

INNOVATION ON MATRIMONIAL LAWS



 info@lawracles.com

 08088229476

 www.lawracles.com



Revolutionizing Matrimonial Proceedings in Nigeria: A Modern Approach

LAWRACLES LP as a thought-leading firm in Nigeria is advocating for an amendment of the Matrimonial Causes Act and Procedural Rules, to allow petitioners/parties in all matrimonial related matters, offering an option to resolve their disputes through Alternative Dispute Resolution means, without recourse to our courts except for the enforcement of awards. This creative submission is in a bid to decongest courts in Nigeria, save taxpayers money, by ensuring data privacy of parties and preventing private affairs of citizens in civil suits from clogging the wheel of Nigeria's criminal justice system.

***“Stories of couples conceiving after commencing divorce proceedings or couples wearing same outfit during proceedings could pass for a good romantic comedy, but if we deeply think about it, it is at the expense of justice for suspects awaiting trial in prisons and the taxpayers”.** -Kayode.F Adeniji*

This article explores the statistics, processes, challenges, recommendations and legal framework governing matrimonial disputes with practical solutions to help us make progress with the judicial system in Nigeria.

In Northern Nigeria, Kano State alone had over a million registered divorce cases in 2009. Lagos alone recorded over **3,000** divorce cases in **2018**, while the Federal Capital Territory sees at least **1,000** annually. Also, in **2023**, Nigeria's divorce

rate was reported at **2.9%**, equating to approximately **1.8** divorces per **1,000** people. This rate positioned Nigeria 11th among countries with the highest divorce rates globally. It is clear that matrimonial disputes are on the rise in Nigeria.

How does Nigeria compare globally?

While our divorce rate stands at **2.9%** as at **2023** which is far lower than South Africa's in **2021**, there were **18,208** divorces granted in South Africa, while in **2022**, this number increased to **20,196**, indicating a **10.9%** rise in divorces year-over-year and Canada's declined rate of divorce stands at **5.6** per **1,000** married people in **2020**. However, these countries have embraced ADR as a primary tool for resolving family disputes, making their systems faster, more efficient, and less emotionally draining. Some of the identified root causes of divorce in Nigeria were explained in our article [here](#). Divorce cases in Nigeria typically take between 3 months to 1 year to conclude. However, where there are disputes over child custody, property, or maintenance, the process can go on for over 2 years or more. The divorce process for a customary marriage may be as quick as three months in a customary court, especially where there are no contentions.

The dissolution of a statutory marriage at the High Court may never be less than six months, even without any contention. A highly contentious matter could take over three (3) years to conclude.



Marriage and Matrimonial Disputes: A Historical Perspective

“How did we get here? How do two lovers mutually agree to get married and thereafter agreed to get a divorce yet require a court to officially dissolve their union?”
Kayode F. Adeniji

The earliest recorded evidence of marriage ceremonies dates back to **2350 B.C. in Mesopotamia**. These were often strategic alliances between families or tribes. Marriage customs varied widely across different cultures and were often governed by religious laws. Initially, marriage was primarily about binding women to men to ensure legitimate heirs. Over time, marriages evolved to include elements of love, companionship, and mutual support, reflecting broader social changes and shifting cultural norms.

In medieval Europe, marriage was often used to form political alliances and secure land or wealth.

The consent of the bride was not always considered necessary. The Catholic Church played a significant role in regulating marriage, with **canon law** dictating the rules and procedures for marriage.

The Marriage Ordinance of 1884 in the Gold Coast Colony was one of the first comprehensive pieces of legislation dealing with various matters relating to the solemnization of marriages. The Marriage Ordinance of 1914 in Nigeria standardized marriage laws across the newly amalgamated Northern and

Southern Nigeria, making the celebration of marriage a purely civil function. Marriage began to be legally formalized with the introduction of marriage licenses and civil ceremonies. This shift marked a move away from purely religious or customary practices. The women's rights movement in the late 19th and early 20th centuries led to significant changes in marriage laws, including property rights and divorce laws.

