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Legal and Societal Considerations in Determining Child Custody Arrangements During Divorce Proceedings in Nigeria

Majebi Samuel Amune, Ph.D
LL.B. (University of Benin); LL.M., M.Phil., Ph.D (Obafemi Awolowo University)
Senior Lecturer, College of Law, Joseph Ayo Babalola University, Ilesa, Osun State, Nigeria &
Principal Partner, LawDigital Consult.,
Email: nobleheirs@yahoo.com
Tel: 08033724459

Abstract
Child custody arrangements during divorce proceedings in Nigeria are shaped by a complex interplay of legal frameworks and deeply rooted societal norms. The determination of child custody arrangements during divorce proceedings is a complex and sensitive issue in Nigeria, with significant legal and societal implications. This paper examines the legal and societal considerations that influence child custody decisions in Nigeria, with a focus on the tensions between the best interests of the child, cultural and religious norms, and the rights of parents. The paper also explores the role of the judiciary in navigating these conflicts, highlighting how courts attempt to balance legal mandates with cultural realities. Despite progressive legislation, enforcement remains inconsistent, particularly in rural areas where traditional practices hold significant sway. Additionally, the lack of awareness among parents about their legal rights and the best interests principle further complicates custody arrangements. This paper argues for a more harmonized approach that respects cultural values while ensuring the protection of children's rights. It calls for increased public education on custody laws, greater sensitivity to gender equity in judicial decisions, and reforms to address gaps in the legal framework. By addressing these challenges, Nigeria can better safeguard the welfare of children in divorce proceedings, ensuring that custody arrangements prioritize their emotional, psychological, and physical well-being.
Keywords: *Child custody, divorce proceedings, Nigerian law, societal norms, best interests of the child, gender equity.*

1. Introduction

Divorce which is otherwise known as dissolution of marriage is the termination of a marital union thus dissolving the bond of matrimony between married couples under the rule of law of the particular country or state in question. It could also mean the court's judgment ending a marriage. Divorce is inevitable in a situation where couples can no longer tolerate each other for one reason or the other, and it is established before the court that the marriage has broken down irretrievably.[1]

The issue of child custody in divorce proceedings has become a topical issue in recent years because of the increasing rate of divorce in our society, and this is not an issue peculiar to Nigeria alone. However, the Matrimonial Causes Act provides that welfare of the child should be strongly considered in custody matters. The African Charter on the Rights and Welfare of the Child defines a child "as every human being below the age of eighteen" Marriages tend to breakdown for various reasons ranging from adultery, lack of communication, intolerance, high expectations from either

[1] See Section 15 Matrimonial Causes Act, Cap M7, LFN 2004

spouses, loss of physical attraction, lack of commitment, family pressure and family background[2], when efforts to save the marriage from collapsing fails, the option left to couples usually is divorce, and since the welfare of the children of the marriage is of paramount interest, when couples could not reach a mutual agreement on custody of children to the marriage, the matter is usually referred to the court to do justice.

It is a known fact that custody of children in divorce proceedings in Nigeria has generated a lot of controversy between couples in dispute. There is the general presumption that children belong to the father and so this fact is usually imported into divorce proceedings by couples in dispute who want their marriage to be dissolved by the court. The Court has always considered the welfare of children of the marriage before granting custody to either of the parent.

In most cases the mother always feels cheated if she is denied custody of children for a particular reason that is related to the welfare of the child. This paper will focus on the law and practice relating to custody under the Nigerian Legal System and consider the customary law aspect of custody and statutory aspect (under the Marriage Act and Matrimonial Causes Act), and also proffer suggestions and recommendations that will assist the courts in settling the issue of custody of the child taking into consideration the welfare of the child.

The Matrimonial Causes Act defines child to include any child adopted since the marriage by the husband and wife or by either of them with the consent of the other,[3] any child of the husband and wife born before the marriage whether legitimated by the marriage or not and any child of either the husband or wife (including all illegitimate child of either of them and the child adopted by either of them) if at the relevant time the child was ordinarily a member of the household of the husband and wife, so however that a child of the husband and wife (including a child born before the marriage whether legitimated by the marriage or not) who has been adopted by another person or other person shall be deemed not to be a child of the marriage.

