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Evaluating Consent Judgments in Petitions for the Dissolution of Marriage in Nigeria*

ABSTRACT

Where parties to a marriage have decided to get a divorce because they have come to a realisation that they can no longer live together as husband and wife or one of the parties to the marriage contract finds it intolerable to live with the other spouse, they are sometimes in a hurry to get a divorce and move on with their lives possibly to remarry. Recently, the practice has developed by parties to a divorce petition in Nigeria to enter “Terms of Settlement” in which the parties ‘agree to divorce’. The ‘Terms of Settlement’ is filed in Court and a consent judgment is entered by the trial Court. An order *nisi* for dissolution of the marriage is made which is subsequently made absolute. Using the doctrinal method and assessment of the position in other jurisdictions, this article examines the legality of this practice in the face of the extant provisions of Matrimonial Cause Act, Matrimonial Cause Rules especially the burden of proof that a marriage has broken down irretrievably. The article posits that consent judgement is unknown to matrimonial causes in Nigeria which are *sui generis* and that the general principle in civil procedure cannot be imported to dissolve a marriage by consent but queries the extant position in view of recent development in other jurisdictions. This article recommends a legislative intervention as in other jurisdictions to incorporate a no-fault divorce. This is relevant because presently parties file petitions and cross petitions for dissolution of marriage on the ground that the marriage has broken down irretrievably without the necessity of finding fault.

Keywords: Consent judgment, dissolution of marriage, decree *nisi*, Terms of Settlement, final order and conditional order.

1.0. INTRODUCTION

Statutory marriage is a union for life hence the marriage vows before the registrar of marriages or the officiating minister in a licensed place of worship. Only death or valid judgment of divorce will separate the couple. It is also a union between the man and the woman to the exclusion of all others.¹ Historically, marriage law is closely linked with religious practice. For centuries marriage was governed by the churches hence the development of ecclesiastic laws. Dissolution of marriages was an exception rather than the rule. Marriage was not only sacred but also indissoluble. Ecclesiastical courts rarely granted a divorce. They only granted the divorce on grounds of adultery as stipulated in the scriptures.² This is because from the scriptures, usually recited at marriage ceremonies, the union is for life.³

However, the parties to the marriage contract may lawfully decide to divorce. This contemplates that they will approach a court of competent jurisdiction to initiate and obtain the divorce.⁴ An increasing feature in a petition for dissolution of marriage in our Courts is the parties entering ‘Terms of Settlement’ to dissolve the marriage. A consent judgment is pronounced and a decree *nisi* is made

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¹ Section 27, Marriage Act (MA)

² Ugochinyelu Anidi, ‘For Better For Worse, Till I change My Mind’ Reviewing Section 15 (2) (f) of the Matrimonial Causes Act’ (2021) 9(2) *International Journal of Innovative Legal and Political Studies*, 88-97 (<https://seahipaj.org/journals-ci/june-2021/IJILPS/full/IJILPS-J-9-2021.pdf>)

³ See Genesis 2: 24; Matthew 19: 4-6,9; 1 Corinthians 7: 10,11 *New World Translation of the Holy Scriptures* (Watch Tower Bible and tract Society of New York, Inc 2013)

⁴ Sections 2(1),114(1), Matrimonial Causes Act (MCA), *Ani v Ani* (2002) 6 NWLR (Pt 762) 166

based on the ‘Terms of Settlement’. No evidence is taken on the petition before the judgment of the Court.

This article examines the legality of a consent judgment in a petition for dissolution of marriage within the context of the extant Matrimonial Causes Act and the Matrimonial Causes Rules in Nigeria by considering what a consent judgment is in the first part, the nature of marriage and dissolution of marriage in the second part and whether by its nature, the court can enter a consent judgment in a petition for dissolution of marriage in the third part. We examine the current position in the United Kingdom and other jurisdictions especially the no- fault provision in the United Kingdom and investigates whether this is a provision that should be adopted in Nigeria by legislative intervention. We conclude with recommendations that the present legal regime be amended to meet the realities of the day.

2.0 Consent Judgment and matrimonial cause

A consent judgment arises when the parties unequivocally agree to terms of settlement which they mutually refer to the Court as basis for the court’s judgment. By their mutual agreement to settle the matter, they have given their consent to the end of the litigation.⁵

In *Woluchem v Wokoma*,⁶ the Supreme Court explained the features of a consent judgment as follows:

In order to have a consent judgment the parties must be ad idem as far as the agreement is concerned; their consent must be free and voluntary; and the terms of settlement must be filed in court. Where the Court makes an order based upon such terms of settlement, there emerges a consent judgment from which the parties could appeal only by leave of Court.

It is the ‘terms of settlement’ when filed in Court that crystallizes into the ‘consent judgment’.⁷ Behind a consent judgment is the *ad idem* of the parties. The court will pronounce the judgment based on the agreement without trial. It is as effective as any other judgment or order made by the court after a full trial.⁸ Consent judgment is known under the civil procedure rules of courts in Nigeria.⁹ However, matrimonial causes are *sui generis*.¹⁰ The civil procedure rules are inapplicable to a matrimonial cause. The applicable law and procedure are the Matrimonial Causes Act and the Matrimonial Causes Rules. Hence it will be inappropriate to import the consent judgment rule into a matrimonial cause.

