

THE LEGALITY OF VIRTUAL MARRIAGE IN NIGERIA GIVEN THE COVID19 PANDEMIC SOCIAL DISTANCING: AN X-RAY OF THE MATRIMONIAL CAUSES ACT

Abstract:

This study examines the upsurge in the virtual celebration of marriage in Nigeria during the outbreak of the Covid-19 Pandemic. During the spike of the outbreak, marriages were celebrated on social media platforms such as Webex meeting and Zoom with the parties at different places at the time of the celebration of the marriage. Despite the economical advantages that the virtual marriage celebration provides, there is a legal uncertainty that marriage so celebrated virtually is one recognized under the Matrimonial Causes Act. This is given the fact that under the Matrimonial Causes Act, marriage can only be solemnized in three places to wit: in the Marriage Registry, licensed place of worship, and any other place indicated in the special licence issued by the governor. The study finds that the Marriage Act makes no provision for virtual marriage in Nigeria. In this regard, this study recommends that the Marriage Act should be amended to embrace the massive advancement in the use of technology around the world, which will enhance the virtual solemnization of marriage in Nigeria and the issuance of electronic marriage certificate as it is time and cost-effective.

Keywords: Covid19, Virtual marriage, Marriage Act, Social Distance, Technology, Nigeria

1.1. Introduction

Globalization has intensified social changes, especially in the sphere of social life. The world is moving fast from the whole period of controlled rigidity to a more flexible and open one¹, where people can interact to exchange ideas, culture, values, and even contract without necessarily seeing one another or being at the same place and time. This is made possible with technology and developments in telecommunication infrastructures such as the internet, mobile phones, and computers². In Nigeria, the improvement and development of communication technology had contributed enormously to enhance human communication³ and improve social life⁴ effectively. Unfortunately, technological advancement and development have not impacted the social life of the people, which is the celebration of marriage. Under the Nigerian family law, the place of celebration of a statutory marriage is one of the most fundamental requirements of valid marriage solemnization in Nigeria⁵. The Marriage Act⁶ provides that

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¹ Antonio S. & Estrella T. A., 'Business and Labour Culture Changes in Digital Paradigm: Rise and Fall of Human Resources and The Emergence of Talent Development' (2020) Vol. 12(3), *Cogito Multidisciplinary Research Journal*, P. 225

² Aidonjoe P. A. & Odojor O. A. (2020). Impact and Relevance of Modern Technological Legal Educational Facilities amidst the Covid-19 Pandemic: A Case Study of Law Students of Edo University Iyamho, *KIU Journal of Humanities* 5 (4), 7-19.

³ Aidonjoe, P. A., Anne, O. O., and Oladele, O. O., 'An Empirical Study of the Relevance and Legal Challenges of an E-contract of Agreement in Nigeria' (2020) Vol. 12(3) *Cogito Multidisciplinary Research Journal*, P. 170; Aidonjoe, P.A. and Agbale. O.P. "E-contract (by mail) and the Clause, 'Subject to Contract': A Case Study of Nigeria and Australia", (2020) Vol. 9(1), *Port Harcourt Law Journal*, P. 42

⁴ Igbale, A., 'Legal And Institutional Framework for E-commerce in Nigeria' being a paper discussed on Wednesday June 9, 2010, Bankers House, PC 18, Adeola Hopewell St. V/I, Lagos

⁵ Nwogugu E.I. *Family Law in Nigeria*, (Heineman Educational Books, Enugu, 2006) p. 217.

⁶ Matrimonial Causes Act, Cap. M6-1 Laws of Federation of Nigeria, 2004

marriage can only be solemnized in three places to wit: in the Marriage Registry⁷, licensed place of worship⁸, and any other place indicated in the special licence issued by the governor. The inadequacies and weakness of this marriage legislation were made to bear when the marriage celebration was crippled by the global outbreak of the Covid-19 pandemic. As an alternative to the rigid provisions of the MCA on a celebration of marriage, Nigeria, just like some other foreign countries,⁹ witnessed an upsurge in the virtual celebration of marriage using social media platforms such as Zoom, a procedure unknown or unrecognized by the MCA.

This study aims at examining the legality of marriages solemnized via electronic platforms such as zoom vis-a-vis the provisions of the Marriage Act regarding the requirements of a valid marriage celebration under the Act. This study finds that the outbreak of Covid-19 brought to bear one of the weaknesses of the Act, which is that Nigerian couples cannot validly solemnize their union under the law unless there is a physically functioning system whereby couples must appear physically before government officials or recognized minister to regulate and validate their union. The article recommends, amongst other things, that the Marriage Act is archaic and long due for amendment to accommodate the innovations provided by technology, which allows virtual solemnization of marriages.