2. Divorce Proceedings in Nigeria

Divorce proceedings or dissolution of marriage is a situation where the marital bond between married couples is dissolved legally by a court of competent jurisdiction at the instance of both parties or either of the parties to the marriage. In Nigeria however, before parties to a marriage can commence proceedings for a decree of dissolution of marriage, the statutory time limitation of two years as provided by S. 30(1) of the Matrimonial Causes Act must be complied with except it can be established before the court that the petitioner will suffer exceptional hardship if his/her petition is not granted. Section 30(1) of the Matrimonial Causes Act (MC[4]A) prescribes that proceedings for a decree of dissolution of marriage shall not be initiated within two years after the date of marriage except by leave of court. Exception to this general rule in respect of the institution of divorce proceedings is based on any of the grounds prescribed by Section 15 of the M.C.A.

The rationale behind the two-year rule is to deter people from rushing out of marriage. In other words, the objective behind it is to ensure that couples have enough time to adjust and adapt to themselves

[2] Arif K.B, Divorce and Child Custody: How it Affects Children, Accessed online through leadership.ng/features/374414/divorce-child-custody-affects-children. Visited on 21 February 2024
[3] See Section 71, Matrimonial Causes Act, Cap M7 LFN 2004
[4] Section 30(1) Matrimonial Causes Act, Cap M7 Chapter 220 LFN 1990

as newly married couples who are coming from different backgrounds. However, S.30 (3) further prescribes circumstances in which court may grant its leave as follows:
The court shall not grant leave under this section to institute proceedings except on the ground that to refuse to grant the leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage

The terms “exceptional hardship” and “exceptional depravity” are not defined in the Act. However, more light has been shed on a similar provision in an English case by the House of Lords in **Fay v Fay**[5] where Lord Scarman who delivered the unanimous opinion of the House observed thus:

It is not possible to define with any precision what is meant by exceptional hardship or depravity. The imprecision of these concepts with the resultant impossibility of definition must have been deliberately accepted as appropriate by the legislature and is in itself an indication that the determination of what is exceptional is essentially a matter for the judge. All that can be said with certainty is to borrow the words of O’Connnor L.J that the hardship suffered by the applicant (or the respondent’s depravity) must be shown to be something out of the ordinary

The law vests the primary responsibility for determining conducts that amount to exceptional hardship on the judge who is to assess the evidence adduced in the affidavit of the applicant. This will also be dependent on the facts of each case. [6]

Section 15 of the M.C.A makes provision for grounds for dissolution of a marriage which is the fact that it must be established that the marriage has broken down irretrievably. Section 15(1) provides thus:

A petition under this Act by a part[7]y to a marriage for a decree of dissolution of the marriage may be presented by either party to the marriage upon the ground that the marriage has broken down irretrievably

It appears that irretrievable breakdown is the sole ground for initiating divorce proceedings. Any petition for divorce that does not have irretrievable breakdown of marriage as the ground for divorce will fail: in **Ekrebe v Ekrebe[8],** the petition did not contain the phrase “the marriage has broken down irretrievably” as required by Section 15(1)[9], and the court made it clear that “irretrievable breakdown” was the only ground for divorce under the Act.

Section 15(2)[10] however stipulated facts one or more of which must be established before a decree of dissolution will be granted thus:

The court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if the petitioner satisfies the court of one or more of the following facts;

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[5] Fay v Fay (1982) 3 W.L.R 206
[6] The court has the discretion of determining what amounts to exceptional hardship based on the evidence adduced before it and also by watching the body language of parties before it during proceedings.
[7] See Section 15(1) M.CA 1970
[8] Ekrebe v Ekrebe, (1999) 5 NWLR, PT 596, 514 CA
[9] Section 15(1), Matrimonial Causes Act, Cap M7, Chapter 220 LFN 1990
[10] Section 15(2) Matrimonial Causes Act, Cap M7 Chapter 220 LFN 1990

(a) That the respondent has willfully and persistently refused to consummate the marriage;
(b) That since the marriage, the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
(c) That since the marriage, the respondent has behaved in such a way that it cannot reasonably be expected to live with the respondent'
(d) That the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the presentation of the petition;
(e) That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;
(f) That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition;
(g) That the other party to the marriage has for a period of not less than one year failed to comply with a decree of restitution of conjugal rights made under this Act;
(h) That the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead;