3.0 Petition for Dissolution of Marriage and Hearing.

A party to a marriage can present a petition for dissolution of the marriage upon the sole ground that the marriage has broken down irretrievably.¹¹ The petitioner must however prove at least one of the factual situations in Section 15(2) of the MCA to establish that the marriage has broken down irretrievably. Any petitioner who fails to prove any one or more of these facts will not be entitled to a decree of dissolution of the marriage.¹²

The burden of proof that a marriage has broken down irretrievably is on the petitioner. Where a party has not discharged the burden of proof, the petition will be dismissed.¹³ A petition for dissolution of marriage cannot be subject to a consent judgment.¹⁴ This is because the decision of court to dissolve a

⁵ *Adedeji v Oloso* (2007) 1 – 2 S.C. 76; *Woluchem v Wokoma* (1974) 3 SC 153; *Galadamchin v Abdulmalik* (2015) 1 NWLR (Pt 1440) 376 at 408 – 409, *The Honda Place Ltd v Globe Motors* (2015) LPELR 24589 (CA)

⁶ *Woluchem v Wokoma* (1974) 3S.C. 153 at 166, 168, *S.P.M. Ltd. v Adetunji* (2009) 13 NWLR (Pt 1159) 647 at 660, 668, *Kolokuma Opokuma L.G.C. v. Egbe* (2025) 18 NWLR (Pt. 2017) 325 at 353, paras. B-E, *Nteile v. Irawaji* (2021) 16 NWLR (Pt. 1803) 411

⁷ *S.P.M. Ltd. v Adetunji* (ibid) 660.

⁸ *Kolokuma Opokuma L.G.C. v. Egbe* (2025) 18 NWLR (Pt. 2017) 325 at 353, paras. B-E, *Capital Oil Plc v Capital Oil & Gas Industries Ltd* (2021) LPELR 54986 (CA) 21-23

⁹ Order 39 Rules 6 & 7 High Court of Lagos State (Civil Procedure) Rules 2019, High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018

¹⁰ *Omogiate v Omogiate* (2021) LPELR 56018 (CA) 22, *Bakare v Bakare* (2016) LPELR 41344(CA) 14-15, *Ibeawuchi v Ibeawuchi* (1973) 3 ECSLR (Pt 1) 56

¹¹ Section 15(1) MCA.

¹² *Adetule v. Adetule* (2022) 10 NWLR (Pt. 1838) 201at 248-249, *Bibilari v. Bibilari* (2011) 13 NWLR (Pt. 1264) 207 at 234, paras. F-H, *Anioke v Anioke* (2011) LPELR 3774 (CA), *Pius v Olorunfemi* (202) LPELR 49579 (CA), Nasiru Tijani, *Matrimonial Causes in Nigeria-Law and Practice* (3rd Ed) (Lagos, Renaissance Law Publishers Limited, 2023) 56

¹³ *Wokoma v. Wokoma* (2020) LPELR-49882(CA) at 45, paras. A-E

¹⁴ This is different from ancillary reliefs of maintenance, settlement of property

marriage can only be arrived at if parties prove to the ‘reasonable satisfaction of the court’ that they are entitled to the matrimonial relief.¹⁵

Although the term ‘reasonable satisfaction of the court’ is not defined in the Act or Rules, an insight on what it is involved was given by the Court in the case of *Nwankwo v Nwankwo*¹⁶ as follows:

The import of this definition is that, by subjecting the standard of proof to ‘the reasonable satisfaction of the judge’, the Act has left the determination of the issue to the discretion of the judge and like all discretionary powers, there is no universal or standard requirement that must be satisfied. It is my view that, ‘reasonable satisfaction’ must entail a decision based on what a judge acting judicially and judiciously would do in the circumstances. In other words, it is a conclusion arrived at on the basis of the evidence adduced in support of facts which are asserted at the trial, and not based on the individual whims and caprices of the Judge deciding the matter. The bottom line of the above is that, a party seeking for a decree of dissolution of marriage must adduce sufficient and credible evidence which will persuade a reasonable court to exercise its discretion in his favour.

The correct conclusion which the court made was that a party seeking dissolution of marriage must adduce sufficient and credible evidence.¹⁷ This cannot be done by a consent judgment but by trial.

4.0 Section 82 (1) and (2) of the Matrimonial Causes Act stipulates as follows:

(1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it shall be sufficient if the Court is reasonably satisfied of the existence of that ground or fact, or as to that other matter.

In *Bibilari v. Bibilari*¹⁸ the court stated the burden on the petitioner to establish the factual situation for the dissolution of the marriage. It does not lie in the whims of the judge:

From the above provision, the Court will pronounce a Decree of dissolution of marriage if satisfied on the evidence that a case for the petition has been made. Thus, the matrimonial offence must be strictly proved once the Court is reasonably satisfied of the existence of a ground to grant the divorce. The Court will then proceed to hold the marriage has broken down irretrievably. The standard of prove is not on a balance of probabilities or preponderance of evidence as in general civil cases. The standard of proof is on the petitioner but taken as discharged once it is established to the reasonable satisfaction of the Court.

