

MATRIMONIAL CAUSES ACT SIMPLIFIED

Acts 33/1985, 11/1987, 18/1989 (s. 38), 2/1990, 6/2000 (s. 151).

ARRANGEMENT OF SECTIONS

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1 Short title

This Act may be cited as the Matrimonial Causes Act [Chapter 5:13].

2 Interpretation

(1) In this Act—

“action for divorce, judicial separation or nullity of marriage” means an action by which a decree of divorce, judicial separation or nullity of marriage or other relief in connection is applied for, and includes—

- (a) an application *pending a decision* for an interdict or for the interim custody of, or access to, a child of the marriage or for the payment of maintenance; or
- (b) an application for a contribution towards the costs of such action, or to institute such action, or make such action or such application;

“court” means—

- (a) the High Court, in relation to any marriage;
- (b) a magistrates court, in relation to any marriage entered into in accordance with customary law;

“marriage” includes a marriage solemnized in term of the Customary Marriages Act [Chapter 5:07].

(2) For the purposes of this Act, an action shall be deemed to have been commenced on the date on which any process in relation to such action is filed or lodged in terms of the rules of the court.

3 Additional Jurisdiction (power to make legal decisions and judgments)

- (1) The High Court shall have the jurisdiction to entertain an action for divorce, judicial separation or nullity of marriage where the wife is the plaintiff or applicant (the one bringing the matter forward) –
 - (a) If a wife is deserted by her husband and just before deserting her the husband was domiciled (treated Zimbabwe as his permanent home) in Zimbabwe even though the husband changed his domicile since desertion or
 - (b) If the marriage was celebrated in Zimbabwe and the wife has lived in Zimbabwe for at least two years before the start date of the action and is still living in Zimbabwe even though the husband has never lived in Zimbabwe or
 - (c) At the start of the action, the wife is a citizen of Zimbabwe and immediately before the date, she has been living in Zimbabwe for a period of more than two years and is still living in Zimbabwe.
- (2) The High Court has jurisdiction to hear any counterclaims made by the husband which arose out of the marriage.
- (3) In proceedings where the High Court has jurisdiction in terms of this section, the issue shall be settled following the law which would be applicable if both parties resided in Zimbabwe.

4 Grounds for divorce

A marriage may be dissolved by divorce through an appropriate court only on grounds of –

- (a) Irretrievable breakdown of marriage as by section 5 (the marriage can no longer be fixed)
- (b) Mental illness that cannot be cured or continuous unconsciousness

5 Irretrievable Break-down

- (1) A suitable court may grant a divorce on the grounds of irretrievable breakdown of marriage where the court is satisfied that the marriage can no longer be fixed and the parties cannot live in peace with each other.
- (2) Subject to subsection (1) a court may consider the following to show irretrievable breakdown of marriage :
 - (a) The couple has not lived together for an on-going period of 12 months just before they started the divorce process
 - (b) One of the parties has committed adultery and a normal marriage can no longer continue
 - (c) The defendant has been sentenced to 15 years imprisonment or declared a habitual criminal or has been sentenced to extended imprisonment for a continuous period or interrupted periods which amount to five years within ten years just before the start date of the divorce action
 - (d) The defendant has during the marriage :
 - (i) Treated the plaintiff with cruelty [mental or otherwise]
 - (ii) Been an ongoing user of drugs or intoxicating substances or alcohol such that a normal marriage cannot survive this behaviour;As proof of irretrievable breakdown of marriage.
- (3) The court may delay the divorce process if there is a reasonable possibility that the couple may get back together through marriage counselling, treatment or some time for reflection.
- (4) If the process has been delayed because of subsection (3), the process may be continued with the permission of the court before any other magistrate or judge.

6. Mental illness or continuous unconsciousness

- (1) In this section –

“Psychiatrist” means a medical personnel who is registered in Zimbabwe or has a qualification that allows him to register in Zimbabwe and –

- (a) Has a diploma or degree in psychiatric medicine which has been given by a university or other body. His/her qualifications must be registerable with the Medical and Dental Practitioners Council of Zimbabwe established by the Health Professions Act
 - (b) Has at least 5 years experience in a place that only deals with mental disorders
- (2) Looking at subsection (3), a suitable court may permit a divorce based on mental illness or continuous unconsciousness of the defendant if satisfied that –
- (a) The defendant has suffered from a mental disease or defect for a period of 5 years or non continuous periods that add up to five years. This must have been within the immediate 10 years before the start date of the divorce action or
 - (b) Because of a physical disorder, the defendant is in a state of permanent unconsciousness which has lasted for at least 6 months before the date of start of the divorce process;
- And it is not reasonable to believe that he will be cured or gain consciousness any time soon.
- (3) A court will not grant a divorce in terms of subsection (2) until at least 3 psychiatrists have looked at the defendant and are satisfied of the matters discussed in paragraph (a) or (b)
- (4) For the purposes of this section, a person shall be under care and treatment –
- (a) While he is detained because of any order or warrant issued under the law of Zimbabwe or any other country which relates to mental disorder
 - (b) While he is getting treatment as a voluntary patient under any law and in no other case.

