

## CHAPTER 5:07

### ARRANGEMENT OF SECTIONS

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## Short title

This Act may be cited as the Customary Marriages Act [*Chapter 5:07*].

## 2 Interpretations

In this Act—

“Customary marriage officer” means—

(a) A magistrate; or

(b) An official or chief appointed to be a customary officer in terms of section *eighteen*;

“Customary marriage” means a marriage between Africans;

“Marriage Act” means the Marriage Act [*Chapter 5:11*] and includes, where appropriate, the Marriage Act

[*Chapter 177 of 1963*];

“Marriage consideration” means the consideration given or to be given by any person in respect of the marriage of an African woman, whether such marriage is contracted according to customary law or solemnized in terms of the Marriage Act or this Act;

“Marriage register” means the marriage register referred to in section *eight*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“Solemnization”, in relation to marriage, means solemnization in terms of this Act. (Solemnization means the performance of a ceremony in which a legal document is given to register a marriage).

## 3 Marriages not to be valid unless solemnized

(1) No marriage contracted according to customary law, including where a man marries the widow or widows of a deceased relative, shall be regarded as a valid marriage unless—

(a) The marriage is solemnized in terms of this Act; or

(b) The marriage was registered under the Native Marriages Act [*Chapter 79 of 1939*] before the 1<sup>st</sup> January, 1951; or

(c) The marriage was contracted before 1st February, 1918; or

(d) A marriage contracted outside of Zimbabwe will be seen as a marriage valid in the country it was contracted

(2) A marriage contracted according to customary law on or after the 1st February, 1918, and before the 1<sup>st</sup> January, 1951, which was not registered under the Native Marriages Act [*Chapter 79 of 1939*] shall, subject to subsection (2) of section *seven* will be regarded as a valid marriage.

(3) If the male party to a marriage referred to in subsection (2) fails to have such marriage solemnized in terms of this Act, he shall be guilty of an offence and liable to a fine not exceeding level one.

[Subsection amended by section 4 of Act 22 of 2001.]

(4) If an accused has been prosecuted before for having gone against subsection (3), it is possible for him to be prosecuted again on the same charge.

(5) A marriage contracted according to customary law which is not a valid marriage in terms of this section shall, for the purposes of customary law and custom relating to the status, guardianship, custody and rights of succession of the children of such marriage, be regarded as a valid marriage.

#### **4 Who must be present at solemnization of marriage?**

(1) A marriage to be solemnized in terms of this Act shall be solemnized by a customary marriage officer of the district in which the woman or her guardian resides.

(2) In addition to the customary marriage officer and the parties to the marriage, there shall be present at the solemnization of every marriage in terms of this Act the following other persons—

(a) The guardian of the woman or a deputy appointed by the guardian:

Where the marriage is being authorized by a magistrate the presence of a guardian of a woman may not be necessary. This is in terms of subsection 5.

The presence of a guardian may also not be necessary where the marriage officer is satisfied that the guardian has consented to the marriage.

(b) The chief, headman or village-head of the guardian of the woman or such other person as the customary marriage officer may approve of the marriage as witnesses.

(3) The husband shall pay a fee of one dollar to the person who, in terms of paragraph (b) of subsection (2), is the witness at the solemnization of his marriage.

#### **5 Authorization of marriage by magistrate**

(1) Parties may appeal to a magistrate where the guardian of women refuses to the solemnization of a woman's marriage. The magistrate must be in the province where the woman lives. The magistrate may -

(a) authorize the solemnization of the marriage where after looking deeper into the matter, the magistrate finds out that there was no need for the guardian to say no to the marriage and

(b) After meeting and talking to the guardian of the woman, fix the marriage consideration.

(2) A magistrate in the province where a woman lives can authorize the solemnization of a marriage where a guardian cannot be found. This can be done after investigations.

#### **6 Customary marriage officer may put relevant questions**

(1) A customary marriage officer may ask a witness anything about the people about to get married. This may be to clarify their identities or marriage status or anything else that may interfere with the solemnization.

(2) Any person who refuses to answer, or lies regarding any question put to him in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment. [Subsection amended by section 4 of Act 22 of 2001.]

(3) If any person impersonates either of the parties to a marriage or the guardian of the woman or his deputy, they shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment

[Subsection amended by section 4 of Act 22 of 2001.].

## **7 Solemnization of marriage**

(1) If the customary marriage officer is satisfied—

(a) The woman's guardian and the husband agree on the marriage, except for where the magistrate has fixed the marriage in terms of section 5 and

(b) That the soon to be husband and wife freely and voluntarily agree to the marriage; and

(c) That the guardian of the woman agrees to the marriage or that a magistrate has authorized the solemnization of the marriage in terms of section *five*; and

(d) That nothing that exists that can lawfully block the proposed marriage;

He shall solemnize the marriage by declaring the parties to be husband and wife and the marriage shall be a valid marriage contracted according to customary law.

(2) If a customary marriage officer refuses to solemnize a marriage referred to in section (3) (2) because he is not satisfied in terms of subsection (1), he shall declare such marriage void.

## **8 Marriage register**

(1) An entry shall be written in ink in the marriage register immediately after the marriage ceremony and the marriage officer will sign the form.

(2) A copy or duplicate of the marriage registration shall be entered into the register and signed by the customary marriage officer. The duplicate shall be given to the woman of the marriage.