Regardless of the two year rule on petitions for the dissolution of marriage, a spouse may petition at any time based on the fact that the other party has willfully and persistently refused to consummate the marriage[11]and the petitioner must show that such an act persisted up to the commencement of the hearing of the petition.[12]In other words, where there is consummation between presentation of a petition and its hearing, a petition is likely to fail. The word "persistent" places on the petitioner the onus of proving the fact that not only that the respondent willfully refused consummation, but that the petitioner as a mark of his or her willingness repeatedly made efforts to ensure that there was consummation, in Mason v Mason, in granting a decree nisi, the court held that a refusal within the context of Section 15(2)(a) of the M.C.A 1970 means that the thing refused was proposed to the refusing party and that the word willful means want of reasonable cause.

It is clear from the above explanation that by virtue of Section 15(2) (a) of the M.C.A, the courts must be satisfied that the respondent had many opportunities afforded him/her by the petitioner to consummate the marriage but he/she willfully and persistently turned the petitioner down.

Section 15(2) (b) Respondent's Adultery and Petitioner Finding it intolerable

One of the factors that must be established before the court can grant a decree of dissolution of marriage is the fact that the respondent has been in the habit of committing adultery since the marriage was contracted. Adultery however, has been defined as the consensual sexual intercourse between two persons of opposite sexes at least one of whom is married to a person other than the one with whom the intercourse is had, since the celebration of the marriage.[13]

Mere allegation of adultery by either party to the marriage will not suffice in a petition for divorce to establish irretrievable breakdown of the marriage. By virtue of Section 15(2) of the M.C.A, mere allegations of adultery do not entitle a petitioner a decree of dissolution of the marriage. A petition

[11] See Section 15(2)(a) M.C.A 1970
[12] See Section 21 M.C.A, and the case of Oladele v Oladele, C.C.H.C. J. 12/72,119
[13] Adesanya S.A, Laws of Matrimonial Causes, 1972, PP 49; his article titled "Divorce in Ghana and in Nigeria-a comparative study in legislative reforms" (1976) The Review of Ghana Law, Vol 4. PP 91-115, and Nwogugu E.I,Family Law in Southern Nigeria, PP 135.

based on this fact will succeed only if the petitioner testifies also that he/she finds it intolerable to live with the respondent. This fact was emphasized in **Labode v Labode** [14]where the learned judge said "This may sound like mere technicality but the decree prescribes this technicality and it is important"

The importance of this technicality was reemphasized in **Okala v Okala**[15] where Agbakoba. J. said: "Intolerability cannot be presumed from proven adultery …. It is an incomplete or imperfect averment to omit an allegation of an ingredient of the facts or set of facts mentioned in the sub-section". In other words, intolerability should not just be as a result of the adulterous act of the respondent, it has to be a separate fact.

As mentioned above, mere allegation of adultery is not a ground for the court to grant decree of dissolution of marriage. Adultery must be proved to the satisfaction of the court in order for a decree of dissolution of marriage to be granted. [16] In relation to the standard of proof of adultery in divorce proceedings, Agbakoba J. in **Okala v Okala** said:

Invariably in divorce suits, the practice has grown not based on any statutory provisions for courts to exercise the utmost care in balancing probabilities and to ensure that the evidence clearly preponderates to entitle the petitioner to a decree. When this happens, the court is said within the meaning of Section 82 of the Decree to be reasonably satisfied not merely satisfied

Although in some cases, the court has required a very high standard of proof as that required in criminal matters. In **Ochei v Ochei,** Oputa J.[17] (as he then was) said "In matrimonial proceedings, adultery must be proved with the same degree of strictness as is required for the proof of a criminal offence in a criminal case. Also in **Ojo v Ojo**, Oguntade J. said "It is trite law that a high degree of proof is required when adultery is an issue in a divorce petition"

The court takes the view that it is not necessary to prove the direct fact or the time and place of an act of adultery the fact may be inferred from the circumstances of the situation[18]. Adultery can however be inferred in each of the following circumstances:

