

REDEFINING MATRIMONIAL RIGHTS UNDER THE MATRIMONIAL CAUSES ACT

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Abstract

In every community in Nigeria today, the issue of marriage attracts great attention. This is because of the value the society placed on the marriage institution. The society places a compulsory right on any adult who gets married irrespective of one's status in life. It is also important to note that in as much as many individuals are eager to get into marriage, some are eager to get out of it for one reason or the other. It is for that reason this paper is being written. The researcher adopts the doctrinal method of research. This paper seeks to examine the definition of marriage considering the contemporary trend surrounding marriage, tries to xray the rights and obligations placed on parties in a statutory marriage as provided by the Marriage Act and the Matrimonial Causes Act and also to look at the challenges or pitfalls of some of these rights and obligations and proffer recommendations for a better marriage relationship between couples and those thinking of going into marriage. The paper concludes that rights and obligations of parties to a statutory marriage are sacrosanct and should be applied by both parties.

1. Introduction

There exist in Nigeria today two types of marriages as recognized by the 1999 Constitution and the Marriage Act. The monogamous system, which is the English type and regulated by statutes and the customary marriage which is a customary institution. Under the customary law, the Islamic Law is also recognized. This is provided for in the second schedule, Item 61 of the 1999 Constitution and also provided for in Section 69 of the Matrimonial Causes Act of 2004.

But irrespective of the type or system, what is important is that, firstly they are both recognized by our laws and secondly that marriage is a contract whereby parties enter into legal relations involving rights and obligation.

It is therefore imperative that couples going into marriage relationship should not only understand the meaning of marriage but also have to be aware of their rights and obligations arising there from. This is the fulcrum of this paper and it is my earnest belief that those who are already married as well those intending to marry will find this paper useful and an indispensable guide to this aspect of marriage institution. This will solve a lot of marital problems.

2. Definition of Terms

Perhaps an exhaustive discussion of this nature should necessarily begin with an explanation of the relevant terms. The paper attempts to discuss some relevant terms such as marriage, monogamous and polygamous systems of marriages, rights and obligations and so many other terms related to this topic to bring it into sharper focus.

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According to Marian Webster's Collegiate Dictionary¹ to redefine means to define something such as a concept again. It also means to reformulate, to re-examine or re-evaluate especially with a view to change.

Matrimonial rights mean the respective rights and powers of married parties in and about the management, control, disposition and alienation of property belonging to either party, or to which either party may be entitled during marriage. They are the rights and privileges that a spouse is entitled to in a marriage relationship. According to Marian Webster's Collegiate Dictionary, marriage is defined as a state of being united to a person of the opposite sex as husband or wife in consensual and contractual relationship recognized by law.²

The Black's Law Dictionary³ defines marriage as a legal union of a couple as husband and wife. It is universally accepted that marriage being a union of one man and one woman involves persons of the opposite sex. Marriage therefore is the legal union of one man and one woman or many women as the case may be.⁴

What then is monogamous marriage? Monogamous marriage in Nigeria is the same as that of England by virtue of our colonization process. Lord Penzance defined it in the case of *Hyde v. Hyde*⁵ "... as a voluntary union for life of one man and one woman to the exclusion of all others.

Three aspects of this definition are of prime importance. First, it must be a voluntary union. Secondly, the union must be for life. The cardinal requirement here is that, at the time of contracting it, the parties intended that it should be for life unless dissolved by a court of competent jurisdiction via a process prescribed by law. Thus, in *Nachimson v Nachimson*⁶ it was held that a Russian marriage, which according to local law, could be dissolved by mutual consent or at the will of the parties with merely formal conditions of registration, was in fact a union for life and a monogamous marriage.

Thirdly, it must be a union of one man and one woman to the exclusion of all others. This requirement distinguishes monogamous system of marriage, from a polygamous one.