This burden must be discharged even if the parties desire the divorce.¹⁹

5.0 Undefended Suit: Even where a suit is undefended, the petitioner must still prove the facts supporting the sole ground that the marriage has broken down irretrievably. In *Ibeawuchi v Ibeawuchi*,²⁰ the respondent did not file an answer or enter an appearance. Counsel for the Petitioner therefore argued that since the averments in the Petition stood uncontroverted, they should be accepted by the Court without further evidence in line with the practice in ordinary civil proceedings. The court rejected this argument and held that while in civil cases generally, failure to deny any allegation in the statement of claim is taken to be an admission of that claim, the same rule does not apply to matrimonial causes. This is because divorce proceedings are not governed by High Court Rules, but by the Matrimonial Causes Rules and the Matrimonial Causes Act. Moreover, divorce proceedings are different from other civil proceedings because they deal with status.

According to the learned Judge, Oputa, J (as he then was):

¹⁵ Section 82(1) MCA, *Omotunde v Omotunde* (2001) 9 NWLR (Pt 718) 263, *Nwankwo v Nwankwo* (2014) LPELR 24396 (CA), *Ibeawuchi v Ibeawuchi* (1974) UILR 67; (1974) 3 ECSLR (Pt 1) 56, Nasiru Tijani, *Matrimonial Causes in Nigeria-Law and Practice* ibid 324-330.

¹⁶ ibid at 15-16

¹⁷ Section 55 MCA

¹⁸(2011) 13 NWLR (Pt. 1264) 207 at 233, (2011) LPELR-4443(CA) 30-32

¹⁹ *Akinbuwa v. Akinbuwa* (1998) 7 NWLR (Pt. 559) 661 at 669, paras. D-E, *Orere v. Orere* (2017) LPELR-42160(CA), 12

²⁰ (1974) UILR 67; (1974) 3 ECSLR (Pt 1) 56

--it does not matter whether a respondent files an Answer or not, it is still the duty of the petitioner at the hearing of his or her petition to satisfy the Court by evidence of witnesses proving the various "grounds" on which the Petition is based. If he fails to do this, the petition will be dismissed not minding the fact that the respondent failed to file an Answer. The failure to file an answer will, thus in my view, not aid the petitioner.²¹

In *Omotunde v Omotunde*,²² after pleadings, the petitioner's counsel urged the court to enter judgment and make a decree *nisi* on admission that the parties had lived apart for a period of at least 3 years before the presentation of the petition under Section 15(2)(f), Matrimonial Causes Act. This was opposed by counsel for the respondent. The trial court struck out the petition and cross petitioned on the grounds that the domicile of the petitioner was not established. On appeal, the Court held that the averments in the petition, and the answer including the admissions appearing therein cannot be substituted for evidence. This is more so as Section 44(3) Matrimonial Causes Act stipulates that 'the court shall not grant a decree of dissolution of marriage without receiving evidence by the petitioner in support of the petition'. The Court emphasized that the petitioner must give evidence.²³

Thus, undefended Petition in matrimonial causes must be proved and default judgment is unknown in matrimonial causes and no admission made by the Respondent binds the Court.

A statement by Tsammani, JCA in *Oguntoyinbo v Oguntoyinbo*,²⁴ emphasizes the philosophy why undefended petition should be granted with caution:

I only wish to observe that the marriage institution is the bedrock upon which any orderly and civilized society is built. Its collapse will inevitably have a negative effect on not only the children and the couple involved, but ultimately the society at large. To that end, it will be in the interest of society, that divorce is not granted unless the court is fully satisfied upon unassailable facts that its grant is the only remedy to the marriage. In other words, the jurisdiction of the court to dissolve a marriage is one which should not be readily applied, because such jurisdiction involves the status of the parties. Accordingly, public interest demands that the marriage bond should not be set aside without strict proof of the grounds alleged or without painstaking and strict judicial enquiry.

6.0. From the authorities, a petition for dissolution of marriage must be heard. The status of the parties is involved. It is not one for consent judgment. That a petition is undefended does not detract from this requirement of trial. It is our contention that even in the case of a 'no -fault' provision under Section 15(2)(f) MCA, evidence should still be taken, in line with the petition, as to when the parties began to live apart and that the living apart was for a continuous period as defined in Section 17(2). This is irrespective of the fact that the court has no discretion in the consent of the Respondent is unnecessary.²⁵

7.0 Consent judgment and collusion in a petition for dissolution of marriage:

Where a consent judgment is given in a petition for dissolution of marriage, it means that both the Petitioner and the Respondent have agreed to an illegal or deceitful purpose for the sole aim of procuring a divorce.

