

ACT 367  
MATRIMONIAL CAUSES ACT, 1971

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ACT 367MATRIMONIAL CAUSES ACT, 1971<sup>1</sup>

**AN ACT to provide for matrimonial causes and for other matters connected therewith.**

## PART ONE

*Divorce***1. Petition for divorce**

- (1) A petition for divorce may be presented to the Court by either party to a marriage.  
(2) The sole ground for granting a petition for divorce shall be that the marriage has broken down beyond reconciliation.

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1. The Act was assented to on 7th September, 1971.

**2. Proof of breakdown of marriage**

(1) For the purpose of showing that the marriage has broken down beyond reconciliation the petitioner shall satisfy the Court of one or more of the following facts:

- (a) that the respondent has committed adultery and that by reason of the adultery the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have not lived as husband and wife for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the grant of a decree of divorce, provided that the consent shall not be unreasonably withheld, and where the Court is satisfied that it has been so withheld, the Court may grant a petition for divorce under this paragraph despite the refusal;
- (e) that the parties to the marriage have not lived as husband and wife for a continuous period of at least five years immediately preceding the presentation of the petition; or
- (f) that the parties to the marriage have, after diligent effort, been unable to reconcile their differences.

(2) On a petition for divorce the Court shall inquire, so far as is reasonable, into the facts alleged by the petitioner and the respondent.

(3) Although the Court finds the existence of one or more of the facts specified in subsection (1), the Court shall not grant a petition for divorce unless it is satisfied, on all the evidence, that the marriage has broken down beyond reconciliation.

**3. Adultery of respondent**

Where with a view to reconciliation, the parties to the marriage have lived with each other as husband and wife for a period or periods after it became known to the petitioner that the respondent had, since the celebration of the marriage, committed adultery, then

- (a) if the length of that period or of those periods together was six months or less, their living with each other as husband and wife during that period or those periods shall be disregarded in determining whether for the purposes of section 2 (1) (a) the petitioner finds it intolerable to live with the respondent; but
- (b) if the length of that period or of those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of section 2 (1) (a).

**4. Unreasonable behaviour of respondent**

For the purposes of section 2 (1) (b), in determining whether the petitioner cannot reasonably be expected to live with the respondent, the Court shall disregard any period or periods not exceeding six months in the aggregate during which the parties to the marriage

lived with each other as husband and wife after the date of the occurrence of the final incident relied on by the petitioner and proved to the Court in support of his allegation.

#### **5. Desertion of respondent**

(1) For the purposes of section 2 (1) (c), in determining whether the period for which the respondent has deserted the petitioner has been continuous, the Court shall disregard any period or periods not exceeding six months in the aggregate during which the parties resumed living as man and wife.

(2) For the purposes of section 2 (1) (c) the Court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the Court is such that, had that party not been so incapable, the Court would have inferred that the desertion continued at that time.

#### **6. Consent of respondent**

(1) For the purposes of section 2 (1) (d) the Court shall be satisfied that a consent to divorce has been given by the respondent only after the respondent has been given the information that will enable the other party to understand the consequences of the consent.

(2) Where the only fact specified in section 2 on which the petitioner relies in support of the petition is that mentioned in section 2 (1) (d), the Court may, on application by the respondent at any time before the decree is made, dismiss the proceedings if it is satisfied that the petitioner misled the respondent, intentionally or unintentionally, about a matter which the respondent took into account in deciding to consent to the grant of a decree.

#### **7. Failure of parties to live as husband and wife**

For the purposes of section 2 (1) (d) and (e), in determining whether the period for which the parties to a marriage have not lived as husband and wife has been continuous, the Court shall disregard any period or periods not exceeding six months in the aggregate during which the parties resumed living as husband and wife.

#### **8. Promotion of reconciliation**

(1) On the hearing of a petition for divorce, the petitioner or counsel for the petitioner shall inform the Court of all efforts made by or on behalf of the petitioner, both before and after the commencement of the proceedings, to effect a reconciliation.