Polygamous marriage on the other hand, may be defined as a voluntary union of one man with one or several women. It's essential characteristics is the capacity of the man to take as many wives as he deems fit. In Nigeria, polygamous marriage as stated earlier is a customary institution, therefore customary law governs it's incidence. Needless to say that there is no uniform customary law that applies throughout the federation. What is accepted as customary law in one community may not be accepted in another. For example, under the Tiv Native Law and Custom, in Benue State, the system of customary marriage by elopement is acceptable to the people, but this is not the practice in other areas.

¹ Marian Webster, Collegiate Dictionary(USA: Marian Webster Inc.,12th ed., 2022)

² Ibid.

³ Bryan A. Garner(ed). Black's Law Dictionary (USA: West Publishing Co.,10th ed., 2014)

⁴ E.I. Nwogugu, Family Law in Nigeria, (.Ibadan: Heineman Educational Books (Nig.)Plc, Revised Ed.,2006).

⁵ (1886) LRIP & D, 135, 133

⁶ (1930) P. 217

However, for a rule of customary law to be acceptable, it must possess some characteristics. First, it must be unwritten, it must be a mirror of accepted usage as per Bairamain F.J. in *Owoniyi v. Omotosho*,⁷ and finally, it's rules changes from time to time i.e. it must be dynamic according to Osborne C.J. in *Lewis v Bankole*⁸.

Monogamous system of marriage is regulated by the Marriage Act⁹ and the Matrimonial Causes Act¹⁰ respectively. As it has been said earlier, marriage is contractual in nature in the sense that it is a contract, whereby the parties enter into legal relations involving rights and obligations. But the contractual aspects of the two systems differ in material respect.

In statutory marriage, the contractual aspects are fully developed along the line of English law of contract. But in customary law marriage, the applicable rules are underdeveloped and uncertain because customary law has no developed precise rules governing contractual relations. In the case of *Esisì v Obafumilola*¹¹ it was held that the court may be able to elicit a contract from correspondence *which* passed between the parties. The contract comes into existence by mutual exchange of promises by the parties to marry each other, at this point there is consensus *adidem*.

Marriage as a universal institution is recognized and respected all over the world. As a social institution, marriage is founded on and governed by social and religious norms of society. Consequently, the sanctity of marriage is a well-accepted principle in the world community. It was Ryan T. Anderson that posited that marriage exist to bring a man and a woman together as husband and wife to be father and mother to any children their union produces. He posited further that marriage is based on biological fact that reproduction depends on a man and a woman and on the social reality that children need a father and a mother. It is a known fact that marriage predates government and it is the fundamental building block of human civilization. All government recognizes marriage because it benefits society in a way that no other relationship does. State recognition of marriage protects children by encouraging men and women to commit to each other and take responsibility for their children¹².

However, the concept of marriage as a union of persons of opposite sex has faced serious challenges in several countries including Nigeria. The issue of same sex union and the union of man/woman and beast, hermaphrodites and pseudo-hermaphrodite have been a concern.¹³We however submit that these are not marriages but should only be referred to as unions even though some countries have gone ahead to legalize same. Marriage as defined above is the most successful family constellation for creating lineage improvement which brings about social favour and goodness by attempting to create a safe and loving environment for each new human being as they grow from a baby to a young adult. ¹⁴The legislative stand on this by proposing a bill to prohibit same sex marriage in Nigeria should be commended.

⁷ (1961) ANLR 304, 307

⁸ (1969) 1 NLR 81, 101

⁹ Marriage Act, Cap M6 LFN, 2004.

¹⁰ Matrimonial Causes Act, cap M7 LFN, 2004

¹¹ SUIT No. FCA/L/182/177 (Unreported).

¹² Ryan T. Anderson, "Redefining Marriage Has Consequences" A commentary

¹³ Ibid

¹⁴ Ibid

3. Nature of Rights under the Matrimonial Causes Act

Statutory law marriage like its customary counterpart confers on couples therein, certain rights and obligations that are peculiar to persons who have acquired that status in life. But before examining these rights, it is instructive to look at what right and obligations connote. Right taken in the abstract sense means justice, ethical correctness or consonance with the rule of law, it could also mean power, privilege, faculty or demand, interest in one person and incident upon another or power of free action. But leaving the abstract sense and giving it a juristic content, “right” according to Professor Holland¹⁵ is one man’s capacity to influence the act of another by means not of his own strength but of the force of organized society. To Salmond¹⁶, right is an interest recognized and protected by the law, respect for which is a duty and disregard of which is wrong.

