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THE CONCEPT OF 'NO FAULT' DIVORCE: COMPATIBILITY WITH THE MATRIMONIAL JURISPRUDENCE OF NIGERIA



In 2023 alone Hugh Jackman (Actor who plays Wolverine in the X-Men Movie series) and wife of 27 years Deborra-Lee Jackman 'amicably'¹ended their marriage. The former couples were mute as to why they went their separate ways after such a long time together in marital bliss. Britney Spears²and Sam Ashgari went their separate ways just 14 months after their marriage.³Ariana Grande another famous singer split from Husband Dalton Gomez after tying the knot in May 2021. Kevin Costner (famous for his role in the Bodyguard, a movie starring Whitney Houston) also parted ways with wife of 18 years in May 2023. These are popular entertainments icons known globally. Perhaps at the end of this piece you would catch the drift as to why we had to make reference to these marriages all of which have hit the rocks.

Ordinarily, a more detailed look at these marriages mentioned so far may reveal several underlying issues, reasons, or grounds that may have caused the marriages to end the way they did. Some usually recurring reasons could be infidelity, lack of commitment, financial problems, substance abuse, abandonment etc.⁴However, in 2023 at least in the United States and in the United Kingdom, divorce proceedings can be conducted without any such extra scrutiny. The former position had always been that grounds for filing a divorce must be stated in the petition in accordance with the Matrimonial legislation of a given jurisdiction and facts adduced to support those grounds to the satisfaction of the Court. In Nigeria section 15 (1) of the Matrimonial Causes Act 2004 (hereinafter MCA)⁵provides categorically that:

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.

The irretrievability of the perceived conflict or breakdown between the couples is proved by adducing evidence satisfying the court that **any** of the facts stated in section 15 (2) (a) – (h) of the MCA exists within the periods so stated. For want of space, we rather not reel out the long list in sub-paragraph (a) to (h) in section 15 (2) and supplementary provisions in section 16 of the MCA. However, issues like unwillingness to consummate the marriage,⁶ intolerability of living with a spouse,⁷desertion,⁸etc come up under section 15 (2) as facts proving irretrievability

¹ Described as amicable because the couples were mum about the whole proceedings

² Ilana Kaplan, 'Sam Asghari Files for Divorce from Britney Spears: Source (August 17 2023, *People*) <<https://people.com/sam-asghari-files-for-divorce-from-britney-spears-source-7644492>> accessed 5 November 2023

³ Skyler Caruso and Alexander Schongeld, 'Celebrity Couples who Broke Up in 2023

⁴ Christy Bieber and Adam Ramirez, 'Revealing Divorce Statistics in 2023' (August 8, 2023, *Forbes Advisor*) <<https://www.forbes.com/advisor/legal/divorce/divorce-statistics/>> accessed 5 November 2023

⁵ Cap M1 LFN 2004

⁶ MCA 2004, section 15(2)(a)

⁷ MCA 2004, section 15(2) (b)

of the breakdown of the marriage. In the locus classicus of **HARRIMAN v HARRIMAN**⁹, **EKEREBE v EKEREBE**¹⁰ the courts have held that there is only one ground for the dissolution of all marriages under the MCA and it must be stated that the 'marriage has broken down irretrievably.'¹¹ Consequently, the follow up in section 15 (2) are only species of facts to show the breakdown. A curious mind at this point would ask why the foray made so far?

In filing for divorce, the minimum expected from the petitioner in the High Court in Nigeria is to state the ground that the marriage has broken down irretrievably backed up with attendant facts to show this position. The position in Nigeria seems to be well settled that where a petition for divorce or dissolution of a union omits to state this all important ground with facts to prove same, then the petition is bound to fail.¹²

Marriages are fundamentally critical to communal stability and sustenance of the family structure; hence the reason why the law seeks to ensure that all hope of salvaging the marriage is not lost before couples are sent separately on their merry way. Anything short of insisting on this ground and attendant facts to back up same would mean that any party can unilaterally decide to part ways for no solid reason or ground and no obligation to show factually whose fault it is that the union has ended. This is the underlining purport of a fault based divorce.