Where parties agree to an illegality, in this case collusion to procure a dissolution of marriage, whatever order the court makes will be null and void. An illegality cannot be the basis of a contract

²¹ Ibid. See Nasiru Tijani, *Matrimonial Causes in Nigeria-Law and Practice* (3rd Ed) ibid 328-329

²² (2000) LPELR 10194 (CA)

²³ ibid at 26-27, *Oguntoyinbo v Oguntoyinbo* (2017) LPELR 42174 (CA)

²⁴ (2017) LPELR 42174 (CA) at 27

²⁵ *Omotunde v Omotunde* (2001) 9 NWLR (Pt 718) 252, *Ajidahun v Ajidahun* (2000) 4 NWLR (Pt 654) 605

of marriage.²⁶ *A fortiori*, collusion which is an illegal act, cannot be the basis of a valid order of decree *nisi*. It is against the law²⁷ and public policy. It is unenforceable.

8.0. What constitutes collusion in a matrimonial cause?

By Order V Rule 7(2) of the MCR, the petition shall contain a statement that in bringing the proceedings, the Petitioner has not been guilty of collusion with intent to cause a pervasion of justice.²⁸ Similarly, Section 27 MCA provides that, ‘a decree of dissolution of marriage shall not be made if the petitioner, in bringing or prosecuting the proceedings, has been guilty of collusion with intent to cause a perversion of justice’.

‘Collusion’ is defined in Black’s Law Dictionary as a defence to divorce, an agreement between a husband and wife to commit or appear to commit an act that is ground for divorce.²⁹ According to the Webster’s New Explorer Encyclopaedic Dictionary,³⁰ collusion is a secret agreement or co-operation especially for an illegal or deceitful purpose.

From the above definitions, it becomes clear that the “collusion” connotes an idea of illegality or deceit. It is not surprising therefore that because of the sacred nature of marriage, parties cannot dissolve it by illegal or deceitful means, in this case by colluding to bring a petition for divorce. The MCR therefore requires in a petition that the Petitioner assert positively that he or she had not colluded in bringing the petition.³¹ The Judge must be satisfied that the parties are not by their agreement urging the court to grant a relief for matrimonial offence which did not occur or a relief which would ordinarily not be granted if the facts were before the court.³²

It is our contention therefore that where a consent judgment is based on terms of settlement by a couple to divorce, this should not be allowed by the court. Otherwise, the court will be aiding an illegality.

On the possibility of collusion in a petition and the need for the court to prevent the pervasion of justice, Oputa J (as he then was) in *Ibeawuchi v Ibeawuchi* stated:

*In the second place, divorce proceedings run on an entirely different plane from the generality of other civil suits. They occupy a distinct and distinctive position. They deal with status and the dissolution of a marriage is a serious business in which the State is interested and which the State has not left entirely to the whims and caprices of the parties themselves hence the rules against collusion and the intervention by the Attorney-General in certain circumstances.*³³

In the case of *Barnes v Barnes*,³⁴ the husband had several interviews with the wife after he ceased cohabitation with her and both before and after the petition was filed, he gave her money and told her not to take any notice of the suit and that they would remain friends and would give her money after the divorce. He would bear the expenses of the litigation and would not hurt the co respondent. Even after the petition was filed, the husband and wife went out together to a public house and had refreshment. The husband paid. The petition was dismissed.

9.0. Consent judgment and compulsory conference:

It is a misconception to say that the result of a compulsory conference is like “terms of settlement” which can be made a consent judgment. This view overlooks the use of compulsory conference in a petition for dissolution of marriage.

A compulsory conference is required to be held where a defended suit include issues relating to maintenance of a party to the proceedings, settlement of property jointly owned, custody or guardianship of an infant child to the marriage, maintenance, welfare or advancement or education of

²⁶ *Corporate Ideals Ins. Ltd. v Ajaokuta Steel Co. Ltd.* (2014) 7 NWLR (Pt. 1405) 165 at 189 - 190; *Sodipo v. Lemminkainen OY (No. 2)* (1986) 1 NWLR (Pt 15) 220; *Dunalin Inv. Ltd. v BGL Plc* (2016) 18 NWLR (Pt. 1544) 262 at 315.

²⁷ Section 27 MCA.

²⁸ See Form 6, paragraph 13.

²⁹ Bryan A. Garner (ed.) *Black’s Law Dictionary* (9th Ed.) (Thomson West Publishing Co.) 300. Contrast “connivance” defined at P. 344 as a defence to divorce, one spouse’s corrupt consent, express or implied, to have the other commit adultery or some other act of sexual misconduct. Consent is an essential element of connivance. The complaining spouse must have consented to the act complained of.

³⁰ Merriam-Webster, *Webster’ New Explorer Encyclopedic Dictionary* (Federal Street Press,2006) 353.

³¹ By O. V R. 7 MCR, Condonation, connivance, and collusion are absolute bars to a decree of dissolution of marriage.

³² Emeka Chianu, *Marriage and Divorce Law* (Benin, Mindex Publishing Company Limited ,2023) 237,238

³³ (1974) UILR 67; (1974) 3 ECSR (Pt 1) 56

³⁴ (1867) LR 1 Probate & Divorce 505

such child and the **parties are not in agreement** as to the order that should be made by the Court 'in the trial of those proceedings in the event that the court does not make an order dismissing those proceedings'.³⁵ This invariably would involve a hearing or trial.