The legal aspect of marriage has evolved from being a tool for political and economic alliances to a more personal and consensual union, with legal protections and rights for both partners. It is important to also note that marriage has now become one of the sure routes for immigrant population to obtain citizenship of another country. This evolution reflects broader social changes and the ongoing quest for equality and justice in marriage laws. Today, the legal framework the Matrimonial Causes Act of 1970 governs how marriages are dissolved.

Innovative Efforts at Resolving Matrimonial Causes Matters

We must not fail to recognize the efforts of our judicial authorities to ensure matrimonial matters remain sui generic by issuing several procedural rules to ensure that emotional intelligence is applied in a bespoke manner to each matrimonial matter. Firstly, there is a



provision for a compulsory conference by parties to resolve specific issues with the aim and hope that couples might reconcile or go their separate ways in an amicable manner. Secondly, Judicial officers in certain circumstances have had to stand down matrimonial matters until the court room is empty. This aims to safeguard a certain level of privacy for the parties involved, particularly when children are part of the marriage. Thirdly, the establishment of family courts is a commendable initiative by the government and judiciary to ensure that private, emotional, and family matters are handled with sensitivity, rather than being treated like commercial disputes.

While all of these efforts are commendable. It is our considered view at Lawracles LP that petitioners or parties to matrimonial causes matters should be given the option to trigger an arbitration process by sending an arbitration or mediation notice to a respondent for the dissolution of their union, in spite of the fact that there was no prior arbitration agreement, as long as the respondent is made aware of the binding nature of the proceedings and agrees to submit to the jurisdiction of the arbitral tribunal.

Integration of Arbitration and Mediation Act to Matrimonial Proceedings.

It is crucial for the resolution of matrimonial disputes to evolve. Alternative Dispute Resolution (ADR) presents a natural progression, providing couples with a more efficient and less adversarial way to settle their differences outside traditional courtroom battles.

The recently enacted Arbitration and Mediation Act (AMA) of 2023 introduces significant changes that can be highly favorable to integrating Alternative Dispute Resolution (ADR) mechanisms into matrimonial proceedings in Nigeria.

The AMA formally recognizes mediation as a legally binding process. Thus, agreements reached through mediation in matrimonial disputes (e.g., on child custody, property division, or maintenance) should now be recognized and enforceable in court without going through protracted litigation. This provides an avenue for couples to resolve their disputes amicably and quickly.

It also emphasizes confidentiality in arbitration and mediation processes. This aligns perfectly with the need to protect families, especially children, from the emotional and reputational harm of public court proceedings. Matrimonial disputes often involve sensitive personal matters, and the AMA's confidentiality provisions offer a more private, dignified alternative to courtroom battles.

Given the historical context and evolution of marriage, it is evident that ADR can be an effective means of dissolving marriages in Nigeria. The journey of marriage from ancient strategic alliances to modern personal unions showcases the dynamic nature of this institution. As societies continue to evolve, so must the approaches to resolving matrimonial disputes. Alternative Dispute Resolution (ADR) methods such as mediation, arbitration, and conciliation provide



effective alternatives to traditional litigation, enabling couples to reach amicable solutions while preserving dignity and reducing conflict.

Rethinking Matrimonial Dispute Resolution in Nigeria: Embracing Alternative Dispute Resolution (ADR)

Marriage is a private affair, and couples seeking discretion should have the option to arbitrate their divorce on their own terms. Nigeria's reliance on litigation for divorce and child custody leads to congested courts and prolonged legal battles. With evolving relationships and technology, embracing Alternative Dispute Resolution (ADR) offers a more efficient and less adversarial solution.