(1) Subsequent Marriage: In a situation where it is proved that there has been a subsequent marriage by the respondent to a third party during the subsistence of the marriage, then adultery will be inferred by the court. In **Faleye v Faleye** and Anor, adultery was proved against the husband respondent when the wife petitioner tendered before the court the Certified True Copy of declaration of marriage between the respondent and the woman cited in the case.[19]
(2) Cohabitation: Adultery will be inferred in a situation where it is proved that the respondent has been cohabiting with the co-respondent while the marriage subsists. In **Ogunleye v Ogunleye**, the court inferred adultery from the fact that the respondent was at the time of the hearing living with the co-respondent in the matrimonial home as husband and wife.[20]

[14] Labode v Labode, (*1972) N.M.L.R, 195
[15] Okala v Okala (1973) 3 ECSLR, Vol. 1 PP. 67
[16] See Section 82 (1) M.C.A 1970
[17] Ochei v Ochei (1973) E.C.S.L.R, 623
[18] See Ambe v Ambe, (1975) N.M.L.R 28. 185
[19] Faleye v Faleye & Anor, Unreported Suit No ID/33WD/84 of 2/5/86, Lagos High Court
[20] Ogunleye v Ogunleye Suit No WD/18/89 of 2/7/71 Lagos High Court

(3) Records: Entries in the diary of a wife's respondent found in her wardrobe which contained references to her weekend at the house of the party cited in her subsequent divorce were held to raise a rebuttable presumption of adultery between them.[21]

(4) Admissions and confessions: The courts tend to regard admissions and confessions with suspicion in view of the fact that they could be made out of spite or with definite desire to support an allegation of adultery with a view to obtaining a decree of dissolution of marriage. Such evidence must be corroborated in writing or orally[22]. In **Alabi v Alabi,**[23] the parties were married in January 1999. The appellant petitioned for divorce alleging intolerable behavior of the respondent. The respondent also alleged that the appellant had committed adultery with one Aramide which resulted in the birth of a son Albert, in October 1999 just eight months after the marriage, and he had a second son named Williams in 2001. The appellant in his evidence admitted knowing Aramide as the mother of his son, Albert. Both the Court of first instance and the Court of Appeal were of the opinion that the commission of adultery was established. An admission by a wife that her child does not belong to her husband while she named another man as the father in a court document constitutes an admission of adultery.[24]

(5) Birth of a child: Pregnancy or the birth of a child for a man married under the Act by a woman other than his legal wife will give rise to the inference that the man has committed adultery with the woman.[25] Also, the pregnancy of or the birth of a child by a legally married woman for a man other than her husband is a conclusive proof of adultery by the woman.[26]In the case of **Erhahon v Erhahon**,[27] the petitioner sought for the dissolution of his marriage with the respondent based on adultery alleged to have been committed with the second respondent. The respondent denied the allegation in a cross petition in which she also sought the dissolution of the marriage because the petitioner had committed adultery with at least three women from whom he had four children during the continuance of the marriage. It was established in evidence that the petitioner committed adultery with three women named in the cross- petition and that he was the father of the four children mentioned in the cross-petition. The court held that adultery had been committed on the basis of which the marriage was dissolved.

(6) Venereal disease: Adultery will be inferred where a spouse suffers from venereal disease which was not contacted from the other spouse. Such presumption of adultery may be rebutted by proof that the disease was for instance contacted otherwise than by adultery.[28]

(7) Frequent visits to hotels and night clubs with strangers: It has been held that frequent visits to a hotel or night club by spouse with stranger raises a presumption of adultery. In **Adeyinka v Ohuruogu**[29]part of the evidence adduced in proof of the respondent's adultery was the fact that she frequented a hotel in Ibadan with strange men.

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[21] Labode v Labode, (1972) N.M.L.R , 195
[22] See Ironoye v Ironoye (1972) N.M.L.R 288
[23] Alabi v Alabi (2007) 9 N.W.L.R (PT 1039)297-183
[24] See Megwalu v Megwalu (1994) 7 N.W.L.R (PT 359) 718 C.A
[25] See Okala v Okala (1973) E.C.S.L.R 67 and Ogunleye v Ogunleye, Suit No WD/18/89 of 2/7/71 Lagos High Court
[26] See Akparanta v Akparanta(1970-71), E.C.S.N.L.R, 104
[27] Erhahon v Erhahon (1997) 6 N.W.L.R (PT 510)667, Alabi v Alabi (2007) 9 N.W.L.R (PT)1039, 297, Adeyinka v Ohuruogu (1965) 1 All N.L.R 210
[28] See Butler v Butler (1917) PP 224
[29] Adeyinka v Ohuruogu (1965) 1 All N.L.R 210