1.1.1. Celebration of marriage under the Marriage Act

The provisions of the Matrimonial Causes Act are very explicit and unambiguous regarding the requirements for the celebration of marriage in Nigeria¹⁰. It is without a doubt that the Marriage Act is the only special legislation governing or regulating the celebration of marriage in Nigeria; therefore, no allusion may be made to any other legislation regarding ways and manners of the celebration of marriages in Nigeria¹¹. A cursory perusal of Sections 21 to 29 makes it abundantly clear the places where marriage may be validly celebrated in Nigeria. By the extant provisions of the Marriage Act, there are three acceptable places where marriage may be validly celebrated in Nigeria, which are:

1. Marriage in the Marriage Registry
2. Marriage in a licensed place of worship
3. any other place indicated in the special licence issued by the governor

1.1.2. Marriage Solemnized in the Marriage Registry

By virtue of Section 27, one of the places where marriage may be celebrated is the Marriage Registry. For the avoidance of doubt, Section 27 of the Act provides that After the issuance of a registrar certificate to marry, or a license as provided in section 3 of the Marriage Act, the parties may, contract a marriage before a registrar, in the presence of two witnesses in his office, with open doors, between hours of ten o'clock in the forenoon and four o'clock in the afternoon. Furthermore, the Nigerian courts have, over the years, made it clear beyond peradventure that the requirements for celebration of marriage in Nigeria must comply with; otherwise, such marriage celebrated outside the requirement of

⁷ Section 27 MCA; Onokah M. C. *Family Law*, (Spectrum Books, Ibadan, 2003) p. 174.

⁸ Sections 25 & 26 MCA

⁹ Couples in New York City opt for online weddings due to the pandemic as an Executive Order was issued by the State governor to this effect. <<http://www.thecity.nyc/coronavirus/2020/4/29/21247062/here-s-to-the-bride-and-zoom--nyc-couples-opt-for-online-weddings-in-pandemic>> Accessed on 1st June, 2020

¹⁰ Adesanya S. A. *Laws of Matrimonial Causes*, (Ibadan University Press, 1973) p. 39

¹¹ Oniyinde O. A., Adelusi O. O., Opara L. C. "Spousal Maintenance and Alimony under the Matrimonial Causes Act (MCA)" (2019) Vol. 2(1), *Journal of Law and Judicial System*, PP 23-33

the Act shall be rendered null and¹² void. In *Chukwuma v Chukwuma*¹³, the Court of Appeal affirmed the above position when it held amongst other things that after the issuance of the Registrar's Certificate, a marriage celebrated in the marriage registry or in the church of the parties' choice is prima facie valid, unless the said marriage is defective by reason of Section 33(2) of the Marriage Act, this is as provided in the case of *Ijeoma v Ijioma*¹⁴. It should be noted that the phrase "...in his office" used under Section 27 presupposes a physical venue or structure such as a building. This opinion is further reinforced by the accompanying words or phrases that followed immediately after, which reads "...with open doors" It goes to say, therefore, that the section under consideration did not envisage a cyber building.

Further to the above, Section 28 makes mandatory provision for the filing and signing of the certificate immediately after the celebration of the marriage when it provides that:

"The Registrar shall then fill up, and he and the parties and witnesses shall sign the certificate of the marriage in duplicate, and the registrar shall then fill up and sign the counterfoil as hereinbefore prescribed in the case of marriage by a minister, and shall deliver one certificate to the parties and shall file the other in his office."

By implication, for Section 28 to be potent and practicable, the parties, witnesses, and the registrar must be at the same place and at the same time to be able to comply with this requirement.

1.1.3. Marriage in a licensed place of worship

Another validly acceptable place of celebration of marriage is a place of worship¹⁵. If parties have opted to celebrate their marriage in a place of worship, such marriage must be conducted in a licensed place of worship¹⁶. A marriage celebration in a licensed place of worship must be conducted by a recognized minister of such place of worship in the presence of two witnesses. The provision of Section 21 is explicit on this when it provides thus:

"Marriage may be solemnized in any licensed place of worship by any recognized minister of the church, denomination or body to which such place of worship belongs, and according to the rites or usages or marriage observed, in such church, denomination or body: provided that the marriage be celebrated with open doors between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, in the presence of two or more witnesses besides the officiating minister."