On the other hand, obligation has been defined as a duty, the bond of legal necessity, which binds together two or more individuals. It is limited to legal duties arising out of a special personal relationship between them, whether by reason of a contract or tort or otherwise.¹⁷

4. Rights of Parties under Statutory Law Marriage

The rights conferred on parties by virtue of the above system of marriage include the following;

1. Right to consortium
2. Right of the wife to make her husband liable in contract for necessaries
3. Right of the wife or husband to or not to maintain action in tort.
4. Right of husband and wife in law of evidence.
5. Right or spouse to bring action against third parties on spouse death.
6. Right of wife to acquire the citizenship of her husband’s country
7. Right of the wife and husband in criminal law.

Each of the rights enumerated above will now be considered in details.

1. *Consortium*

This is an all-embracing term used to denote the association between a husband and wife whereby each is entitled to companionship, love affection, comfort and support of the other.¹⁸ Consortium is used to explain the bundle of rights, which each spouse enjoys by virtue of marriage. For example it is generally accepted that the husband is the breadwinner of the home, while the wife is primarily responsible for running the home. Although, this position may vary, depending on the circumstances.

The courts have highlighted a number of rights and duties which spouses owe each other in their domestic life. In *Re-Fry*¹⁹, it was held that in marriage, a wife has a right to use her husband’s

¹⁵ Nwogugu E.I, Family law in Nigeria (Ibadan: Heineman Educational Books (Nig.) Plc, Revised ed., 2006

¹⁶ Ibid.

¹⁷ Osborn’s Concise Law Dictionary (London: Sweet & Maxwell, 12th ed. 2013). See the case of State of Rajasthan V Union of India, AIR(1977) SC 1361. <http://definitions.uslegal.com/d/duties-and-rights/>

¹⁸ Ibid. pg. 98

¹⁹ (1945) CH. 348

surname. And in *Fendel v Goldsmith*²⁰, it was decided that a wife has the right to retain her husband's surname even after the marriage has been brought to an end, either by divorce or death of the husband except she is using the name to defraud others or to defraud the husband. Again, a wife may not use the husband's name on marriage. Even though the change of name is effected customarily, there is no legal obligation on her to do so. Some of these rights inure even after divorce.²¹

Again, in *Cowley v Cowley*²² it was held that a husband has no right to stop his divorced wife by injunction from using his name unless she is doing so for the purpose of defrauding him and others.

Another attribute or incident of consortium is the duty of the spouses to cohabit. In marriage, the wife and husband has a right to insist on living together physically, under the same roof. However, this duty is not absolute, being subject to the circumstances of the parties, where, for instance the nature of their job so demands, the spouses may live apart for most of the time, but this must be done by mutual consent of the parties. In *R v Creamer*²³ the husband could not cohabit with the wife because he was on military service abroad. should however be noted that the spouses have a right of action, against each other for deliberate withdrawal from cohabitation which constitute a matrimonial offence of desertion as was held in the case of *Pulford v Pulford*²⁴ and *Dunn v Dunn*.²⁵ A situation where the spouses choose to live together in a matrimonial home, they may face the challenge of determining where the home should be located as each of the spouses may want the home to be located close to their working place. The claim may succeed where the husband is the breadwinner but where both spouses contribute to the upkeep of the family, then the location of the matrimonial home becomes a subject of mutual agreement.

Another attribute of consortium is the right of the spouses to consummate the marriage. The parties to a marriage owe each other a right to sexual intercourse. Incapacity to consummate the marriage, which may arise from impotence of one spouse may constitute a ground for nullity of marriage as provided for in section 5(1)(A) of the Matrimonial Causes Act.²⁶ But impotence which arise subsequent to the consummation of marriage does not constitute a basis for nullity.