(8) Familiarity: Adultery can be inferred in a situation where a spouse is unnecessarily too familiar with a third party who is of an opposite sex. Mere proof of familiarity between the respondent and the co- respondent is not sufficient to establish adultery. In addition, it has to be shown that there was opportunity to commit adultery. In **Akinyemi v Akinyemi**[30], the respondent and co-respondent who were fond of each other were found kissing and embracing each other in the early hours of the morning, and prior to that, they had spent over five hours together outside for which no proper account was given. The Supreme Court held that this was a proper case to draw an inference of adultery as there was evidence of inclination to each other and of opportunity to commit adultery.

(9) Suspicious circumstances: In some cases, the court may conclude from suspicious circumstances that adultery was committed.[31]In **Adeyemi v Adeyemi**,[32]the husband visited his wife who was living apart from him at night. The wife's bedroom was in darkness and as a result of his banging at the door, it opened and he found the respondent and co-respondent inside. The wife was sitting on a bed with only a wrapper not properly covering her body and the co-respondent's shirt was not properly tucked into his trousers. It was held that the circumstances in which the parties were found pointed conclusively to the commission of adultery.

(10) Conviction for rape: Pursuant to Section 87(1) (a) of the M.C.A,[33] evidence that a party to a marriage was convicted in Nigeria or elsewhere of rape or any other sexual offence with a person of the opposite sex during the subsistence of his/her marriage shall be evidence that the convicted person committed adultery with the person on whom the rape or other crime was committed. A certificate signed by the registrar or appropriate officer of that court shall be evidence of the fact and date of the conviction.

(11) Refusal of a spouse to subject a child to DNA test: Sections 63-67 of the Child's Rights Act[34] empowers a Family Court upon the application of a party to any civil proceedings in which the paternity or maternity of a person is to be determined to give directions for the use of scientific tests including blood tests and DNA to determine whether the applicant is, or is not the father or mother of the person. Although a court has no power to compel a party to submit to a blood test, it may however draw a conclusion from a refusal to submit to blood test.

The courts have always considered the above stated factors in drawing inferences of adultery in divorce proceedings where the commission of adultery is in issue. It is not in all cases that the courts will just go ahead in granting divorce after parties must have presented their cases before the courts there are however, certain factors that guide the courts on whether to grant divorce or decline. Some of such factors shall be considered below.

3. Bars to the Granting of Decree of Divorce

The courts have always been guided by certain factors which enable them to determine whether to grant or refuse a decree of divorce. Ordinarily, a petitioner who has proved to the satisfaction of the court that the marriage has broken down irretrievably is entitled to the decree of divorce. However, such a decree may be refused if an absolute or discretionary bar exists. There are three absolute bars

[30] Akinyemi v Akinyemi (1963) 1 All N.L.R 340
[31] See Ambe v Ambe (1976) 1 N.M.L.R 28
[32] Adeyemi v Adeyemi (1997) 6 N.W.L.R (PT 510) 667
[33] Section 87 Matrimonial Causes Act 1970
[34] Child's Rights Act. Cap C 50, Laws of the Federation of Nigeria 2004.

to a petition for divorce, and these are condonation, connivance and collusion. Upon proof of an absolute bar, the court is bound to dismiss the petition, but in the case of discretionary bars, the court has the discretion whether or not to dissolve the marriage if one of the factors is established. There are also three discretionary bars and these are petitioner's adultery, petitioner's desertion and conduct conducing to the commission of a matrimonial offence.

3.1 Absolute Bars

Condonation: This implies the forgiveness of a spouse who has committed a matrimonial misconduct and his or her reinstatement to the position of a spouse. Such forgiveness and reinstatement is on the condition that no further matrimonial misconduct is committed.[35] The two main elements of condonation are forgiveness and reinstatement.