10.0 From the provisions of O. XI r. 33 M.C.R., a compulsory conference is not a necessity in all matrimonial causes. It is only where the parties are not in agreement as to what order should be made by the Court when maintenance, settlement, custody or guardianship, welfare, advancement, or education of a child of the marriage are in issue. The compulsory conference is a condition precedent for setting a defended suit down for trial in such circumstance. The result of a compulsory conference is taken to the Court in open trial. In that case, the parties may dispense with evidence as to the subject discussed in the conference.

We therefore contend that the compulsory conference cannot be the basis of a consent judgment in a petition for dissolution of statutory marriage. It will be illegal and a nullity.

We will review the evolution and current framework in various jurisdictions, assess the progress achieved, and identify valuable insights to inform future actions.

11.0. The Position in the United Kingdom

11.1 Before 2022: Under the Matrimonial Causes Act 1973, United Kingdom, (MCA UK) evidence must be taken before a decree is pronounced.³⁶ Section 1(3) & (4) of the Act provides that:

(3) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

(4) If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to sections 3(3) and 5 below, grant a decree of divorce.

We submit that the effect of this provision, is that the court should inquire and be satisfied on the evidence that the marriage has broken down irretrievably. This will invariably include oral evidence. This is like the situation in Nigeria where the court will be reasonably satisfied of the fact supporting the ground for dissolution before making the order.³⁷

11.2. Where the parties have lived apart for a continuous period of 5 years before the presentation of the petition, the court shall hold that the marriage has broken down irretrievably. This is the 'no-fault' or 5 years separation provision in Section 1(2)(e) of the MCA 1973 which provides:

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as " five years' separation ").³⁸

In this case, evidence will still be taken to satisfy the court that the parties have lived apart for a continuous period of 5 years and on the financial or other hardships that may result from the making of the order against the respondent.³⁹

11.3. Where parties agree to dissolution of marriage, collusion may be inferred. This was the opinion, albeit *obiter* of the Supreme Court in *Owen v Owen*.⁴⁰ The court held that the agreement to divorce will be regarded as a consensual, collusive manipulation of the judicial process. Lord Wilson stated about the Court of Appeal decision⁴¹ as follows:

The ease with which a petitioner can nowadays establish a case under the subsection, if undefended, led the President in his judgment to speak of its widespread dishonest and collusive manipulation. If the allegations of behaviour are not true, there is indeed dishonesty and, by not challenging them, a respondent might loosely be said to collude with it; and

³⁵ See Part 6 MCR., Nasiru Tijani, 'Matrimonial Cause in Nigeria – Law and Practice' (3rd Ed). *ibid* 296-297. The children of the marriage are those who are not likely to have attained the age of 16 years before the decree is made.

³⁶ The word 'decree' has been substituted with 'order' by the Divorce, Dissolution and Separation Act 2020 UK. A decree *nisi* and decree absolute are now conditional order and final order respectively. We now have divorce order

³⁷ See *Oguntoyinbo v Oguntoyinbo* (2017) LPELR 42174 (CA), *Nwankwo v Nwankwo* (2014) LPELR 24396 (CA)

³⁸ In Nigeria, the period is three years.

³⁹ Section 5(1) MCA UK. Note that this section has been omitted by the Divorce, Dissolution and Separation Act 2020 (Schedule Part 1)

⁴⁰ (2018) UKSC 41

⁴¹ (2017) 4 WLR 74; (2017) ECWA Civ 182

*unfortunately, such dishonesty is unlikely to be uncovered when, by reference only to the papers filed, the court decides pursuant to rule 7.20(2)(a) of the FPR whether to certify that the petitioner is entitled to a decree.*⁴²

11.4. After April 2022: The criticism of the decision in *Owens v Owens* led to debate on the reform of the Matrimonial Causes Act 1973. Lord Wilson stated the need for reform on the finding of fault before the dissolution of the marriage can be made in the following terms:

Family lawyers are well aware of the damage caused by the requirement under the current law that, at the very start of proceedings based on the subsection, one spouse must make allegations of behaviour against the other. Such allegations often inflame their relationship, to the prejudice of any amicable resolution of the ensuing financial issues and to the disadvantage of any children. Thus, for many years the advice of the Law Society, now contained in the second guideline of para 9.3.1 of the fourth edition (2015) of the Family Law Protocol, has been:

*“Where the divorce proceedings are issued on the basis of unreasonable behaviour, petitioners should be encouraged only to include brief details in the statement of case, sufficient to satisfy the court ...”*⁴³

11.5 Owens v Owens: The Appellant, Mrs Owens, and the Respondent, Mr Owens, were married in 1978 and have two adult children. Mrs Owens had been contemplating a divorce since 2012, but it was not until February 2015 that she left the matrimonial home. The parties have not lived together since her departure. In May 2015 Mrs Owens issued the divorce petition. It was based on s.1(2)(b) of the Matrimonial Causes Act 1973, and alleged that the marriage had broken down irretrievably and that Mr Owens had behaved in such a way that Mrs Owens could not reasonably be expected to live with him. The judge found that the marriage had broken down, but that Mrs Owens’ 27 examples were flimsy and exaggerated, and that those relied on at the hearing were isolated incidents. Accordingly, the test under s.1(2)(b) was not met and Mrs Owens’ petition for divorce was dismissed. Mrs Owens appealed against this decision to the Court of Appeal, but it was dismissed. Her further appeal to the Supreme Court was also dismissed.