(3) Every document that comes from the marriage register of a customary marriage officer's register is to be taken as good evidence and shall be admissible when it is produced to the court for civil and criminal cases.

## **9 Search of marriage register**

Anyone may have access to the marriage register during office hours.

After paying \$1 a person may get a copy of the marriage entry.

The parties to the marriage may not pay to get a copy of their marriage certificate.

## **10 Offences in relation to marriage register**

(1) If any person unlawfully—

(a) Erases or messes up any entry in a marriage register or duplicate original register; or

(b) destroys a marriage register; He shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not more than three months or to both such fine and such imprisonment.

(2) If any person—

(a) unlawfully and willfully forges or alters or falsely makes an entry in a marriage register or duplicate original register or any certified copy from a marriage register; or

(b) Knowingly and willfully delivers offers, alters or puts off any such forged, false or altered copy; He shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

## **11 Pledging of girls and women in marriage prohibited**

(1) Any agreement where a girl is pledged or promised to a man for marriage shall have no effect.

(2) ....

## **12 Certificates as to consent and marriage consideration in marriages under Marriage Act**

- (1) Africans should appear before a magistrate should they wish to have their marriage registered under the Marriages Act and get the relevant marriage certificate. The couple should show that they have consent from the parents or guardian of the woman.
- (2) A magistrate will only issue the certificate where he is satisfied that there is nothing that would be against giving the couple the marriage certificate.
- (3) A marriage between Africans which is solemnized in terms of the Marriage Act shall be invalid unless a minister of religion or other marriage officer the certificate required in terms of subsection (1).
- (4) On application by the parties to a marriage between Africans which is or is to be solemnized in terms of the Marriage Act, a magistrate for the province in which the husband or wishes to live shall give the couple a certificate stating—
  - (a) The marriage consideration paid and its value; and
  - (b) The marriage consideration remaining to be paid and its value; and
  - (c) The terms of payment agreed upon; and the certificate shall be evidence of the facts recorded in the certificate and shall be admissible in both civil and criminal courts.

## **13 ...**

[Section repealed by section 7 of Act No. 6 of 1997.]

## **14 Evidence for prosecution by husband or wife of accused**

Without taking away from from the Criminal Procedure and Evidence Act, marriages contracted according to customary law, inside or outside Zimbabwe which was not registered in terms of the Native Marriages Act, or solemnized in terms of this Act or Marriages Act will not render either party incompetent to give evidence against the other.

## **15 .....**

[Subsection repealed by section 282 of Act 23 of 2004]

## **15A Legality of marriages between persons within certain degrees of affinity or consanguinity**

- (1) To avoid any doubt, according to the Criminal Law Code-
  - (a) No one related to another in any degree of relationship specified in section 75(2) of the Criminal Law Code shall be able to contract a valid marriage. Unless, in the case of persons who are related to each other as first or second cousins, they satisfy the customary marriage officer that they belong to a community referred to in section 75(3) of the Criminal Law Code;
  - (b) persons who are related to each other by affinity shall be capable of contracting a valid marriage if the affinity relationship between them is not one described in paragraph (b) or (j) of section 75 (2) of the Criminal Law Code.
- (2) Section 24(2) of the Marriage Act [*Chapter 5:11*] shall apply to persons who marry or appear to marry in contravention of section 75(2)(i) of the Criminal Law Code.
- (3) To avoid any doubt it is declared that a marriage between persons who are related to each other as first or second cousins shall not be void or voidable if such marriage was contracted before the date of commencement of the Criminal Law Code.

[Section inserted by section 282 of Act 23 of 2004.]

### **16 Dissolution of marriage**

No marriage solemnized in terms of this Act or the Marriage Act or registered under the Native Marriages Act [*Chapter 79 of 1939*] or contracted under customary law before the 1st April, 1918, shall be dissolved except by order of a court of competent jurisdiction in terms of the Matrimonial Causes Act [*Chapter 5:13*].

### **17 Validation of certain marriages**

Any marriage solemnized in terms of the Marriage Act [*Chapter 177 of 1963*] before the 1st April, 1930, between Africans is a legal and valid marriage.

### **18 Appointment of customary marriage officers**

The Minister may appoint any person employed by the State or a local authority or any chief to be a customary marriage officer for the purposes of this Act.

### **19 Existing marriage registers**

Every extract from a marriage register which was kept under the Native Marriages Act [*Chapter 79 of 1939*] which is certified as a true copy by a customary marriage officer who has possession of the marriage register shall be satisfactory evidence of the facts that are recorded in the certificate.

### **SCHEDULE (Section 8)**

#### **FORM**

#### **CUSTOMARY MARRIAGES ACT [CHAPTER 5:07]**

#### **CERTIFICATE OF CUSTOMARY MARRIAGE**

No.....

This is to certify that I have this day solemnized a marriage between—

Name ..... of

Husband.....

National Registration No. ....

Village..... Chief..... of

Wife.....

National Registration No. ....

Name of Wife's Guardian.....

National Registration No. ....

The said Wife being the\*.. .....wife and having freely consented to the marriage.

Consideration Paid..... Value.....

Consideration remaining to be paid..... Value.....

Terms of payment agreed upon.....

In the presence of.....

Given under my hand at.....

This..... Day of.....19.....

*Customary Marriage Officer*

\*Here state whether first, second or subsequent wife