However the right to sexual intercourse with each other must be exercised reasonably and with due regard to the health and dispositions of each other. Consequently, while there is a right to have sexual relations, a spouse is not bound to submit to excessive – sexual demands of their party which may be detrimental to his or her health as it may form a basis for the evidence of

²⁰ (1977) 2PD, 263, 264

²¹ B. E. Umukoro "Settlement of Matrimonial Property upon Divorce: Challenges and Need for Reform in Nigeria and Some Other Commonwealth Countries in West Africa". (2006) Commercial & Property Law Journal. Vol. 1 No.1 116-131

²² (1991) AC 450.

²³ (1919) I KB 564.

²⁴ (1923) P. 18, 21.

²⁵ (1949) 217 S.W 2d 124.

²⁶ Matrimonial Causes Act Cap. M7 LFN 2004.

irretrievable breakdown of marriage for the injured party as provided for in Section 15(2)(c) of the matrimonial Causes Act.

Lastly, as marriage imports the consent of the spouses to sexual relations, a husband cannot be guilty as principal offender in the first degree of rape of his wife. This is the position adopted by the court in the case of *R v Miller*.²⁷ This is the position of Section 6 of the criminal code which allows for marital rape. However, the Violence Against Persons (Prohibition) Act, 2015 has repealed this.

As part of the right enjoyed by the parties to a marriage, the law confers on a spouse the right to use force such as is necessary in aiding or defending the other spouse who is assaulted or who is under reasonable apprehension of death. By virtue of Section 32(3) of the Criminal Code, a spouse may use force, if necessary in order to resist actual or unlawful violence threatened to the other spouse in his presence.

It is important to emphasize here that any of the spouses to a statutory marriage has a right of action against any third party who wrongfully and unlawfully entices or procures or induces a spouse to violate the duties owed each other. Interference with this right may occur in a number of circumstances like enticement by a third party. Any third party who wilfully or unlawfully entices or procures or induces a spouse to violate this duty commits a wrong against the other spouse who can claim damages. However, this action may not lie against a mother in law of the husband.²⁸ This exemption may also cover both parents of a wife because they owe her the parental obligation to be interested in her welfare. But it has however been held that action may be brought against a brother in law or a brother who induced or persuaded her to leave her husband. The person who gives such advice whether in bad faith or in good faith is another issue that may give cause for a suit. If a party to the marriage solicits the advice of a third party who gives it in good faith, he will not be liable as was decided in *Adu v Gillison*²⁹ where the expatriate wife of a Nigerian sought the advice of her doctor on the question of separating from her husband to enable her to re-adjust herself and restore her emotional equilibrium which has been disturbed by domestic conflicts. The advice offered in good faith and on strong medical grounds was that a period of separation from her husband would do her good. The court held that since the advice was in good faith and based on medical grounds, the defendant was not liable for the wife departure. Proof of adultery cannot amount to an action for enticement. However, there are defenses to an action for enticement. One of such is to prove that the defendant was not aware of the marital status of the woman. Another defense is to prove that the defendant acted on the principle of humanity because the plaintiff had been maltreating the wife. An action in tort lies against the defendant for harboring a married woman against the will of the husband without lawful excuse. We submit respectfully that this action is repugnant to the principles of equity, good conscience and natural justice especially where the wife cannot bring an action against anyone harboring the husband. The wife should be free to associate with whoever she wishes to associate with and again, the right that accrue to a husband should equally be ascribed to the

²⁷ *Peace v Seated* (1932) 2 KB 497; See also *Winsmore v Greenbank* (1745) Willes 557

²⁸ *Gottlieb v Gleiser* (1957) 3 ALLER 715

²⁹ (1961) WNLR 390

wife. This right is enshrined in the Constitution of the federal Republic of Nigeria which provides for freedom of association.

