AN EXAMINATION OF DISSOLUTION OF CUSTOMARY MARRIAGE, CHILD CUSTODY, AND SUNDRY RELIEF IN NIGERIA[1].

Abstract

The dissolution of customary and statutory marriages do not adhere to the same law or procedure, and need not do so. Dissolution of customary marriages are a lot less complicated, however the vital aspects of the dissolution of customary marriages, custody orders, and maintenance claims, are not widely known, or are confused with those of statutory marriages. Reforms have been frequently suggested but have not been implemented yet. This article tries to analyze the main aspects of dissolution of customary marriages, custody and maintenance. Then a proposal that many of their essential elements should be retained, and reflected in the various Customary Court Rules.

Keywords: Dissolution, Customary marriage, Custody, Maintenance, Procedure, Child.

1.Introduction

Dissolution of a customary marriage is the bringing to an end of a marriage contracted under customary law in Nigeria. Since it is not a statutory marriage, the legal procedure for dissolving a statutory marriage does not apply to it. It should also be noted that there are no provisions in the Matrimonial Causes Act for the dissolution of customary marriages.

2. The customary law of marriage and divorce

The customary law of marriage, like other customary laws, is a set of rules developed by long usage, and accepted as obligatory by a given community. They are not merely custom but enforceable law. The customary law of marriage embodies aspects of tradition as well as of evolution.

Nigerian customary law comprises of hundreds of sets of laws, which differ both as between the various ethnic groups, and as between the various areas, even villages. Since customary law is not enacted written law, rules of customary law must be proved in judicial proceedings by the party relying upon them[2]. Even where the rule is established, the judge can refuse to enforce it, if he finds it 'repugnant to natural justice, equity and good conscience'[3].

3. Formation of customary marriage.

Traditionally, a customary marriage is constituted, as a result of negotiations, as a union between husband and wife as well as between their two families, and entailed, apart from the performance of marriage ceremonies, the transfer of property from the husbands to the wife's family.

Marriage under customary law may be seen as a private contractual union between a man and a woman as the nucleus of an association between the spouses' families.

Customary marriage ends with its dissolution or with the death of the wife. As the marriage is still regarded as a union (also) between the families of the spouses, the death of the husband does not inevitably lead to the termination of the marriage. The wife can retain the status of a married woman in order to stay on as a member of the late husband's family, or re-marry and end it..

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[2] See *Abisogun v Abisogun 1 All NLR 237. Dung Jatau v. Pam Dung (1993) 3 NWLR (Pt. 283) 588; Larinde v. Afiko 6 WACA 108 at 110; Chiga v. Umaru (1986) 3 NWLR (Pt. 28) 460 at 466.*

[3] *Lawal-Osula v. Lawal-Osula* (1993) 2 NWLR (Pt. 274) 158

4. The essential requirements.

4.1. Capacity and Consent*:* The parties to a customary marriage must possess the capacity to marry each other; that means, *inter alia,* they shall have (in theory) reached a certain age, now 18, depending on the relevant laws. An adult man need not necessarily have the express consent of his parents although in practice he will try to get it. Today also the agreement of the *spouses* is, of great importance[4]. In Nwogugu's opinion[5] a lack of the spouses' consent shall render the marriage voidable.

4.2. Transaction of economic value*:* Another prerequisite for a valid customary law marriage is the marriage consideration or bride-price. A marriage payment must normally be made by the bridegroom to the bride's parent or guardian.

4.3. Marriage celebration*:* In many customary laws there must be a ceremony or celebration, following the handing over the bride to the bridegroom's family. The celebration, and often cohabitation are essential for a valid marriage[6].

5. Dissolution of marriage.

Although customary marriage, like every other form of marriage, is intended to be an enduring relationship, divorce often occurs, and can be simply obtained in either a non-judicial or a judicial proceeding.

There is no special procedure for the non-judicial dissolution of marriage under customary law. Nor are there a set of specified grounds that are to be fulfilled in order to get divorced.