This case set out the test to be used when determining a petition for divorce on ground that the marriage has broken down irretrievably by the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent under section 1(2)(b) of the Matrimonial Causes Act 1973.

In determining the test to be applied, Lord Wilson stated that in interpreting the facts under section 1(2)(b) of the Matrimonial Causes Act, three stages of inquiry are necessary:

*The inquiry has three stages: first (a), by reference to the allegations of behaviour in the petition, to determine what the respondent did or did not do; second (b), to assess the effect which the behaviour had upon this particular petitioner in the light of the latter’s personality and disposition and of all the circumstances in which it occurred; and third (c), to make an evaluation whether, as a result of the respondent’s behaviour and in the light of its effect on the petitioner, an expectation that the petitioner should continue to live with the respondent would be unreasonable.*⁴⁴

The case was a turning point which prompted the enactment of the Divorce, Dissolution and Separation Act 2020 to repeal the requirement for precedent facts to be established prior to a grant of divorce—a no-fault divorce.

When addressing the reason behind counsel’s request for a half-day hearing on behalf of Mrs. Owens, Lord Wilson offered the following opinion:

The answer to this question is not in dispute. It lies in an understanding of the practical operation of the family court nowadays when determining a defended suit

⁴² Owen *ibid* para 36

⁴³ *Ibid* 4 para 7

⁴⁴ *Ibid* para 28 Lord Wilson

for divorce. Defended suits are exceedingly rare. In his judgment the President noted that, in relation to the 114,000 petitions for divorce which were filed in England and Wales in 2016, fewer than 800 answers were filed; and he estimated that the number of suits which proceeded to a final, contested hearing was 0.015% of the petitions filed, which amounts to about 17 in that whole year. The degree of conflict between the parties which is evident in a fully defended suit will of itself suggest to the family court that in all likelihood their marriage has broken down. While it recognises that, unless and until repealed by Parliament, section 1 of the 1973 Act must conscientiously be applied, the family court takes no satisfaction when obliged to rule that a marriage which has broken down must nevertheless continue in being.⁴⁵

In conclusion, he stated ‘Parliament may wish to consider whether to replace a law which denies Mrs. Owens any present entitlement to a divorce in the above circumstances’⁴⁶

At the court of appeal, Lord Justice Sir James Munby, President of the Family Division had stated that:

But, unless she can bring herself within the “no fault” provisions of subsections 1(2)(d) and (e) she must remain trapped in her loveless marriage. As I observed during the course of argument, Parliament has decreed that it is not a ground for divorce that you find yourself in a wretchedly unhappy marriage, though some people may say it should be. Such is the law which it is our duty to apply.⁴⁷

Further expatiating on the need for the no-fault doctrine, he stated:

The simple fact, to speak plainly, is that in this respect the law which the judges have to apply and the procedures which they have to follow are based on hypocrisy and lack of intellectual honesty. The simple fact is that we have, and have for many years had, divorce by consent, not merely in accordance with section 1(2)(d) of the 1969 Act but, for those unwilling or unable to wait for two years, by means of a consensual, collusive, manipulation of section 1(2)(b). It is ironic that collusion, which until the doctrine was abolished by section 9 of the 1969 Act was a bar to a decree, is now the very foundation of countless petitions and decrees.⁴⁸

This remark by Lord Wilson and the report by the Nuffield Foundation, Professor Trinder and Mark Sefton in 2018: *No Contest: Defended Divorce in England and Wales* is credited with igniting the reform to the Matrimonial Causes Act 1973 by the introduction of the Divorce Law Review Bill 2017-19 by Lady Butler-Sloss.⁴⁹ The Divorce, Dissolution and Separation Act 2020, received the Royal Assent on 25 June 2020 but came into effect from 6 April 2022.⁵⁰

⁴⁵ Ibid para 15. He referred to the report published by the Nuffield Foundation, Professor Trinder and Mark Sefton in 2018: *No Contest: Defended Divorce in England and Wales*

⁴⁶ Para 45

⁴⁷ [2017] EWCA Civ 182 at para 84 and 85

⁴⁸ Ibid para 94, Mary Welstead, ‘Divorce in England and Wales: Time for Reform’ (2012) 24 *The Denning Law Journal* 21-37

⁴⁹ Frances Burton, ‘Owens v Owens: A Most Curious Case’ (2020) 32 *Denning Law Journal* 5-23 available https://www.researchgate.net/publication/350533650_Owens_v_Owens_A_Most_Curious_Case accessed 15 March 2026, Sarah Trotter, ‘The State Of Divorce Law’ (2019) 78 (1) *The Cambridge Law Journal* 38-41

⁵⁰ The Divorce, Dissolution and Separation Act 2020 amended the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004 to remove fault-based concepts in proceedings for divorce, dissolution and (judicial) separation. See the President of the Family Division guidance at <https://www.judiciary.uk/guidance-and-resources/guidance-from-the-president-of-the-family-division-the-divorce-dissolution-and-separation-act-2020/> issued on 28 March 2022