Further to the above, the marriage certificate must specify in which place of worship licensed for that purpose the marriage must take place.¹⁷ Therefore, a marriage celebrated in a church not licensed for celebration of statutory marriages will be invalid¹⁸. Interestingly, just as in the case of marriage celebrated in the marriage registry, it is very fundamental to the validity of the marriage solemnized in a licensed place of worship, that the marriage certificate should be immediately signed by the parties,

¹² Rahmatian A. "Termination of Marriage in Nigerian Family Laws: The Need for Reform and the Relevance of the Tanzanian Experience" (1996) Vol. 10, *International Journal of Law, Policy and the Family*, p. 281-316

¹³ [1996] 1 N.W.L.R. , 543

¹⁴ [2009] 12 NWLR [pt. 1156] 593

¹⁵ Onyemenam U., 'Law Practice and Procedure Relating to Marriage, Divorce and custody of children under customary law in Nigeria, being a paper delivered at the 2006 All Nigeria judges of the lower courts' conference, Asaba Delta State, 29

¹⁶ The Minister of Internal Affairs is empowered under Section 6 to license a place of worship for celebration of marriages.

¹⁷ Margaret C.O., 'Family Law' (Spectrum Books Limited, Ibandan 2012) P. 131

¹⁸ *Akududike v Akuwudike* [1963] 7 E.N.L.R. 5; *Ajih v Ajih* [1975] E.C.S.N.L.R. 6

their witnesses, and the minister. This is the purport of Sections 25 and 26 of the Marriage Act which provide thus;

Section 25: *“Immediately after the celebration of any marriage by a minister, the officiating minister shall fill up in duplicate a marriage certificate with the particulars required by the said Form E, and state also and enter in the counterfoil the number of the certificate, the date of the marriage, names of parties, and the names of witnesses.”*

Section 26: *“The certificate shall then be signed in duplicate by the officiating minister, by the parties, and by two or more witnesses to the marriage. The minister has also signed his name to the counterfoil, he shall sever the duplicate certificate therefrom, and he shall deliver one certificate to the parties, and shall within seven days thereafter transmit the other to the registrar of marriages for the district in which the marriage takes place, who shall file the same in his office.”*

Furthermore, as in the case of marriage celebrated in the marriage registry, the filling up of the marriage certificate by the parties, the witnesses, and officiating minister immediately after the marriage celebration is a mandatory requirement which is reinforced by the repetitive usage of the word “shall” preceding each task to be done after the marriage celebration. It is therefore not out of place to say that Sections 25 and 26 can only be complied with if the parties, the witnesses, and officiating minister are all in the same place and at the same time. Going further, “*place of worship*” as used in Section 21 coupled with the phrase “*open doors*” is suggestive of the fact that a licensed place of worship must of necessity imply “building” or “physical structure” which has doors that are capable of being opened and closed. This, in a nutshell, further implies accessibility to the public or anyone of interest.

1.1.4. Marriage at a place other than a licensed place of worship or Marriage registry

The Marriage Act envisages a situation whereby parties may intend to celebrate their marriage in a place other than a licensed place of worship or Marriage registry¹⁹. This is the purport of Section 29, which provides that Whenever the license issued under section 13 of the Marriage Act authorizes the celebration of marriages, the registrar of the court where the marriage is intended to take place, upon the production of such license, will deliver to the parties producing the same a blank certificate of marriage in duplicate and shall fill up such certificate, and observe strictly all the formalities as required by the Act.

The provision of Section 29 permits that special license be granted to allow parties celebrate their marriage in a place other than a licensed place of worship or marriage registry. However, the formalities of marriages celebrated in a licensed place of worship or marriage registry must comply with the Marriage Act. The purport of this provision is simply to cater for situations whereby reasons of circumstances or other supervening reasons it becomes impracticable for parties to celebrate their marriage either in a licensed place of worship or marriage registry, it may be celebrated in any other place as the license may be granted. However, the mandatory requirement for the valid celebration of marriage must comply with the provision of the Act.