5.1. Non-judicial divorce, family arbitration :

The divorce will often be initiated by a separation of the spouses, or one party may unilaterally declare unwillingness to continue the marriage. The dissolution can also be commenced by mutual consent. Such events will usually cause a meeting of the families involved, who first attempt to reconcile the spouses. If they fail, they will accept the breakdown of the marriage and enter into negotiations on return of bride price, custody of any children, or return of property that was brought to the matrimonial home or acquired during the marriage.

A non-judicial divorce is not only effected when the wife's father or guardian refunds the bride-price to the former husband. A demand by the husband and his family is enough to dissolve the marriage. Most families will only return the bride price when the woman remarries. In fact, some collect the bride price paid by the former husband from the new, or intending husband, and send it to the former husband in refund. In some customs, the woman can also redeem herself by provide the money to her family, to refund her husband.

But in most cases once there is a positive demand for the return of the bride price in the presence of witnesses, whether or not accompanied with some drinks, the marriage is at an end, whether or not there is an actual refund, immediately, or at a later date, or not at all. In the case of disputes about the amount of the repayment, the husband is entitled to invoke the assistance of the court[7].

[4] *Osamwonyi v Osamwonyi* [1973] NMLR 25

[5] E. I., Nwogugu Family Law in Nigeria, Heinemann Educational Books (Nigeria), Ibadan, 1974.

[6] *Re caveat Beckley and Abiodun* (1943) 17 NL R 59 ; *Re caveat Ayorinde and Aima* [1964] LHC R 71; see also *Agbeja v. Agbeja* (1985) 3 NWLR (Pt. 11) *Pp.167, paras. A; D-E; 168, paras. A-B*)

[7] E. I., Nwogugu Family Law in Nigeria, Heinemann Educational Books (Nigeria), Ibadan, 1974., *id.*

But in reality, most husbands are not bothered about a refund, and easily renounce a refund of same, because most modern bride prices, are mere token amounts, ranging from N50 to about N5000, in most communities. Most of the money spent in traditional marriages are for gifts, drinks and food, which are non-refundable.

But there must be a formal, positive and unequivocal statement by the husband or wife, especially in the presence of witnesses, that the marriage was at an end or that he was no longer interested in the marriage. In *Ezeaku v. Okonkwo*[8] it was held that customary marriage in Nigeria cannot be dissolved by mere wishful thinking or assertion. A woman who is a wife of the man under the native law and custom does not divorce the man merely by leaving him and staying with another man for whom she has children, and it is not sufficient that one of the parties to the marriage declares that he or she no longer wants the other. There must be a formal act on the part of the party who is tired and not willing to continue.

In that case, the deceased swore to an affidavit to the fact of plaintiff being his only wife without taking the proper step to dissolve the marriage between him and the 1st defendant, the Court of Appeal held that that the proof of the dissolution of customary marriage requires a high degree of certainty. Living with a man and having children for him alone does not necessarily make a woman a wife of the man under the native law and custom. In the same way, a woman who is a wife of a man under native law and custom does not divorce the man merely by leaving him and staying with another man for who she has children.

Usually, the dissolution of customary law marriage is effected or accompanied by the refund of the bride price paid in respect of that marriage. Where a domestic dispute leads to the non judicial dissolution of the marriage, the refund bride price is one of the important subjects to be settled by the family group that unsuccessfully attempts to reconcile the parties.

It is however open to a husband to renounce his right to claim a refund of that bride-price. Any renunciation of that right must be formally and unequivocally made.

5.2. Judicial Divorce*:*

Where the family arbitration has failed, and there is no formal demand for the return of the bride price, the spouses may resort to a customary court to obtain a divorce. Judicial dissolution, frequently at the instance of the wife, has become increasingly common nowadays. The court, too, will try to reconcile the parties but if this attempt fails it will declare a dissolution of the marriage. Then the bride-price normally has to be returned, but as earlier said above, this is not a requirement for the valid termination of the marriage[9].