11.6. Divorce, Dissolution and Separation Act 2020 UK

Section 1 of the Act⁵¹ provides that either or both parties to a marriage may apply to the court for a “divorce order” which dissolves the marriage on the ground that the marriage has broken down irretrievably. The application must be accompanied by a statement by the applicant or applicants that the marriage has broken down irretrievably. Remarkably, the court is enjoined to take the statement to be conclusive evidence that the marriage has broken down irretrievably and make a divorce order.⁵² No evidence is required and no fault is ascribed to either party. This replaces the 5 factual situations for finding that a marriage has broken down irretrievably under the 1973 Act.⁵³ The divorce order will be conditional at first instance and final after a period of not more than 6 weeks from the making of the conditional order.⁵⁴

There may be an application by a party or joint application seeking the dissolution of the marriage. Where it is a joint application, it removes the possibility of contesting the application.

By section 1(5) the court may not make the conditional order unless (a) in the case of an application that is to proceed as an application by one party to the marriage only, that party has confirmed to the court that they wish the application to continue, or (b) in the case of an application that is to proceed as an application by both parties to the marriage, those parties have confirmed to the court that they wish the application to continue; and a party may not give confirmation before the end of the period of 20 weeks from the start of proceedings. The implication of this provision is that once a party confirms to the court within the period that an application brought should continue, the marriage will be held to have broken down irretrievably.

The President of the Family Division in his guidance on the new approach under the Act stated:

Under the new process the court’s decision about whether to make a divorce order, dissolution order or (judicial) separation order **does not depend on any findings about the responsibility of either party for the breakdown of the relationship. There is therefore no scope for the court to consider the conduct of the parties in that respect.** The parties’ conduct in relation to the proceedings (whether before or during the proceedings or in the manner in which a case has been pursued or defended) will remain relevant; in particular, if the court concludes that the conduct of a party has been unreasonable (for example by attempting to evade service or raising spurious or irrelevant arguments) and that costs have been incurred or increased as a result, an award of costs in favour of the other party may be appropriate⁵⁵

The effect of the reform after the *Owen* case is the Divorce, Dissolution and Separation Act 2020 which has implemented the No-Fault Divorce. It removed the requirement to prove the 5 factual situations under the 1973 Act. Furthermore, the legislation removed the ability of one spouse to contest the divorce, preventing a repeat of the *Owens* scenario where a divorce was denied. Couples may now make a joint statement, which is conclusive, that the marriage has broken down irretrievably, eliminating the need to assign blame. The law changed from requiring proof of a “fault” fact to a system of no-fault.

12.0. The Position in Australia

12.1. Matrimonial Causes Act 1959 Australia provides for dissolution of marriage in section 28 on various grounds. However, by Section 69, the court, upon being satisfied of the existence of any

⁵¹ Amends section 1 of the MCA 1973

⁵² Section 1(3)

⁵³ Section 1(2)-facts of adultery and the petitioner finds it intolerable to live with the respondent; the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted, that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition. The only no-fault provision is under section 1(2) (e) after 5 years of separation.

⁵⁴ Section 1(4). Under the MCA 1973, the first order is decree *nisi* and the final order is decree absolute after a period of 6 months from the making of the decree *nisi*-Section 1(5).

⁵⁵ President’s Guidance, *ibid* para 7

ground in respect of which relief is sought, shall make the appropriate decree. This means that evidence must be tendered to satisfy the court.

The Matrimonial Causes Act 1959 was replaced by no-fault divorce system by the Family Law Act 1975.⁵⁶ There is only one ground for dissolution of marriage. The only ground that the marriage has broken down irretrievably is that the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for the divorce order. It is a no-fault provision. Section 48 provides:

(1) An application under this Act for a divorce order in relation to a marriage shall be based on the ground that the marriage has broken down irretrievably.

(2) Subject to subsection (3), in a proceeding instituted by such an application, the ground shall be held to have been established, and the divorce order shall be made, if, and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for the divorce order.

(3) A divorce order shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

The position therefore is that in Australia, the parties need not apportion fault to either party if there is evidence of separation.⁵⁷

13.0. New Zealand

The Family Proceedings Act 1980 came into effect on 1 October 1981 and removed divorce from the High Court to the newly created Family Court. From that date, for legal purposes, the term divorce became 'dissolution of marriage', for which application had to be made to the Family Court. Under the Act, an application for dissolution on the grounds that the marriage has broken down irreconcilably may be joint or made by either the husband or wife, provided they can satisfy the two-year separation requirement.⁵⁸

Section 39 of the Act provides that:

(1) An application for an order dissolving a marriage or civil union may be made on the ground that the marriage or civil union has broken down irreconcilably.

(2) The ground for the order is established in law if, and only if, the court is satisfied that the parties to the marriage or civil union are living apart, and have been living apart for the period of 2 years immediately preceding the filing of the application for an order dissolving the marriage or civil union; and no proof of any other matter shall be required to establish the ground.

(3) A separation order or a separation agreement (whether made by deed or other writing or orally) in full force for the period of 2 years immediately preceding the filing of an application for an order dissolving a marriage or civil union may be adduced as evidence of living apart for the required period.