2. *Husband's Liability on Wife's Contracts*

Another right which accrues to parties to a statutory marriage, particularly the wife, is the right to make her husband liable for contract entered into. Generally, the fact of marriage in itself does not authorize a wife to bind the husband in contract. However, if the wife cohabits with her husband and manages his household, there is a presumption of the fact that she is his agent and has authority to pledge his credit in all domestic matters which are ordinarily entrusted to a wife. This position was canvassed in *Freestone v Butcher*.³⁰ It is important to note that the wife's authority to pledge her husband's credit is limited to the purchase of "necessaries" to wit food, clothing, medicine, lodging and those goods and services which are suitable in kind and sufficient in quantity and necessary in fact according to the position in life of the husband.³¹

This authority cum right, which the wife has to pledge her husband's credit, may be rebutted by the husband through several methods.³² They include, husband's express prohibition to the tradesman, husband's insanity, and husband's death.

3. *Husband and Wife in the Law of Tort*

Another obligation which parties to a statutory law marriage have, is that by virtue of Married Women's Property Act., no husband or wife shall be entitled to sue each other for a tort, except where such action is taken by the wife for the purpose of protecting her private property.³³

This provision expressly disallows husband and wife of a statutory law marriage from bringing action against each other in tort except where the action is taken by the wife for the purpose of protecting her private property.

This provision is applied throughout Nigeria with the exception of the following states to wit, Lagos, Oyo, Ondo, Osun, Edo and Delta, where a different statute applies. However, where a husband commits a tort against his wife in the capacity of an agent of a third party, the wife can recover against her husband's principal. This was the position in the case of *Smith v Moss*.³⁴

With regard to third parties, the combined effect of section 1 (2) and section 12 of the Act is to enable third parties to sue a married woman in respect of both nuptial and postnuptial torts. Her husband also becomes liable to third parties for the torts of his wife, and as pointed out earlier, Section 12 of the Married Women's Property Act confer on married women the right to institute civil proceedings against all persons including their husbands and for the protection and security of their own properties. This is a clear exception to the general rule prohibiting tortious action between husband and wife. This position was followed by the court in the *Edet v Edet*.³⁵ in that

³⁰ *Freestone v Butcher* (1840)5 Ch. 643

³¹ *Morgan v Cheywood*(1965) 4 Fxf 451

³² Nwogugu, (n15) 84.

³³ Section 12 of Married Women's Property Act, 1882 which is a state of general application.

³⁴ (1940) 1.K.B. 424.

³⁵ (1966/67) 109 ENLR 90

case it was held that a woman has the right to institute an action in tort against her husband, primarily for the protection of her private property. Suffice to say that the property must be in her name. We submit that the common law principle of prohibition of tortious action between husband and wife deserves to be maintained having regard to the children of the marriage who will be psychologically affected by any suit between husband and wife but however advocate that it should be invoked where third parties are involved.

4. *Husband and Wife in the Law of Evidence*

Special consideration is given to the relationship between husband and wife of a statutory law marriage by the provisions of the law of Evidence. For example, in all civil proceedings the wife or husband is a competent witness and he or she can testify for or against the other spouse. The law makes it clear in spite of the relationship of marriage which makes it possible for each to be competent witnesses.

Section 160 (2)³⁶ of the Evidence Act creates instances where the husband or wife of a person charged with an offence is a competent and compellable witness only on the application of the person charged. Also a husband or wife cannot be compelled to disclose any communication made by either, during the marriage except in suits involving parties to marriage under the statutes.

In addition to the above the Evidence Act and the Criminal Code confers special defenses only on husband and wives of statutory marriage. For example in a criminal charge, a wife may plead, as a defense that she was compelled by her husband to commit the wrongful act in his presence. This defense of course is not available to the wife of a customary law marriage. In communications between husband and wife, none of the couple is compelled to disclose any communication made between them except with the consent of the spouse who made it. This is to foster good relationship between couples and to ensure that couples confide in themselves. Section 182(3) of the Evidence Act, 2011 provides specifically that “Nothing in this section shall make a husband compellable to disclose any communication made to his wife during the marriage or a wife to disclose any communication made to her by her husband.”