Grounds for divorce:

Grounds for divorce in a technical sense need not be established, in either a non-judicial, or a judicial, divorce. In addition, the responsibility of a spouse for the failure of the marriage plays only a secondary role. Nevertheless, some reasons have become generally accepted as sufficient justification for dissolving a marriage. These include adultery,[10] impotence of the husband or sterility of the wife, incest by either

[8] (2012) All FWLR Part 654 @ Page 128

[9] A. B Kasunmu. and J. W Salacuse., Nigerian Family Law, Butterworths, London, 1966:(176-8)

[10] *Rabiu v Adeboye* (1979) OGSLR 76 (proof of adultery under customary law).

spouse, ill-treatment and cruelty, commission of crimes (especially if repeated), lunacy, desertion and witchcraft[11].

Although several reasons may resemble some 'facts' under the Matrimonial Causes Act, they are not as clearly characterized and do not necessarily have the same meaning. For instance, under statutory law adultery only, committed by either party, can lead to a divorce, whereas under customary law a husband's (not a wife's) adultery must be compounded by some other matrimonial wrong in order to constitute a reason for divorce.

Generally, no ground need be alleged or proved in the dissolution process, though some grounds have become common. The categories of these grounds are however, not closed. The principal determination being that the differences between the parties have become so irreconcilable that the parties are not reasonably expected to continue to live together as husband and wife any longer or that the marriage has broken down irretrievably.

Where therefore, parties to a customary marriage establish the fact that irreconcilable differences exist between them in the course of their marriage or that there has been abandonment or desertion by the other party. That would certainly constitute legally valid grounds upon which customary marriage can be terminated or dissolved judicially by a customary in Nigeria.

(a) Irreconcilable differences; Under this generic head, various acts which amount to a misconduct on the part of either of the spouses may give rise to differences that are grievous enough that all attempts to resolve it proved abortive. Any or all of the other grounds enumerated hereinunder may, either acting alone or in combination with other grievances, be sufficient to generate such differences that make it impossible for the couples to live together as husband and wife.

(b) Abandonment or Desertion; Any form of desertion of the marriage by either party to a customary marriage entitles the other party to seek the termination of the marriage. Desertion under customary law does not require separation for any specific period[12].

Once it is established therefore, that a man or woman in a customary marriage has unreasonably abandoned the matrimonial home without an intention of returning, this will form a veritable ground for terminating the marriage. The court has no power to compel a deserting party to return to the marriage because, "An attempt to do so will be an infringement of the Constitutional rights of the deserting party. This was the decision of the court in *Egri v Uperi*[13].

(c) Adultery; A very common highly contentious ground for dissolution of customary law marriage is the ground of adultery. Under customary law, when adultery is committed by a man, this is generally not a viable ground to premise an application or request for termination of marriage. This is so because, under customary law, a man is entitled to more than one wife, given the polygamous complexion of the marriage. Therefore, even if a man is caught in the act of adultery, it is common for such a man to either claim to want to marry the woman, actively laying the foundation to do so or marry her outright.

[11] S. N. C Obi, Modem Family Law in Southern Nigeria, Sweet & Maxwell, London, 1966:366-7;. Obi S. N. C. (ed) The customary law Manual, The Government Printer, Enugu, 1977☹291-2).

[12] E. I, Nwogugu, " Family Law in Nigeria" 3rd Edition, HEBN Publishers Plc, Ibadan, 2014, P. 233

[13] [1974] E.C.S.L.R.632 at 634

But conversely, under customary law, where a woman is caught in the act of adultery, her husband is entitled to promptly seek the termination of the marriage. In most communities, the belief is that any condonation of adultery by a man of his wife's adultery will result in either his death or that of the children of the marriage. In *Loye v Loye*[14], the marriage between the couples was dissolved on grounds of adultery.

(d) Lack of maintenance, Cruelty or ill-treatment of either party; Under customary law, a man is under a legal obligation to provide his wife and children with the necessities of life such as food, shelter, clothing, medicare etc. The customary law wife could seek to terminate her marriage if the husband is unable or unwilling to perform any of his forgoing duties of maintenance towards her or their children. The same can also be said where either party is guilty of cruel or ill treatment. In *Adeyemi v Adeyemi*[15] a husband obtained divorce after proof of cruelty of the wife. Similarly, in *Rebecca Kpera v John Kpera*[14,] the basis for the petition was cruelty, assault and adultery, and it was granted by the Court of Appeal.