(4) Where the ground for the making of the order is established under subsection (2), the court shall, subject to section 45, make an order dissolving the marriage or civil union.

The result of the above analysis is that countries such as the United Kingdom, Australia, and New Zealand have adopted no-fault divorce as a valid approach to ending a marriage. What is the way forward for Nigeria?

14.0. Policy Implications and Way forward

The current Nigerian legal framework governing dissolution of statutory marriage reflects a strong commitment to the protection of marital status as a matter of public interest. Under the Matrimonial Causes Act and the Matrimonial Causes Rules, dissolution of marriage is not treated as a private dispute capable of settlement by agreement alone, but as a status-based proceeding requiring judicial inquiry and proof to the reasonable satisfaction of the court.⁵⁹ Therefore, the emerging practice

⁵⁶ It came into effect on 5 January 1976.

⁵⁷ Sections 49 and 50 defines what constitute separation and the effect of resumption of cohabitation.

⁵⁸ Section 39

⁵⁹ See *Ibeawuchi v Ibeawuchi* n 33, *Oguntoyinbo v Oguntoyinbo* n 24

whereby parties file “Terms of Settlement” and invite the court to enter a consent judgment dissolving the marriage represents a significant doctrinal and policy misalignment.

We submit that from a policy standpoint, continued judicial tolerance of consent judgments in petitions for dissolution of marriage will undermine the core objectives of Nigerian matrimonial law. The need to call evidence to the reasonable satisfaction of the court was to prevent collusion and perversion of justice. Furthermore, importing a procedure of consent judgment a general civil procedure to a matrimonial cause which is *sui generis* introduces uncertainty. Marital status is a matter of public interest. Consent judgment goes against the role of the courts to safeguard marital status in the public interest. It weakens our traditional regard for the marriage institution.⁶⁰ Therefore, our court are enjoined to insist on oral or documentary evidence establishing at least one of the factual situations under section 15(2) of the Matrimonial Causes Act, irrespective of whether the petition is defended or undefended, and notwithstanding the agreement of the parties.

On the other hand, some have argued based on the experience in the *Owen* case that fault is a concept rooted in historical and patriarchal expectations of marriage; and that there is no place in modern divorce law for fault.⁶¹ Allegations of fault often increases conflict between couples as it inevitably promotes the appearance that one party is to blame for the marriage breakdown, causing significant stress and upset. This will not salvage the marriage in any way.⁶² This has been the underlying reasons for reform in the United Kingdom, Australia and New Zealand.

It is therefore opined that there is the necessity for adopting the position in these jurisdictions through legislative intervention rather than the courts facilitating collusion by parties seeking the dissolution of marriage. A carefully designed no-fault divorce regime—anchored on a clear statement that the marriage has broken down irretrievably, subject to necessary safeguards that would better align the law with social realities while preserving the court’s supervisory role is recommended. The advantage of this is that the court will be able to concentrate on the consideration of ancillary reliefs such as custody, maintenance, settlement of property where appropriate.

15.0. CONCLUSION AND RECOMMENDATIONS

Under the present legal regime, a “consent judgment” in a petition for dissolution of a statutory marriage will amount to the court giving its *imprimatur* to an illegality. This is because where parties to a statutory marriage “agree” to divorce, and thereafter file “Terms of Settlement”, it will mean that parties have circumvented the burden of proof to the ‘reasonable satisfaction of the court’, the facts to support the ground that the marriage has broken down irretrievably. This will be against section 82 of the MCA. It can also amount to collusion under Section 27 of the Act. The Court must not act or grant it irrespective of the apparent convenience or efficiency. To do otherwise is to aid the perversion of justice.

At the same time, the persistence of informal consent-based divorces is a clear signal that the existing fault-oriented framework no longer fully serves its intended purposes. Comparative developments demonstrate that a transparent, no-fault dissolution regime—implemented through legislation rather than judicial accommodation—offers a more honest, humane, and administratively sound approach to marital breakdown.

Adopting the no-fault doctrine in the dissolution of marriage, as practised in jurisdictions such as the United Kingdom, Australia, and New Zealand, is recommended. When parties submit a petition for dissolution of marriage with a statement on oath that the marriage has irretrievably broken down, the order should be granted. This approach reduces the expenditure of time and resources and avoids perpetuating marriages that exist only in form. It also prevents scenarios similar to the *Owen* case from persisting in Nigeria. This recommendation does not preclude the adjudication of any ancillary relief claims.

⁶⁰ Robert Jago, ‘Surely this time? Divorce reform after Owens’ <https://lawslondoninternational.wpcomstaging.com/wp-content/uploads/2019/04/transcript-6.pdf> accessed 15 March 2026

⁶¹ Barclay Littlewood, ‘Owens v Owens [2018] and the Issue of a No-Fault Divorce’ <https://www.ukessays.com/essays/law/owens-v-owens-2018-and-the-issue-of-a-no-fault-divorce.php?vref=1> accessed 15 March 2026

⁶² Ibid reference to A. Bainham, ‘Men and Women Behaving Badly: Is Fault Dead in English Family Law?’ (2001) 21 *Oxford Journal of Legal Studies* 219.