5. *Right to Bring Action on Death of a Spouse*

This is another right which accrues to the spouses of a statutory marriage, particularly the husband’s right to bring action against any third party whose wrongful act causes the death of the wife³⁷, which has been re-enacted in our local legislations³⁸. It provides that action can be brought for the benefit of the immediate family of the deceased, which include the parents, children or widow of the deceased. This statutory provision was applied in the case of *Jirogho v. Anamali*³⁹ where the executors of the deceased woman were allowed to bring a civil action against the person who caused the death of the deceased. This action must commence within

³⁶ Section 160 (2) Evidence act Cap. E14 L.F.N. 2004

³⁷ Section 1 of the Fatal Accident Act,

³⁸ Fatal Accident Law under Section 111 Enugu State Law, Section 111 Anambra State Law, Section 2 Rivers State Law, Section 4 Ogun State Law and Section 3(2) Lagos State Law.

³⁹ (1958) WRNLR 195

three(3) years after the death of the deceased.⁴⁰ In accessing damages, no consideration is taken of any amount due to be paid or payable by any contract or insurance on the death of the deceased.⁴¹

6. *Citizenship*

Another right enjoyed by parties to a statutory law marriage in Nigeria is that on marriage, the wife or husband may become a Nigerian citizen, if a foreigner prior to the marriage, this is done by registration or naturalization. The mere fact of marriage does not automatically confer Nigeria citizenship on the foreign spouses as provided under the 1999 Constitution. A Nigerian woman who marries a foreigner does not lose her citizenship by marriage to a foreigner even though she acquires the citizenship of her husband.⁴²

Parties to a statutory marriage in Nigeria also enjoy other rights like, right to bring action against the spouse for such ancillary reliefs as order for maintenance in favour of spouse or children of the marriage. Action for custody of children of the marriage and actions for settlements. Also statutory marriage empowers the spouses to sue for other matrimonial causes like restoration of conjugal rights, judicial separation, divorce and so on.

7. *Husband and Wife in Criminal Law*

Criminal law provides for criminal liability of husband and wife. Section 33 of the Criminal Code⁴³ provides that a wife is not criminally responsible for an act which she was actually compelled to do by her husband in his presence, provided that such an action is not an offence punishable by death or is one in which grievous bodily harm is an element. Again, section 10 of the same code confers a right on the wife of a statutory marriage by not making her an accessory by helping her husband to escape punishment, nor is she guilty if in her husband's presence and by helping her husband to escape punishment nor is she guilty, if in her husband's presence and by his authority she assists his confederate to escape punishment. Similarly, a husband does not become an accessory by assisting his wife to escape punishment unlike in criminal law where a person who assist another to escape punishment is guilty is an accessory after the fact of the offence. A wife in a statutory marriage is not also guilty if her husband's presence or by his authority she assist her husband's confederates to escape punishment and vice versa.⁴⁴ Again, the husband and wife of a statutory marriage are not criminally liable for conspiring between themselves alone, for they are considered in law as one person. In the same vein, a husband cannot be guilty of an offence of unlawful carnal knowledge of his wife.⁴⁵ This above means that a husband cannot rape his wife and this rule is not limited to statutory law marriages but also customary law marriages.⁴⁶ We however argue that this view is repugnant to the dignity of the human person especially on the wife who is a weaker vessel and who may not be in the mood for

⁴⁰ Section 3 Ogun State Law, Section 3 Oyo State Law, Section 4 Rivers State Law, Section 4 Lagos State Law, Section 114(1) Anambra State Law, and Section 114(1) Enugu State Law.

⁴¹ Section 114(1) Anambra State Law, Section 5(3) Rivers State Law, Section 6(1) Ogun State Law, Section 6(1) Oyo State Law, and Section 6(2) Lagos State Law.

⁴² Section 28(1) of the 1999 Constitution of the federal Republic of Nigeria.

⁴³ Criminal Code Cap. C38 Law of the Federation 2004.

⁴⁴ Sections 33 and 34 of the Criminal Code Act

⁴⁵ Ibid, section 6.