(d) Impotence or Sterility; Impotence on the part of a man or sterility (inability to procreate) of either spouse is a very potent ground for dissolution of customary marriage. This is because most African societies place high premium on procreation of children as the main reason or at least one of the main reasons for contracting a marriage.

(e) Other general grounds for dissolution of customary marriage include leprosy or other diseases, failure or inability to consummate the marriage, lack of respect; fetish practices etc.

Once a ground is sufficiently made out for dissolution of marriage and such marriage is lawfully dissolved, only a re-marriage can reunite the parties again as husband and wife. This principle was upheld by the Benue State High Court in *Rekia Agono v Salifu Adebo*[16] In that case, the marriage between the appellant and the respondent was dissolved. Subsequently, the respondent sued his ex-wife, the appellant asking her to return to his house since he had paid her money to settle with her to return. The trial court ordered her to return to the respondent. An appeal against this decision was allowed. According to appellate court,

> " Once a marriage between a couple has been dissolved, no court has the power to order the woman to return to the former husband as the trial court did in this case and to do so is contrary to natural justice, equity and good conscience. It is also our view that before such couple can live together again as married couples, there must be a fresh marriage proved between them and this is totally lacking in the present case."

6. Procedure for judicial dissolution proceedings under the Customary Court Rules.

For the purposes of this paper, we shall make reference to the Customary Court Rules of Anambra State, which is in pari materia with the Customary Court Rules in other southern, and some northern states of Nigeria, where customary law is applicable.

[14] (1981) O.Y.S.H.C.L.R. 140.
[15] (1969) 2 All N.L.R. 161

[16] (Unreported) Suit No: ID/18A/1981. Referred to by Justice A.P. Anyebe in, "Customary law: War Without Arms, "Fourth Dimension Publishing Co. Ltd 1985, Enugu at p. 95.

i. Where the defendant concedes to dissolution

The first point to note in customary court procedure is that when the respondent admits the claim of the petitioner for dissolution of the marriage, the court would give judgment dissolving the marriage, without the need to take any evidence, and/or make such orders as would be just.

Order 9 Rule 4 of the Customary Court Rules of Anambra State provides as follows:

> "Where the defendant appears on the day fixed for the trail and admits the claim, the Court shall give judgment or make such order as may be just".

7. Commencement of proceedings for dissolution of marriage in customary courts.

Proceedings for the dissolution of marriage in a customary court, is commenced as any other proceedings is commenced in customary courts, under the customary court rules.

Under the customary court rules, a suit is commenced by a claim, together with the particulars of claim. See Order 1 Rule 1(1) of the Customary Court Rules of Anambra State.

The said claim is expected to contain the relief sought, while the particulars of claim should contain the normal contents of a petition for the dissolution of marriage, though not necessarily as required in petitions under the Matrimonial Causes Act.

The said particulars of claim should normally state the names and addresses of the parties, the particulars of where and how the marriage was conducted, and the witnesses, the particulars of co-habitation, particulars of the children of the marriage if applicable, the facts or grounds relied upon for the dissolution, and also a repeat of the relief sought.

At the end of evidence, if the claim for dissolution is not admitted, the court is required to give its judgment as to whether the plaintiff or petitioner proved his case and is entitled to the relief in his petition.

8. Relief for dissolution.

This is the main and most important relief, where it was not admitted or conceded to by the respondent. However, it is easy to succeed where the plaintiff/petitioner proves by evidence that, he or she had already dissolved the customary marriage extra judicially, under customary law. He/she can do this by leading evidence to show that he/she arranged a meeting where he/she duly informed his/her parents in law of his/her intention to bring the marriage to an end. As earlier said, it is not necessary for the husband to return the wife physically to her family, or that the bride price was returned. He may only show that he demanded the return of his bride price, or expressly waived same.

It should be noted that only demanding a return or refund of the bride price, whether or not coupled with returning the woman to her maiden home is enough to dissolve the marriage, whether the bride price is actually refunded or not. This is because in most customs, the bride price is only actually retuned after the woman re-marries. In fact it is usually refunded from the money paid by the new husband, as bride price.