(2) If at any stage of the proceedings for divorce it appears to the Court that there is a reasonable possibility of reconciliation, the Court may adjourn the proceedings for a reasonable time to enable attempts to be made to effect a reconciliation, and may direct that the parties to the marriage, together with representatives of their families or any conciliator appointed by the Court and mutually agreeable to the parties, attempt to effect a reconciliation.

(3) When proceedings are resumed after an adjournment under subsection (2), the conciliator, or if a conciliator has not been appointed, counsel for the petitioner, shall make a report to the Court of the result of the adjournment, and the report shall be limited to a statement that the parties have been reconciled or have not been reconciled or that more time is needed to effect a reconciliation.

(4) Evidence of statements or other actions of the parties or their representatives in connection with attempts at reconciliation under subsection (2) shall not be admissible in Court in the divorce proceedings.

#### **9. Restriction on petitions within two years of marriage**

(1) Subject to subsection (2), a petition for divorce shall not be presented to the Court within two years from the date of the marriage.

(2) The Court may, on application, allow the presentation of a petition for divorce within two years from the date of the marriage on the ground of substantial hardship suffered by the petitioner or depravity on the part of the respondent.

(3) In determining the application under subsection (2) the Court shall consider the interest of any child of the household and to the question whether there is a reasonable possibility of reconciliation between the parties.

(4) If it appears to the Court that leave under subsection (2) was obtained by the petitioner by a misrepresentation or concealment of the nature of the case, the Court may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the period of two years from the date of that marriage on the same, or substantially the same, facts as those proved in support of the dismissed petition.

(5) This section shall not be deemed to prohibit the presentation of a petition based on matters which occurred within two years from the date of the marriage.

#### **10. Petitioner's conduct no bar to divorce**

Without prejudice to a provision of this Act which empowers or requires the Court to dismiss a petition for divorce, nothing in an enactment or a rule of law shall be taken as empowering or requiring the Court to dismiss a petition on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or on the ground of any conduct on the part of the petitioner.

#### **11. Respondent entitled to divorce without cross-petition**

If in the proceedings for divorce the respondent alleges against the petitioner and proves the facts required by sections 1 (2) and 2 (1), the Court may in those proceedings give to the respondent the relief to which the respondent would have been entitled if the respondent had presented a separate petition seeking that relief.

#### **12. Alleged adulterer may be joined**

On a petition for divorce in which adultery is alleged, the person alleged to have committed adultery with the party to the marriage may be, but need not be, made a party to the proceedings.

## PART TWO

*Other Matrimonial Causes***13. Nullity**

(1) A person may present a petition to the Court for a decree of nullity for annulling the marriage on the ground that it is by law void or voidable.

(2) In addition to any other grounds on which a marriage is by law void or voidable, a marriage is voidable, subject to subsection (3), on the ground

- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it; or
- (b) that at the time of the marriage either party to the marriage was of unsound mind or subject to recurrent attacks of insanity; or
- (c) that the respondent was at the time of the marriage pregnant by some person other than the petitioner; or
- (d) that the respondent was at the time of the marriage suffering from an incurable venereal disease in a communicable form.

(3) The Court shall not grant a decree of nullity in a case falling within paragraph (b), (c) or (d) of subsection (2) unless it is satisfied that

- (a) the petitioner was at the time of the marriage ignorant of the facts making the marriage voidable; and
- (b) proceedings were instituted within a year from the date of the marriage; and
- (c) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of the facts making the marriage voidable.

(4) Nothing in this section shall be construed as validating a marriage which is by law void but with respect to which a decree of nullity has not been granted.

**14. Children of annulled marriages**

Where a decree of nullity is granted, a child of the parties to the decree shall be deemed to have the same status and rights as if the marriage of the parents had been dissolved rather than annulled.