A no fault divorce in stark contrast to a fault based divorce happens when a couple desires to end their marriage without having to present any specific ground or reason for filing for divorce.¹³ A no fault divorce prevents the court from delving into inner recesses of the union. A no fault divorce does not mean actually that no one within the confines of the marriage is to blame, rather it is seen as a choice for speed and possibly to ensure that the dirty linen of the couples do not get to see the light of day in court. It also seems to be a way to avoid the blame game. In the United Kingdom (UK) the Divorce Dissolution and Separation Act 2020¹⁴ amended the Matrimonial Causes Act 1973 and Civil Partnership Act 2004 both of which are the main statutes governing dissolution proceedings in the UK.

The Divorce Dissolution and Separation Act 2020 revised the legal process in England and Wales for married couples to obtain a divorce or judicial separation and for civil partners to dissolve their civil partnership or obtain a separation. The DDSA 2020 removes the need to adduce facts

⁸ Matrimonial Causes Act 2004, Cap M1 LFN 2004, section 15 (2) (d)

⁹ (1999) 3 NWLR (pt 119) 6

¹⁰ (1999) 3 NWLR (pt. 569) 514

¹¹ Tijani N, *Matrimonial Causes in Nigeria - Law and Practice* (Renaissance Law Publishers Ltd, 2007) 37

¹² M M Stanley Idun and J. A Agaba, *Civil Litigation in Nigeria* (Netlag Co Ltd, 2016)

¹³ Christy Bieber and Jeffrey Johnson, 'What is a No Fault Divorce?' (July 26, 2023, *Forbes Advisor*) <<https://www.forbes.com/advisor/legal/divorce/no-fault-divorce/>> accessed 5 November 2023

¹⁴ Divorce Dissolution and Separation Act 2020, Cap 11. The legislation received Royal assent on 25 June 2020, cap 11 the legislation received Royal assent on 25 January

or delve into the issue of faults in the divorce proceedings. It only need be stated that the marriage has broken down permanently. All one need do is file an application including a statement that the marriage has broken down. This has simplified divorce in the UK to its barest minimum.

In the United States (U.S) a no fault divorce can be filed unilaterally and the other spouse cannot object. The parties have no obligation to share information related to wrong doing in court. For the past half century many American Women have enjoyed the no fault divorce, so also have the men. Beginning in the early 1970s's no fault divorce enabled millions of people in the U.S to file for divorce over irreconcilable differences no matter how asinine without need to prove adultery, domestic violence, abandonment, or impotence.¹⁵What are the implications and could this be co-opted into the Nigerian Matrimonial Causes arrangement? Would it be compatible with the MCA?

Hypothetically speaking if the no faults clause is adopted in the Nigerian MCA it would mean several things. First it would mean that no cogent facts need to be adduced for leaving a marriage. Secondly the court shall be precluded from scrutinizing some facts crucial to determining other issues such as who to pay child support and custody. Thirdly, the Respondent cannot object or adduce evidence that the petitioner is at fault. The more liberal population may consider such adoption of the no faults system as an advantage but the conservatives may be concerned that it is a backdoor to encouraging divorce. However, since the current position is still that encapsulated in sections 15 and 16 of the MCA it is important to consult a lawyer for professional advice. Even though the no fault divorce concept seems alien to the Nigerian matrimonial jurisprudence, a smart lawyer would know how to reduce animosity over a divorce proceeding. As a result of this reality one would be cautious not to hastily recommend it's adoption till there is a move by the legislators towards this end.

¹⁵ Kimberly Wehle, 'The Coming Attack on an Essential Element of Women's Freedom' (September 26, 2023, *The Atlantic*) available at <<https://www.theatlantic.com/ideas/archive/2023/09/no-fault-divorce-laws-republicans-repeal/675371/>> accessed 5 November 2023

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