But in some cases, where the woman herself is adamant that she wants a dissolution of the marriage, the family could raise money, either from the woman giving them the money to refund him, or independently, and refund the bride price upfront, before she re-maries.

Where however the wife is the petitioner, she can also show that she had dissolved the marriage extra-judicially, under customary law, by refunding the bride price to the husband or his family, or has paid it into the court in the case of their refusing to collect same, or where violence is feared.

In the case of *Okpanum v Okpanum*[17], the court held that: Unlike in English law, dissolution of marriage under native law and custom can be extra-judicial. No ground for divorce need be alleged or proved. It is sufficient for a husband to arrange a meeting where he duly informs his parents in law of his intention to bring the marriage to an end. It is not necessary for the husband to return the wife physically to her family, nor is the return of the dowry necessary.

Information of the intention to bring a customary marriage to an end is the critical threshold in customary divorce procedure. Once the husband of the woman or the woman herself informs the family of the woman, of their intention to end the marriage, all incidents of customary marriage falls apart irretrievably.

Where a customary marriage is dissolved by order of court, a consequential order for a return of the bride price by the family of the woman may be made, if claimed by the husband, or the bride price may be renounced by him expressly.

In the case of *Ezeaku v. Okonkwo*[18] the Court of Appeal adopted the views of Professor E. I. Nwogugu in his book family Law in Nigeria thus:

> "Usually the dissolution of customary law marriage is effected or accompanied by the refund of the bride price paid in respect of the marriage….. the refund of the bride price is one of the important subjects to be settled by the family group that unsuccessfully attempts to reconcile the parties it is however open to a husband to exercise or renounce his right to claim a refund of the bride price. Any renunciation of that right must be (done) formally and equivocally …. In that case, the marriage will be regarded as dissolved from the time of renunciation and there will be no need for the bride price to be actually refunded". (underlining mine).

Thus, there are many instances where the refund of bride price loses its significance in the context of the dissolution of customary marriage. These include:

(1) Where a husband renounces his right to a refund of the bride price formally and equivocally as discussed above.

(2) Where a husband divorces his wife, same customs dictate that the refund shall not take effect until the wife remarries. This custom is common among the Igbos, South East Nigeria.

(3) Where the husband or members of his family evade receipt of the bride price. In this case, a woman may include in her petition for dissolution of marriage, an order for the bride price to be paid into court. Where the plaintiff has expressly renounced his right to a refund, there is no longer any need for the court to order a refund of the bride price. It should be noted that customary law, unlike the Matrimonial Causes Act, does not put any undue restrictions on the path of an unwilling partner. It does not even require such an unwilling partner to state the reasons why he or she dissolved the marriage extra-judicially.

Expressing an intention to the in-laws to bring the customary marriage to an end is the only real requirement to dissolve a customary marriage extra-judicially, or even judicially in Nigeria. Customary law does not force a willing spouse on an unwilling partner.

[17] (1972) ECSLR 561
[18] (2012) All FWLR (Pt 654), 129

i.Custody of the Children of the Marriage.

Where the children of the marriage are over 16 years of age, an order of custody would not be necessary in the case. In the case of *Okwueze v. Okwueze* [19], the Supreme Court held that in general, under most systems of customary law in Nigeria the father of a child has absolute right to custody of the child. However customary law recognizes that the absolute right of the father will not be enforced where it will be detrimental to the welfare of the child. It also held that the only proper manner in which the custody of a child under customary law can be determined is by specifically taking evidence to establish what is in the best interest and welfare of the child.

Under most native laws and customs in Nigeria, a father owns the child and is entitled to custody. The court may also consider who is in a better position to cater for the welfare of the children, with regard to their financial capacity. But the overriding custom is that the children belong to the father and he is entitled to custody.