**15. Presumption of death and dissolution of marriage**

(1) A married person may present a petition to the Court to have it presumed that the other party to the marriage is dead and to have the marriage dissolved.

(2) The Court may, if it is satisfied that reasonable grounds for the application of the presumption exist, make a decree of presumption of death and dissolution of marriage.

(3) In proceedings under this section, the fact that for a period of seven years or more the other party to the marriage has been continually absent from the petitioner and

the petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.

#### **16. Neglect to maintain spouse or child**

(1) Either party to a marriage may petition the Court for an order for maintenance on the ground that the other party to the marriage has willfully neglected to provide, or to make a proper contribution towards, reasonable maintenance for the petitioner or a child of the household.

(2) A wife shall not be deemed to have willfully neglected her husband unless the Court is satisfied that, in all the circumstances, it is reasonable to expect the wife to provide or contribute towards maintenance for her husband, and for the purpose of so satisfying itself the Court shall consider

- (a) an impairment of the husband's earning capacity, whether through age, illness, disability or otherwise,
- (b) the resources of the husband,
- (c) the earning capacity and the resources of the wife, and
- (d) any other circumstances relating to the financial position of the parties.

(3) A respondent shall not be deemed to have willfully neglected a child of the household where that child is not the natural or adopted child of the respondent unless the Court is satisfied in all the circumstances that it is reasonable to expect the respondent to provide or contribute towards maintenance for that child of the household, and for the purpose of so satisfying itself, the Court shall consider

- (a) whether the respondent had assumed any responsibility for the child's maintenance, and if so, the extent, duration and basis of that assumed responsibility; and
- (b) whether a person other than the respondent is responsible for the maintenance of the child, and if so, the extent to which that party is maintaining, or might be able to maintain, the child; and
- (c) any other circumstances relating to the relationship between the respondent and the child.

#### **17. Unreasonable conduct towards spouse or child**

Either party to a marriage may petition the Court for a child custody order on the ground that the other party to the marriage has persistently behaved in an unreasonable manner towards either the petitioner or a child of the household.

### **PART THREE**

#### *Financial Provision, Child Custody and Other Relief*

#### **18. General powers**

In proceedings under this Act, the Court may exercise any of the powers specified in this Part.

**19. Financial provision for spouse**

The Court may, whenever it thinks just and equitable, award maintenance pending suit or financial provision to either party to the marriage, but an order for maintenance pending suit or financial provision shall not be made until the Court has considered the standard of living of the parties and their circumstances.

**20. Property settlement**

(1) The Court may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision that the Court thinks just and equitable.

(2) Payments and conveyances under this section may be ordered to be made in gross or by instalments.

**21. Conveyance of title**

(1) When a decree of divorce or nullity is granted, if the Court is satisfied that either party to the marriage holds title to movable or immovable property part or all of which rightfully belongs to the other, the Court shall order transfer or conveyance of the interest to the party entitled to it on the terms that the Court thinks just and equitable.

(2) When a transfer or conveyance of movable or immovable property is ordered by the Court and the party ordered to make the transfer or conveyance is either unable or unwilling to do so, the Court may order the registrar of the Court to execute the appropriate transfer or conveyance on the part of that party.

**22. Custody and financial provision for children**

(1) In proceedings under this Act, the Court shall inquire whether there are any children of the household.

(2) The Court may, either on its own initiative or on application by a party to proceedings under this Act, make an order concerning a child of the household which it thinks reasonable and for the benefit of the child.

(3) Without prejudice to the generality of subsection (2), an order under that subsection may

- (a) award custody of the child to any person;
- (b) regulate the right of access of any person to the child;
- (c) provide for the education and maintenance of the child out of the property or income of either or both of the parties to the marriage.

**23. Security for payment**

Where the Court has reason to believe that a party ordered to make a payment or payments may be unwilling or unlikely to pay, the Court may order that party to give reasonable security for any payment or payments ordered.