⁴⁶ Ibid, sections 10,33,34 and 36.

love making sometimes and is forced to make love by her husband. In this situation, do we now say that wife gave her consent when it is in fact so glaring that she was raped by her husband. Section 360 of the Criminal Code provides that a husband could be charged for indecent assault on his wife. Having discussed the above rights, it is also important to mention some of the rights enjoyed by parties under the matrimonial causes Act. Some of those rights include right to maintenance of the parties as provided in Section 70 which provides that ‘ the courts have powers to make order for the maintenance of the parties to a marriage, including the children of the marriage’. From the above provision, it will be right to construe the provision to mean both parties in the marriage. By this, we mean that both the husband and the wife are entitled to this right. But it would appear that in Nigeria, only the wife is entitled to this right probably as a result of lack of awareness by the men or as a result of pride on the part of the men who feel that having married and paid the bride price of the wife, it is their duty to maintain the wife. The position of the law in granting maintenance order to both parties was given credence to in *Mueller v. Mueller*⁴⁷ where the court stated that ‘ husband and wife, given the changes sweeping across the society today, in so far as the rights and duties to make financial provisions are concerned albeit in theory, are gradually moving towards equal footing base. Many wives are today more financially empowered than their husbands and so, the courts are fast moving away from the old rule whereby virtually ordered financial provisions in favor of the wife. For law to be useful, must always reflect the norms and the developmental changes in the society where it will apply.....’

Flowing from the above, it is clear that Section 70 of the Act applies to both the husband and the wife of the marriage. However, there are some factors to be considered while applying this section. Some of those factors as was stated by the court of Appeal in the case of *Nakanda v Nakanda*⁴⁸ are as follows;

1. The means of the parties
2. Earning capacity of the parties
3. The conduct of the parties and
4. All other relevant circumstances.

5. Conclusions and Recommendations

Parties to a statutory marriage are conferred with plethora of rights and obligations. While these rights and obligations are necessary for the survival of the marriage institution, it is respectfully submitted that some of them needs a total review to reflect the needs of our contemporary society.

One wonders why a woman of a failed marriage should be allowed to continue to bear the surname of her former husband, with the man having no power to stop same except where such name is being used fraudulently by the woman. The writer is of the view that once a marriage is dissolved, parties to it, should return to their former status.

⁴⁷(2006) 6 NWLR (Pt. 977) 627 at 645-647

⁴⁸Unreported Suit No CA/1/99/81.

From our findings, the right to pledge credit is only that of the wife. The husband has no such right. Furthermore, the wife also has the sole right to sue the husband in tort for her properties where the marriage fails.

It is believed that these positions of the law, were taken at the time when the husband was the sole breadwinner of the house and in control of the home. But time has changed, situations abound, in a depressed economy like ours where the breadwinners of the home is the wife and sometimes threatens to throw the unemployed husband out of the matrimonial home where she is the rent payer. The question is, what happens to the poor man's property where he is driven into the street by the iron-lady of the home. It is submitted that these aspects of the law should also be made to apply to the husband of a statutory marriage –“what is good for the goose is also good for the ganders”. This issue has been given credence to where recently, a court in Kenya ruled that parties to a dissolved marriage should go with the properties each brought to the marriage. This, to my mind means that any property acquired during the subsistence of the marriage is for both parties and should be shared equally. The above decision taken in Kenya should be applied in Nigeria to bring a balance to marital abuses and to encourage responsibility among married couples in Nigeria. We also humbly submit with respect to right of maintenance that a husband can also bring an action for his maintenance as it is not only the wife that is entitled to this right especially in a situation where the husband who has labored so much for the family suddenly becomes financially incapacitated.

From our findings also, it was observed that a husband cannot be guilty of raping his wife. This aspect of the law should also be reviewed to reflect the 1999 constitution and domestic violence law or gender based law which frowns against rape and upholds the dignity of the human person.

It is hoped that if these areas of the weakness of the law, is looked into with a view to making it applicable to all, irrespective of sex, it will help in curbing some matrimonial recklessness of parties to statutory marriage.