7 Division of assets and maintenance orders

- (1) When it comes to allowing a decree of divorce, judicial separation or nullity of marriage, subject to this section, an appropriate court may make an order regarding –
 - (a) The division and distribution of assets of spouses including an order that any asset be transferred from one spouse to another.
 - (b) Payment of maintenance either by lump sum or timed payments for the spouse or any child of the marriage.
- (2) An order made in terms of subsection (1) may have conditions attached which bring about consequences or supplementary ones. This may be done where the court finds it necessary for effect to be given to the order at hand. The order must operate fairly between the spouses and may without prejudice –
 - (a) Order anyone who holds property belonging to any one of the spouses to make a payment or transfer of the property as said in the order ;
 - (b) Give powers to any trustee over any property or powers such as to appear before an appropriate court where necessary
- (3) The power of an appropriate court to make an order in terms of paragraph (a) of subsection (1) shall not extend to any assets which are proved to have been gained by a spouse whether before or during a marriage –
 - (a) Through inheritance
 - (b) Or in terms of custom are intended to be held by the spouse personally
 - (c) Or in any manner such that the asset has particular sentimental value to the spouse concerned
- (4) When making an order in terms of subsection (1) an appropriate court shall consider all the circumstances of the case, including –

- (a) The income earning capacity, assets and other financial resources which each spouse and child has or is likely to have in the foreseeable future
 - (b) the financial needs, obligations and responsibilities which each spouse and child has or is likely to have in the foreseeable future;
 - (c) the standard of living of the family, including the manner in which any child was being educated or trained or expected to be educated or trained;
 - (d) the age and physical and mental condition of each spouse and child;
 - (e) the direct or indirect contribution made by each spouse to the family, including contributions made by looking after the home and caring for the family and any other domestic duties;
 - (f) the value to either of the spouses or to any child of any benefit, including a pension or gratuity, which such spouse or child will lose as a result of the dissolution of the marriage;
 - (g) the length of the marriage;
- (5) In granting a decree of divorce, judicial separation or nullity of marriage an appropriate court may, in accordance with a written agreement between the parties, make an order with regard to the matters referred to in paragraphs (a) and (b) of subsection (1).

8 Duration of Maintenance orders

- (1) An order for timed payments of maintenance for a spouse shall stop-
 - (a) When the spouse dies or remarries
 - (b) If the order was made following a decree of judicial separation when the decree is set aside or the divorce is granted.
- (2) Subject to subsection (3), an order for timed payments of maintenance in respect of a child shall stop –
 - (a) when the child dies or marries; or
 - (b) when the child is adopted; or
 - (c) when the child attains the age of eighteen years; or
 - (d) when the child becomes self-supporting; whichever occurs the earlier.
- (3) A court may direct that the maintenance order referred to in subsection (2) shall extend beyond the date when the child attains the age of eighteen years—
 - (a) if the child is or will be receiving education or training beyond attaining that age; or
 - (b) if there are special circumstances which justify such direction

9 Variation, etc of orders

Without harm or injury to the Maintenance Act, with good reason a court may vary, suspend or take back an order in terms of section seven, and subsections (2) , (3) and (4) of that section , in respect of any such variation, suspension or cancellation.

10 Inquiry as to custody and maintenance of children

- (1) Before granting nullity, decree of divorce or judicial separation, the court may require evidence to be given by either party to make sure that proper plans have been made for the custody and maintenance of the children.
- (2) A court, after hearing evidence –
 - (a) May give custody of the children to the person considered the best by the court
 - (b) Make an order in terms of section seven for maintenance of the children

11 Claim for arrear maintenance for children

- (1) A spouse shall be able to recover an arrear from the other spouse maintenance or portion of maintenance where a court considers it just and fair where the spouse provided for maintenance of children for that marriage or for children of one of the other spouses.

- (2) A court may make an order for the payment by a spouse of his or her share pending the action for divorce, judicial separation or nullity of the marriage or such an order may be included in the final order of divorce, judicial separation or nullity of marriage as the case may be.

12 Recognition of certain decrees

- (1) A court may recognize the validity of any decree or order of divorce, judicial separation or nullity of marriage made in any country in any case in which the husband was not domiciled in that country if—
- (a) The law of that country has similar law which matches to section three
 - (b) Or the President has proclaimed in a statutory instrument that country has similar law that corresponds with section three.
- (2) The proclamation by the President will not be issued unless the President is satisfied that enough provisions have been made under the law of that country for the recognition by the courts of that country of the decrees and orders made under section three in any case in which the husband is not domiciled in Zimbabwe.
- (3) The President may at any time revoke any proclamation issued in terms of paragraph (b) of subsection (1).

13 Grounds for decree of nullity

- (1) Amongst other reasons, a marriage may be voidable by law on the grounds –
- (a) The marriage has not been consummated (that the couple has not engaged in sexual intercourse to complete their union.)
 - (b) That either party of the marriage was mentally disordered or defective within the meaning of the Mental Health Act

Provided that, in the case specified in paragraph (b), an appropriate court shall not grant a decree of nullity unless it is satisfied that—

- (i) the plaintiff was at the time of the marriage ignorant of the facts alleged; and
 - (ii) the proceedings were instituted within a year from the date of marriage; and
 - (iii) marital intercourse with the consent of the plaintiff has not taken place since the discovery by the plaintiff of the existence of the ground for a decree.
- (c) (2) Nothing in subsection (1) shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

14 Legitimacy of children of voidable marriages

Where a child would have been said to be legitimate had the parents dissolved the marriage and not annulled it, the child will still be regarded as a legitimate child even though the parents have annulled their marriage.

15 Evidence

(1) Without ignoring any other rule of law, the evidence of a husband or wife shall be acceptable or valid in any court matters to prove that marital intercourse did or did not take place between them during any period.

(2) Without taking anything from subsection (1) or any rule of law, a husband or wife shall not be compellable to give evidence of the matters mentioned in that subsection