It is important that the spouse who condones should be substantially aware of the matrimonial misconduct committed.[36]In other words, there cannot be condonnation without misconduct. Whether or not a spouse has knowledge of the misconduct is a question of fact. Forgiveness alone without reinstatement cannot constitute condonation.[37] The spouse guilty of the matrimonial misconduct must be reinstated to the position of a spouse, and this is because of the fact that reinstatement cannot occur unless reconciliation takes place between the parties. This is also a question of fact. Willingness to forgive does not constitute condonation. For reconciliation to take place, both spouses must intend to be reconciled.[38]

Where sexual intercourse occurs between the spouses after one of them to the knowledge of the other has committed adultery, the situation may constitute condonation. In **Sotomi v Sotomi**,[39] the parties were married in 1966 in Kaduna. The husband petitioned for divorce. The wife in her cross-petition alleged the husband's adultery with several women, and all the acts of adultery occurred prior to December 1973 when the couple separated, but on each occasion, the respondent would forgive the petitioner and have sexual intercourse with him. It was held that the respondent's cross-petition failed for condonation under Section 26 of the M.C.A.

In the case of a man, sexual intercourse is regarded as conclusive evidence of condonation, and this is because of the fact that the wife's position may be prejudiced if she conceives as a result of the intercourse. Also, it will be unfair for the husband to exercise his marital rights and at the same time seek the dissolution of the marriage. The rule is less strict where a wife participates in sexual intercourse with her husband in the knowledge of his adultery, this is because of the fact that she may not be a free agent, and the intercourse cannot therefore be a conclusive proof of condonation.[40]

In **Martins v Martins**[41], the parties were married under the Marriage Act. The petitioner had no child for her husband, and this made the husband to bring another woman into the matrimonial home. The woman the husband brought into the home had two children for the husband. Marital relations still continued between the petitioner and the respondent up to the date of the conception of the

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[35] See Bernstein v Bernstein (1893). PP 292: 203, Ayoola v Ayoola (1979) 2 FNR 251
[36] Berstein v Berstein (1893) PP 292, 203
[37] See Fern v Fern (1948) PP 241: Ehigiator v Ehigiator (1966) 2 All N.L.R 169 170-4
[38] See Rose v Rose (1963) 3 F.L.R. 56. 58
[39] Sotomi v Sotomi, (1979) 2 L.RN 339
[40] Ayoola v Ayoola (1979) 2 F.N.R 252, Amaghado v Amaghado (1992) 1 N.W.L.R, (PT) 216, 207.219
[41] Martins v Martins (1931) 10 N.L.R 92 , Ayoola v Ayoola (1979) 2 L.R.N 257

second child of the irregular union. Kingdom C.J held that the continuance of the marital relations did not amount to condonation on the part of the wife petitioner.

The Judge adopted the statement of the law made by Mccardie .J in **Cramp v Cramp** and Freeman[42] where he said:

I find that the authorities draw a clear distinction between a wife who permits intercourse after knowledge of her husband's adultery and a husband who has intercourse with his wife after he is aware of her infidelity. As to condonation by a wife, Sir Cresswell in Keats v Keats[43] and Moritezuma said:

With reference to a wife to whom knowledge of her husband's adultery has been brought home and who has yet continued to share his bed, the rule has been so strict. The wife is hardly her own mistress; she may not have option of going away; she may have no place to go; no person to receive her; no fund to support her; therefore, her submission to the embrace of her husband is not considered by any means such strong proof of condonation as the act of a husband in renewing his intercourse with his wife[44]

If however, it is established that she has forgiven her husband before the intercourse occurred, condonation would be presumed against her.[45]

Connivance: Where a petitioner has consented, encouraged or willfully contributed to the commission of the misconduct on which a petition for divorce is based, he will be denied a decree of divorce on the ground that he connived at the misconduct. Connivance operates on the principles of "*volenti non fit injuria*"[46]

A spouse will therefore not obtain relief for misconduct in which he acquiesced or which he encouraged. In addition, there must also be a corrupt intention, that is, the respondent must have intended the result in question.[47]

Usually, connivance precedes and accompanies the commission of misconduct but where the misconduct stretches over a period, a spouse may connive at its continuance after he has obtained knowledge of its existence.[48]

Collision: This implies an agreement or acting in concert to procure the initiation or prosecution of a suit for divorce with intent to cause a pervasion of justice. To constitute collision, there must be two elements, that is, agreement and improper motive or purpose. The essence of collision is that the petitioner and respondent act in concert with the common intent to cause a pervasion of justice. Collision will be said to have occurred where a party is bribed or induced to initiate or prosecute divorce proceedings. Collision arises where a party by agreement commits or appears to have committed a matrimonial misconduct or where on agreement, a true case is established by false