But as earlier stated the issue of custody does not arise where from the evidence before the court, the child or children in question are above 16 years old, at the date of the judgment as they can no longer be the subject of any order for custody. In *Okwueze v. Okwueze*,[20] the Supreme Court held as follows:

> **"***There is one other point that I consider pertinent in this appeal. It is the ages of the children in question as at today. In September, 1982, when the Customary Court heard the case, Bosede was 14, Ngozi was 12, Victor was and Gloria was 6 1/2. It is now more than 6 years since the proceedings in the Customary Court took place. In effect, the ages of the children are now over 20, 18, 16 and 13 respectively. Have the children not now passed the age of infancy under which they may be considered to need close parental care and attention? The word "child" has not been defined under the Customary Courts Law, Cap. 33 nor is it defined under the interpretation Law…The ordinary meaning of child is not also very helpful. Webster's New Twentieth Century Dictionary, Unabridged, 2nd Edition defines "child" as a boy or a girl in the period before puberty… The Concise Oxford Dictionary, 17th Edition defines "child" as a person who has not reached the age of discretion. Section 70 of the Matrimonial Causes Act 1970 provides that a child who has attained the age of twenty-one is not entitled to maintenance. There is, however, no provision in the Act as to age limit with regard to custody. In England, Section 42 of the Matrimonial Causes Act, 1973 empowers Courts to make order, as they think fit, for the custody and education of a child who is under the age of eighteen. This power notwithstanding it is not usual for the courts in England to make a custody order in respect of a child who has reached the age of sixteen - see Hall v. Hall (1945) 62 T.L.R. 151 C.A. where the order for the custody of a child of the age of seventeen was discharged. Admittedly the provisions of our Matrimonial Causes Act, 1970 do not apply to marriages contracted under customary law - see section 69 thereof; but in the absence of any specific provisions under the relevant customary law or any statute or rule applicable to customary courts, it may be desirable to seek guidance under the provisions of other laws; such as the Children and Young Persons Law Cap. 21, Infants Law Cap 49 and the Matrimonial Causes Act, 1970 with regard to custody of the children of a marriage under customary law. In the light of the foregoing, I am of the view that in the absence of any specific provision under the Customary Courts Law, Cap. 33, the age of 16 can be considered to be the reasonable age below which a Customary Court…would consider the issue of custody of children of a marriage performed under Customary law***."**

[19] (1989) LPELR-2539(SC), (1989) NWLR (Pt.109) 321.
[20] *ibid*

Once a marriage becomes governed by customary law, the customary court in that region has "unlimited jurisdiction" in dissolution of the marriage and the custody of children resulting from the customary marriage. This creates an absolute control over customary marriages through the customary court system. Also, because of the international treaties Nigeria has become a party to, the determination of custody over the children must adhere to the best interests of the child doctrine, which states that "The best interests of the child shall be a primary consideration.", as also held in *Okwueze v Okwueze* above, and as codified in the Matrimonial Causes Act.[21]

However, the Marriage Act excludes customary marriages. Therefore, it is unclear if the Best Interests of the Child Doctrine is usually applied in practice to children of customary marriages. Some customary courts have noted that, according to the Best Interests of the Child Doctrine "the interest and welfare of the children shall be of paramount consideration." As a result, "the interests and welfare of the child. . . takes precedence over any law or custom that might confer custody of the child on anybody." [22]

Despite the codification of the best interests of the child doctrine, customary courts primarily consider the customs of the ethnic group of the child and parents. As a result, when the customary courts begin to look at the custom that applies to a particular ethnic group, it creates a gap in the law where a custody decision is governed largely by patriarchal rules instead of primary considerations of the best interests of the child. For instance, the belief under the majority of customary law systems is that the father has absolute right to the custody of his legitimate or legitimated child. This right sometimes is applied even upon the death of the father, so that the male head of the father's family is vested with the right.

Customary courts may enforce a "tender age" doctrine where the mother will be granted custody of children who are young and "in need of motherly care and affection." However, the tender age doctrine is limited in its enforcement because once the children are deemed to exceed this judicially prescribed "tender age," it is common practice for them to be "safely separated from their mother and returned to their father[23]."

Some courts give conditional custody to the mother and order the child to be returned to the father upon reaching a certain age or upon the father making a stable income. It can therefore safely be said that the Matrimonial Causes Act and the law on the Rights of the Child are of secondary consideration under customary law because a man owns the child.

ii. Relief for a wife to revert to her maiden name.