**24. Payment of costs**

At any time after the commencement of the proceedings, the Court may require either party to the marriage to pay to the other party the sum or sums of money that is, or are reasonable to enable that party to maintain or defend the suit.

**25. Orders of restraint**

(1) The Court may by order restrain

- (a) either party to the marriage from leaving the jurisdiction until the Court is satisfied that that party has made adequate provision to satisfy an award the Court has made or may make in the proceedings;
- (b) a person from removing a child of the household from the jurisdiction;
- (c) a party to the marriage from imposing a restraint on the personal liberty of, or from harming or interfering with, the other party to the marriage or a child of the household, for as long as it thinks necessary.

(2) The Court may order a person to return a child of the household to the jurisdiction.

**26. Orders relating to assets**

(1) The Court may by order restrain either party to the marriage, or any other person, from permitting the disposition of the assets or property of either party to the marriage, and the Court may rescind a disposition of the assets or property that has been made with the intention of defeating the financial provision or property settlement of the other party, except that a disposition for value to a purchaser in good faith may not be rescinded.

(2) The Court may make an order concerning the property or assets of either party to the marriage or of a child of the household that is appropriate to preserve or maintain that asset or property while the suit is pending before the Court.

**27. Modification of financial provision, custody and support**

(1) Subject to subsection (2), the Court may from time to time rescind or vary an order in respect of maintenance pending suit and financial provision, or the care, custody and support of a child, as it thinks fit.

(2) An order of financial provision for a party to the marriage shall not be made subsequent to a decree of divorce or nullity in any case in which

- (a) the decree contains an express waiver of financial provision; or
- (b) the decree provides for a money or property settlement in lieu of financial provision and that settlement has been executed; or
- (c) the decree does not grant liberty to apply for financial provision in the future.

**28. Financial provision to cease on remarriage or death**

(1) A party to the marriage is not entitled to financial provision for that party in respect of any period after the remarriage of that party.

(2) The death of a party for whose benefit an order for financial provision has been made, or the death of the party adversely affected by the order, shall automatically terminate the order.

(3) The provisions of this section shall be without prejudice to the right of a party ordered to make financial provision to apply to the Court under section 27 (1), at any time subsequent to the order, to rescind or vary the order for a sufficient cause.

### **29. Orders terminating on child reaching majority**

An order for care, custody or support of a child shall automatically terminate when the child reaches the age of twenty-one years, unless the order provides otherwise with a view to making reasonable provision for the further education of the child, or for the care, custody and support of the child who is so incapacitated that the child cannot be expected to care for himself or herself.

### **30. Failure to comply with order to make financial provision**

Failure to comply with an order of the Court to make financial provision under this Act for a spouse or child shall, in addition to any other effect it might have, be deemed to commence a period of desertion by the party to the marriage who has failed to comply with the order.

## PART FOUR

### *Jurisdiction*

### **31. General matrimonial jurisdiction**

The Court shall have jurisdiction in proceedings under this Act where either party to the marriage

- (a) is a citizen, or
- (b) is domiciled in Ghana, or
- (c) has been ordinarily resident in Ghana for at least three years immediately preceding the commencement of the proceedings.

### **32. Domicile of married women**

For the sole purpose of determining jurisdiction under this Act, the domicile of a married woman shall be determined as if the woman was above the age of twenty-one and not married.

### **33. Additional jurisdiction relating to financial provision**

In addition to any other jurisdiction conferred by this Act the Court shall have jurisdiction, where a party who may be ordered to make financial provision has assets in Ghana, to order that party to make financial provision not exceeding the value of those assets.

**34. Additional jurisdiction relating to child custody**

In addition to any other jurisdiction conferred by this Act, the Court shall have jurisdiction to make child custody arrangements whenever the child whose custody is in question is present in Ghana.

**35. Choice of law**

In proceedings under this Act, except in proceedings for a decree of nullity of a void marriage, the issues shall be determined as if both parties to the marriage were domiciled in Ghana at the commencement of the proceedings.