From the combined provisions of the Act discussed so far, the following observations are evidence of the celebration of marriage under the Act, and they are:

- a. a recognized minister or registrar must celebrate it

¹⁹ Akpunonu A. C. “Access to Justice in the Modern Nigerian Family: Problems and the way forward” (2007) Vol. 33(7), The National Education Association Journal, P. 134-140

- b. it must be celebrated in a licensed place of worship, or the registrar’s office, or in a place authorized by the Minister under a license other than a licensed place of worship or registrar’s office
- c. the doors of the venue must be opened, and the celebration must be during the day time.
- d. the minister or registrar, parties, and witnesses must all be physically present at the place where the marriage is to be celebrated
- e. the signing of the marriage certificate by the minister or registrar, the parties and witnesses, must be done immediately after the celebration of the marriage
- f. in the case of marriage celebrated by a minister, the duplicate copy of the marriage certificate must be delivered to the registrar within seven days after the celebration of the marriage.

1.1.5. Virtual marriage celebration and the Matrimonial Causes Act

The word “*virtual*” means ‘being on or simulated on a computer or computer network such as occurring or existing online.’ Accordingly, the word is also used to describe something that can be done or seen using computers or the internet instead of going to a place, meeting people in person, etc²⁰. Virtual marriage is, therefore, a marriage where the parties are joined together via a video call²¹. Virtual marriage is usually conducted via virtual platforms such as Webex meeting, Zoom, etc. with the parties to the marriage, the officiating minister, and the witnesses in different places. A cursory look at the entire provisions of the Matrimonial Cause Act, there is neither express nor implied provision for virtual marriage. By the wordings of the MCA, the Act does not even envisage the virtual conduct of marriage celebration. This is further made clear by the usage of the words “*open doors*,” “*place of worship*,” and “*in his office*” in Sections 27 and 21 of the Matrimonial Causes Act²². Given this, Section 23 of the Marriage Act, clearly state in specific terms that the celebration of marriage is contemplated to be done in a “building” when it provides thus: “*A minister shall not celebrate any marriage except in a building which has been duly licensed by the Minister or in such a place as the license issued under Section 13 of this Act*”. In this regard, a marriage celebrated on Zoom by a recognized minister (within the provision of the Act) cannot by any stretch be construed or interpreted to have been celebrated in a ‘building.’

1.1.6. The legal status of a virtual marriage and the mandatory provisions of the Matrimonial Causes Act concerning places of marriage celebration

The various provisions of the Act examined so far have indicated the requirements for a valid celebration of marriage in Nigeria, which provisions do not contemplate virtual marriage. It is very apt to state that virtual marriage is not within the spirit of the Matrimonial Causes Act. Hence, until the Matrimonial Causes Act is amended, any marriage celebrated in any manner other than has stipulated under the Act is null and void. It is immaterial that the marriage was officiated by a recognized minister or registrar, insofar as the same was conducted via Zoom or any other virtual platform; such marriage is void as one cannot put something on anything and expect it to stand²³. Affirming this position, Section 33 (2) of the Matrimonial Causes Act²⁴ provides thus:

“A marriage shall be null and void if both parties knowingly and willfully acquiesce to its celebration-

²⁰< <http://dictionary.cambridge.org/dictionary/english/virtual>> accessed 8th October, 2020

²¹<<http://simplyeloped.com/virtual-weddings/>>accessed on 8th October, 2020

²² Matrimonial Causes Act

²³ Macfoy v United Africa Company[1961] 3 All ER 1169

²⁴ Ibid

(a) *in any place other than the office of a registrar of marriages or a licensed place of worship (except where authorized by the license issued under Section 13 of this Act;”*

It is the position of law that the place of celebration of marriage is fundamental to the validity of such marriage²⁵. Any celebration of marriage in a place other than provided in the Act is *void ab initio* unless parties can establish that they did not know such place was not licensed²⁶. It means, therefore, that virtual marriage is conducted on a virtual platform where all the parties (the minister or registrar and the witnesses inclusive) are in different locations at the time of the celebration is void. With a virtual marriage, the provisions of the Act require the signing of a marriage certificate immediately after the celebration becomes impracticable. It should be noted importantly that Sections 21, 27, and 29 of the Matrimonial Causes Act used the word “*shall*” repeatedly, which means it is a requirement that is mandatory for the validity of the marriage celebrated. Where a marriage is celebrated virtually, one will wonder how the parties to the marriage, the witnesses, officiating minister, or registrar can all sign the marriage certificate at the same time in the same place as required by the mandatory provisions of the marriage Act. Since virtual marriage is time-saving and less expensive, it is neither unrecognized nor contemplated by our law.

