirement of this Schedule, or of an order under this Schedule, that is applicable to him; or

(b) in any statement of notice furnished to a court under this Schedule or in compliance with an order made under this Schedule, makes a statement that he knows to be false or misleading in a material particular; or

(c) recklessly furnishes such a statement or notice that is false or misleading in a material particular,

shall be guilty of an offence punishable on conviction by a fine not exceeding ₦200.

(2) It shall be a defence if a person charged with an offence arising under sub-paragraph (1) *(a)* above proves that he took all reasonable steps to comply with the requirement or order.

33. Any person who dismisses an employee, or injures him in his employment, or alters his position to his prejudice, by reason of the circumstance that an attachment of earnings order has been made in relation to the employee or that the person is required to make payments under such an order in relation to the employee, shall be guilty of an offence punishable on conviction by a fine not exceeding ₦200.

34. In any proceedings for an offence arising under paragraph 33 above, if all the facts and circumstances constituting the offence, other than the reason for the action of the person charged with having committed the offence, are proved, the burden shall be upon that person to prove that he was not actuated by the reason alleged in the charge.

35. Where a person is convicted of an offence arising under paragraph 33 above, the court by which he is convicted may order that the employee be reimbursed any wages lost by him, and may also direct that the employee be reinstated in his old position or in a similar position.

36. The Schedule shall have effect in relation to a defendant notwithstanding any law that would otherwise prevent the attachment of his earnings or limit the amount capable of being attache