Where the husband claims such a relief he is assumed to be entitled to an order that the wife revert to her maiden name after the dissolution of the marriage. This is because generally, under native law and custom, what entitles a woman to assume a man's surname, or family name, is her marriage into his family. It goes without saying that once that bond of marriage is severed, she also loses that right to the family name. But this assumption may be rebuttable depending on the particular custom, and the facts and circumstances of the case, as well as the balance of convenience e.g. where the woman has that surname on her certificates and documents.

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[21] See generally Matrimonial Causes Act (1990) Cap. (220) (Nigeria)

[22] Hon. Justice Folashade O. Aguda-Taiwo, President of the Customary Court of Appeal: Ondo State, Guardianship and Custody of Children: A Customary Perspective (Mar. 11, 2019) (delivered at the Refresher Course for Judges and Kadis) note16, at 7. 17.

[23] *ibid*

It is relevant to show that a woman bears a man's name only by virtue of the marriage, and that if she was not married to the family, she would not answer the family name, and would lose the other family rights at the dissolution of the marriage.

Where the wife claims a right of being entitled to continue to answer the surname of her former husband, she has to, on her own part, give evidence of any native law or custom which entitles her to that relief. Customary law is only proved by evidence. See *Dung Jatau v. Pam Dungm*[24]; *Larinde v. Afiko* [25]; *Chiga v. Umaru*[26]. But as earlier said, the balance of convenience may be considered.

iii. **Amount recoverable upon dissolution of customary marriage:**

Upon divorce in a marriage contracted under customary law, the dowry paid is recoverable but the gifts or presents given to the wife or her parents are not recoverable. However, all claims or debts other than dowry by one spouse against the other are recoverable in a separate suit as debts when supported by valid documents.[27]

iv. **Claim for damages or maintenance.**

Where any of the parties claim for damages or maintenance, that party has to lead evidence to show that under the relevant native law and custom, an amount of money is required to be paid to that party whether as damages or under any heading, after the dissolution of a customary marriage. Usually, the only money paid is the refund of the bride price to the husband, if not waived or renounced, and nothing more. The payment of maintenance or any form of money after dissolution of a marriage, is not known to the native law and custom. It is not part of the native law and custom to pay maintenance.

9. **Conclusion and Recommendation**

Dissolution of a customary marriage has more flexible principles than that of a statutory marriage. However, it is necessary to be familiar with the sundry issues that arise, as following a wrong principle or procedure may be fatal. In this paper, the grounds for termination or dissolution of customary marriage, and the procedure, have been critically examined. In doing so, efforts have also been made to set out the grounds for the dissolution of customary marriage. The product of which is that the grounds commonly relied upon, judicially or non-judicially for the dissolution of customary marriages are numerous and the categories thereof are never closed, largely varying from community to community. They may also be general or statutory. Any or all of these grounds alleged and established by any of the parties may validly ground the dissolution of a customary marriage. This paper has clearly underscored the point that even where no reason has been alleged or proved, once party states that he/she no longer wants to continue with the marriage due to some irreconcilable differences between them, desertion or abandonment etc, such a marriage can validly be terminated under customary law in Nigeria.

In dissolving a customary marriage, the procedures are different from that of a statutory marriage, as customary marriage can be summarily dissolved. There is no special judicial procedure for dissolution of customary marriage.

It is therefore recommended that many of the essential elements of dissolution of customary marriage, especially in the area of how much should be paid or refunded as bride price, custody to wit: the doctrine of the best interest of the child should be codified as done in Edo State, and also reflected in the various Customary Court Rules, for clarity and certainty. Also, to avoid hurt and disappointment, it is advisable that more advocacy and public enlightenment be done by government, traditional institutions, churches,

lawyers, and civil society groups, so that parties involved get familiar with the tradition and custom they submit themselves to, and also the law.

[24] (1993) 3 NWLR (Pt. 283) 588;
[25] 6 WACA 108 at 110
[26] (1986) 3 NWLR (Pt. 28) 460 at 466
[27] (1962) WRNLR 48
[28] (1961) WRNLR 154 referred to]. (Pp.167-168, paras. F; A).