The Traditional Litigation is a burdened and restricted system for dissolution of marriage in Nigeria. An overburdened family court system can result in criminal cases being delayed, impacting the overall efficiency of the justice system. Matrimonial cases are often played out in open courtrooms, exposing families to public scrutiny and emotional distress. Public court battles can have severe emotional impacts on the parties involved, including children. The lack of privacy in these proceedings only amplifies the trauma.

ADR processes like mediation and arbitration are faster, more cost-effective, and provide a private setting that ensures confidentiality to the parties involved. They not only save time and money for the parties involved but also reduce the burden on the courts, enhancing the efficiency of justice delivery.

ADR encourages amicable settlements, minimizing conflict and emotional harm. Here are significant things to note:

1. Benefits for Children: One of ADR's most significant advantages is how it protects children. Custody arrangements, property divisions, and maintenance agreements can be handled sensitively, ensuring that the child's welfare is always prioritized.

2. Addressing Root Causes: Beyond dissolving marriages, ADR has the potential to resolve soft issues, such as communication breakdowns or financial disputes. Pre-divorce counseling as part of ADR could also save some marriages.

3. Data Protection: Intimate information of happenings within a family should no longer be for public consumption in this era of social media.

While ADR offers significant advantages, its success in Nigeria depends on overcoming key challenges. To fully integrate ADR into the matrimonial dispute resolution framework, we must address the following:

1. Legal Framework: Amend the Matrimonial Causes Act to recognize the right of parties to pursue the ADR route to resolve their disputes and that outcomes as binding.



2. **Awareness and Training:** Educate couples about ADR options and train mediators and arbitrators to handle matrimonial cases effectively.
3. **Subsidized Services:** Make ADR accessible to low-income families by subsidizing costs.
4. **Use of Technology:** Introduce online mediation platforms and virtual courtrooms to ease court congestion.
5. **Mandatory Counseling:** Require pre-divorce counseling to explore reconciliation before proceeding to ADR or litigation.

Recommendations for Implementing ADR in Nigeria

1. **Couples Option to Choose:** Providing couples with the opportunity to choose between traditional litigation and ADR for resolving their disputes.
2. **Marriage Duration Limitation-The Five (5) Year Rule:** A provision should be made stating that “only marriages above five (5) years or more can be qualified for arbitration”. This will help prevent the creation of another monster of arranged marriage and instant divorce. This five-year rule will prevent fraud.
3. **Reassigning our Family Court Judges towards dispensing speedy criminal Justice:** Family court judges can be reassigned to handle other civil and criminal matters, thereby reducing the burden on the judicial system.

Countries Embracing ADR for Divorce

Several countries have successfully integrated ADR into their matrimonial dispute resolution systems, providing valuable examples for Nigeria:

- **France:** ADR is used for various family disputes, including conflicts between spouses, division of assets, and visitation rights for children after a divorce.
- **United States:** Mediation and collaborative divorce are common ADR methods, encouraging couples to reach mutually agreeable solutions without going to court
- **Canada:** Mediation and arbitration are popular options for resolving divorce disputes, providing an alternative to lengthy court processes.
- **Germany:** ADR methods like mediation and collaborative divorce are supported by the legal system, promoting consensual resolutions.
- **South Africa:** Mediation and arbitration are encouraged to handle family law disputes, offering a more amicable approach.
- **India:** With the establishment of the Mediation and Conciliation Project Committee (MCPC), mediation is increasingly used to settle divorce cases.



Conclusion

Nigeria's approach to matrimonial disputes needs to reflect the realities of modern relationships. ADR offers a way to resolve disputes quickly, privately, and compassionately, protecting families and all of their data from the emotional toll of public litigation.

It is time for us to rethink how we handle these cases. Policymakers, the judiciary, and society must come together to embrace ADR as a progressive solution. By doing so, we can create a system that prioritizes the dignity and welfare of Nigerian families and decongest our courts of law.

“We must develop solutions tailored to our unique challenges without merely replicating approaches from other countries. It is time for others to look to our innovative and pioneering ideas for inspiration” -Kayode F. Adeniji.