Until there is an amendment, a virtual marriage will be invalid, especially when it has the following ingredients²⁷:

- a. where minister or registrar is physically present in a licensed place of worship while the parties and witnesses are in another location (it does not matter if the other location is also a licensed place of worship), the marriage is void
- b. where a minister or registrar and the parties are physically present in a licensed place of worship while witnesses are in another location (it does not matter if the other location is also a licensed place of worship), the marriage is void
- c. where parties and witnesses are in a licensed place of worship while the minister or registrar is in another location (it does not matter if the other location is also a licensed place of worship), the marriage is void
- d. where the necessary parties are not in a licensed place of worship but merely connect via the online platform from different locations, the marriage will be void.

1.1.7. Lesson from the United States of America

The incidents of virtual marriage started during the outbreak of the Coronavirus pandemic. Before the outbreak of the pandemic, virtual marriage was unrecognized in the USA. The practice was similar to that of Nigeria, where parties must appear physically before the marriage registrar. However, in order to prevent large gatherings, various states such as New York, California, Colorado, Ohio, and Washington in the United States legalized virtual marriage²⁸ via an Executive Order that was first issued by Gov. Andrew Cuomo of State of New York which was followed by his other states counterparts.

²⁵ Ajuzie, C.O., *Modern Nigerian Family Law and Practice*, 1st Edition, (Lagos: Printable Publishing Co., 2012), p. 187; Owolabi, A., “Maintenance under the Nigerian Statutory Family Law: A Critical Appraisal”, (2003) Vol. 45(3) *Journal of the Indian Law Institute*”, p. 429.

²⁶ Anyebe A. P., *Customary Law: the war without Arms* 1st ed. (Enugu: fourth Dimension publishing Co. Ltd, 1985)92; Ajibola J.O. *Administration of Justice in the Customary Courts of Yoruba land* (1st Edition Ibadan University press Limited, 1982) p. 35

²⁷ Ibid

²⁸ <http://en.as.com/en/2020/05/27/other_sports/1590545661_862024.html>Accessed 8th October, 2020

Since the operation of the Executive Order in the various states where it was issued, virtual marriage became legalized. One would have expected that Nigeria would learn from this incident to disallow the pandemic from crippling the social life of the people.

1.1.8. Conclusion

Though the Marriage Act is unarguably an obsolete instrument, the outbreak Covid-19 has further exposed the weaknesses of this legislation. The MCA was enacted when the technology was just evolving and has not impacted the social life of the people. Law is supposed to be an instrument of social change. Law must influence society positively and move at the same pace as society is moving. Apologetically, this is not the case of the MCA. In this 21st Century, the world has become a global village with improvement or advancement in technology. As sophisticated computers and gadgets are produced to enhance the life of the people socially, the MCA should also benefit from this advancement. There is a need to examine very closely how marriages may be conducted using the blessings that technology has come to offer us. The celebration of marriages in the 21st century should not be too stringent in this era of technology. Parties must be able to conduct their marriage virtually and sign their certificate virtually. A marriage certificate may even be produced electronically without the need for parties appearing physically before a marriage registrar as contained in the present Act. There ought to be flexibility in how marriages are conducted in Nigeria.

The outbreak of the pandemic should be seen as a blessing in disguise. The outbreak of Covid19 disease should not be a reason sufficient to cripple the social life of the people or rob them of the love of their life, when technology may easily be used to compensate the moment.

1.1.9. Recommendations

This study makes the following recommendation

1. The Matrimonial Causes Act should be amended forthwith to cater to the best practice obtainable in other jurisdictions regarding the celebration of marriages. There is the yawning need to introduce some flexibility that permits parties to do away with a mandatory physical presence in whichever place they choose to celebrate their marriage.
2. In the era of technological advancement today, a virtual marriage celebration should be introduced into our Marriage Act. Since the advent of the pandemic, our courts have introduced virtual hearing, functioning correctly. The physical presence of counsel in court has been jettisoned. All that may necessarily be done physically has now been replaced electronically. This has positively impacted our judicial system as the process is less expensive; the risk of traveling from one location to the other is also jettisoned.
3. The Matrimonial Causes Act should digitalize the signing, collection, and submission of a marriage certificate. Parties to the marriage, their witnesses, and the officiating minister or registrar should complete filling of appropriate forms, signing of marriage certificate electronically while parties can print their certificate online. In case of marriage in a place other than a place of worship, the officiating minister, instead of taking the certificate to the registrar within seven days of celebration of marriage, may forward the certificate electronically.