**FAMILY DISPUTES/DIVORVCE MATTERS AND SETTLEMENTS RELATING TO CHILDREN**

**DIVORCE**

Under Nigerian law there is only one ground for divorce, which is that the marriage has broken down irretrievably. To establish this, the petitioner must satisfy the court of certain facts or situations (*section 15 and 16, Matrimonial Causes Act*). Most of these facts are fault-based, in which case, fault must be alleged and proved by the party seeking dissolution of the marriage. These facts are:

* Lack of consummation of the marriage.
* Adultery and the fact that the petitioner finds it intolerable to live with the respondent.
* The respondent has behaved in such a way that the petitioner cannot be expected to live with him or her. Sodomy, bestiality, habitual drunkenness or drug addition, frequent crime convictions and lack of reasonable means of support/maintenance and unsound mind can be argued in this regard.
* Desertion for a continuous period of at least one year immediately preceding the filing of the petition.
* The other party to the marriage has, for at least one year, failed to comply with a decree of restitution of conjugal rights.
* The other party to the marriage has been absent from the petitioner for such time and in such circumstances to provide reasonable grounds for presuming that he or she is dead.
* Nigeria law also recognises a non-fault based dissolution of marriage. A petitioner will not need to allege fault on the part of the respondent to secure dissolution of marriage where:
* The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the filing of the petition, and the respondent does not object to the dissolution of the marriage.
* The parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the filing of the petition.
* Leave of the court is required to petition for dissolution within two years of the marriage unless the petition is predicated on grounds of lack of consummation, adultery, rape, sodomy and bestiality. Leave will not be granted unless the party seeking leave has suffered exceptional hardship or depravity. The court will consider the interest of the children of the marriage and the possibility of settlement in determining the application for leave.

It must be emphasised that a petition for dissolution of marriage will not succeed if the petitioner has condoned any of the above reasons/grounds or facts that must be proved.

**Finances/capital and property**

**Powers of the courts have to allocate financial resources and property on the breakdown of marriage?**

The courts have power to allocate financial resources or settle property at the instance and for the benefit of the parties and the children of the marriage, under section 72 of the Matrimonial Causes Act. The application is usually made by a claim in the petition for divorce or in the answer to the petition. This section provides in effect that the court can make any order it deems just and equitable in the allocation and settlement of the property. Unless there are exceptional circumstances, children above 21 years cannot be beneficiaries of the settlement of property or maintenance.

The power of the court includes the power to mandate the execution of deeds or instrument for the transfer of title, payment of lump sum, grant of life interest in the property, constitution of trust and payment of maintenance to a public officer for the benefit of a child, and so on. The power of the court in this regard can be exercised before the conclusion of the proceedings.

There is no express provision in the law with respect to whether trust, company or other assets can be taken into consideration as a financial resource in the settlement of property. However, the court has wide discretion (*section 73 and 74*). This discretion can be exercised, depending on the facts and circumstances of particular cases, to do equity where trust or company properties are involved. For example, the court has the power to appoint or remove the trustees of trust property or constitute a trust in favour of either of the parties (*section 73(1) (e), (f) and (g)*). Furthermore, the discretional power of the court as granted by law may be exercised with respect to shareholding in the company holding the property or the veil of incorporation may be lifted for the purpose of settlement of property.

**What factors are relevant to the exercise of the court's powers?**

There is no provision under Nigerian law regarding factors for the exercise of the court's power to allocate resources and settlement of property. All that is required of the courts under section 72 of the Matrimonial Causes Act is to consider what is just and equitable in the circumstances of each case. In practice, the court will look at the following:

* The time the property was acquired (it must have been acquired during the subsistence of the marriage or payment for it must have been concluded during the marriage).
* Whether the property was acquired jointly.
* The contribution of the parties to the property.
* The conduct of the parties.
* The age and position of the children.

Though contribution has been a major consideration, this practice has no sound basis in the law. The law expressly provides that the property for settlement can either belong to one or both parties (*section 72(1)*).

**What financial claims are available to parents on behalf of children within or outside of the marriage?**

The power of the court to order maintenance for children under the Matrimonial Causes Act (section 70) is predicated on a matrimonial cause, which is a substantive action for dissolution, separation or nullity of marriage. Parents can therefore claim maintenance for their children during the process or after dissolution or separation. Either parent can apply for maintenance under the Child’s Rights Act in states that have adopted the law and the Federal Capital Territory in the absence of a matrimonial cause, that is, within the marriage.

**On what basis is child maintenance calculated?**

In Nigeria, maintenance is for children less than 21 years old. However, in special circumstances, the court can use its discretion to award maintenance for a child of 21 years or more, under section 70(4) of the Matrimonial Causes Act.

In determining the maintenance, the court will have regard to all circumstances of the case, including the income, earning capacity, property and other financial resources of the party to which the maintenance order applies, as well as his financial needs, obligations and responsibilities. In addition, all of the following must be considered in calculating child maintenance:

The financial needs of the child.

The income, earning capacity and property of the parties. Physical or mental disability of the child. The manner in which the child is being or is expected to be trained.

(*Section 4 of the first schedule to section 55(14) of the Child's Rights Act, in conjunction with section 70 of the Matrimonial Causes Act*).

Maintenance order can take the form of any of the following:

1. Periodical payment to the child or to the Applicant for the benefit of the child.

2. Payment of a lump sum to the child or to the Applicant for the benefit of the child.

3. Enforcement of a Maintenance Agreement and Financials Agreement.

4. Grant of an interim Order to make periodical payments to the child pending the substantive application.

There is no fixed formula for calculating child maintenance; it is on a case-by-case basis. The guide is the above listed considerations and the overriding interest of the child.

**What is the duration of a child maintenance order (up to the age of 18 years or otherwise)?**

Under the Matrimonial Causes Law, a maintenance order is in favour of a child under the age of 21. Special circumstances are required for children that are 21 years old and above. Special circumstances can include disability or other factors that make it difficult for the child to support his/herself. This means that maintenance may be in place until the child finishes university education. However, this depends on the facts and circumstances of the case.

Maintenance orders or child support predicated on the Child’s Rights Act terminate when the child reaches 18 years old. This is because a child under the law is a person under the age of 18.

**MAINTENANCE (SPOUSAL SUPPORT/ALIMONY)**

Spousal support or Alimony is a monthly payment made by one spouse to another in accordance with either a settlement agreement or a Court’s order. The purpose of spousal support is to correct any unfair economic effects caused by a divorce, such as when a stay at home parent suddenly needs a source of income after the divorce but has never held a job.

It is noteworthy that an award for maintenance is at the discretion of the presiding judge over the matter, the judge has the freedom of choice in determining exactly what one might get considering the social standing of the parties and their lifestyles, the respective means and earning capacity of the parties, the age of the parties, the conduct of the parties during the marriage and the existence and the number of children.

Furthermore, a party making an application for maintenance has the right to receive maintenance for a value, which will be sufficient to maintain the marital standard of living as long as the other party is in a strong financial position and is able to afford such an order. However, a maintenance order will terminate on the remarriage of the party order is granted in favour.