**36. Recognition of foreign decrees**

The Court shall recognise as valid a decree of divorce, nullity, or presumption of death and dissolution of marriage, obtained by judicial process or otherwise, which is not contrary to natural justice, and which

- (a) has been granted by a tribunal which had a significant and substantial connection with the parties to the marriage; or
- (b) is in accordance with the law of the place where both parties to the marriage were ordinarily resident at the time of the action dissolving or annulling the marriage.

**PART FIVE***Miscellaneous and Supplementary***37. Decrees to be final**

Every decree of divorce, nullity and presumption of death and dissolution of marriage under this Act shall take effect from the date on which the Court gave judgment.

**38. Bequest to divorced spouse to be invalid**

A gift to or an appointment in favour of one spouse in the will of the other shall be invalidated if the marriage has been terminated under this Act by divorce or annulment, unless the will contains an express provision to the contrary.

**39. Privacy of proceedings**

The Court may direct that proceedings under this Act be heard in private and may exclude all persons except officers of the Court, the parties and their witnesses and lawyers where the Court is satisfied that the interests of the parties or the children of the household so require.

**40. Transfer of undefended actions**

The Chief Justice may by writing personally signed by the Chief Justice transfer an undefended action under this Act from the High Court or a Circuit Court to a District Court, and that Court shall have jurisdiction.

**41. Application of this Act**

(1) This Act shall apply to all monogamous marriages.

(2) On application by a party to a marriage other than a monogamous marriage, the Court shall apply the provisions of this Act to that marriage, and in so doing, subject to the requirements of justice, equity and good conscience, the Court may

- (a) consider the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements;
- (b) grant any form of relief recognised by the personal law of the parties to the proceedings, in addition to or in substitution for the matrimonial reliefs afforded by this Act.

(3) In the application of section 2 (1) to a marriage other than a monogamous marriage, the Court shall consider the facts recognised by the personal law of the parties as sufficient to justify a divorce, including in the case of a customary law marriage, but without prejudice to the foregoing, the following:

- (a) wilful neglect to maintain a wife or child;
- (b) impotence;
- (c) barrenness or sterility;
- (d) intercourse prohibited under that personal law on account of consanguinity, affinity or other relationship; and
- (e) persistent false allegations of infidelity by one spouse against another:

(4) Subsection (3) shall have effect subject to the requirements of justice, equity and good conscience.

(5) In the application of this Act to a marriage under customary law, the words “**child of the household**” shall be construed as including a child recognised under customary law as a child of the parties.

**42. Abolition of right to claim restitution of conjugal rights**

After the commencement of this Act a person shall not petition the Court for restitution of conjugal rights.

**43. Interpretation**

In this Act, unless the context otherwise requires,

“**adultery**” means the voluntary sexual intercourse of a married person with one of the opposite sex other than his or her spouse;

“**child of the household**” means a child, whether the natural or adopted child of both or either of the parties, or any other child who is treated by both parties as a permanent member of their household;

“**citizen**” means a citizen of Ghana;

“**Court**” means, subject to section 40, the High Court or a Circuit Court;

**“financial provision”** includes maintenance and all other forms of financial support provided by one spouse to the other or to a child of the household;

**“maintenance pending suit”** includes all forms of financial support provided by one spouse to the other or to a child of the household from the commencement to the determination of the proceedings;

**“marriage”** except as otherwise provided in section 41, means a monogamous marriage;

**“monogamous marriage”** does not include a potentially polygamous marriage.

#### **44. Enactments ceasing to have effect**

(1) An English Statute relating to matrimonial causes which was in force in Ghana immediately before the commencement of this Act shall cease to apply.

(2) This Act shall not apply to proceedings commenced before the coming into force of this Act, and accordingly, despite subsection (1) of this section, the proceedings may be continued and determined after the commencement of this Act in accordance with the law in force immediately before the commencement.

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