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[42] Cramp v Cramp (1920) PP 158
[43] Keats v Keats (1859) 1 SW & TR 334, 164 ER
[44] See Martins v Martins: 10 N.L.R 92. 95-96
[45] See Morley v Morley (1961) 1 All ER 428
[46] See Rogers v Rogers (1830) 3 Hag Ecc 57. 59. 162 ER 1079
[47] See Gripps v Gripps (1864) 11 HL. Cas 1. 25: 11 E.R 1230
[48] See Rumbe Low v Rumbe Low (1965) 2 All E.R 767 (CA)

evidence[49]but every agreement is not collusive. A bona fide agreement relating to maintenance, damages, costs or custody is not necessarily collusive.[50]

On the other hand, excessive maintenance may be indicative of collision because it may be intended as an inducement to the initiation or continuance of divorce proceedings. Besides agreement, there must be a corrupt intention or motive to cause a pervasion of justice.[51] This element is very important that Scarman J. had to explain in **Noble v Noble** its importance thus: *A collusive bargain is one with a corrupt intention. It is an agreement under which a party to the suit of valuable consideration has agreed either to institute it or to conduct it in a certain way; for example, the reluctant petitioner induced by the offer of some benefit to take proceedings against an eager respondent, or closer to this case, a co-respondent induced by a promise of some benefit not to defend a charge of adultery; or stronger still, to provide evidence or to bear witness at the trial against the respondent. If upon a fair consideration of the circumstances, the parties intend by their agreement to match institution of suit or any aspect of its conduct with the provision of some benefit to the party instituting or in that aspect conducting the suit here is in my opinion collision. Unless there is this matching of forensic proceeding against valuable consideration, there is no conclusion…. I would add that to refrain from raising a defense, or to drop a charge while continuing with others, though, negative acts, are of course as much part of the conduct of a suit as positive steps taken to institute or prosecute it, and if done, or agreed to be done for valuable consideration would be collusive*[52]

However, a collision is not a permanent bar to petition for divorce. Consequently, a party is free to present a fresh petition which is not collusive.

3.2 Discretionary Bars

The court has a discretion however, whether to make a decree of divorce, or not. There are some factors that guide the court and these are considered below.

Petitioner's adultery: The petitioner's adultery that has not been condoned is a discretionary bar, no matter the facts of the petition for divorce, but where the adultery has been condoned, it cannot serve as a bar unless it has been revived by a subsequent misconduct.[53]

Where a petitioner has committed adultery, he must specifically request the court to exercise its discretion in his favor. The petitioner must however, file with the Court Registry a discretionary statement setting out the full details of his adultery in order to enable the court to determine such a request.[54] However, failure to file a discretionary statement does not necessarily prevent a court from exercising its discretion[55]. Where there is a cross-petition, the court may exercise its discretion in favor of one party or both and dissolve the marriage. Also, it may refuse to exercise its discretion in favor of either or both parties.

[49] See Jeune .P in Churchward v Churchward (1895) PP 7, 31.
[50] See Noble v Noble (No 2) (1964) PP250, 257
[51] See Section 27 M.C.A 2004: Noble v Noble (No 2) (1964) PP 250.
[52] See Noble v Noble (NO 2) (1964).PP 250, 257 approved by the Court of Appeal at 261-2.
[53] See Section 28(a) Matrimonial Causes Act, Cap M7, LFN 2004.
[54] See Order XI Rule 28. Matrimonial Causes Rules 2004
[55] See Tinubu v Tinubu (1959) W.N.L.R 314, Craig v Craig (1962) 16 N.L.R, 103,

3.3 Petitioner's desertion

The court has a discretion to refuse a decree of divorce in favor of a petitioner who has willfully deserted the respondent before the commencement of the proceedings or the happening of the fact upon which the petition is based.[56]If the petitioner therefore has a good reason for deserting the other spouse, his conduct will not constitute a discretionary bar. However, no specific period is prescribed for the desertion, but desertion for a period less than the "one year" required in Section 15(2) (d) of the Decree may constitute a discretionary bar.

3.4 Conduct conducing

A court may refuse to grant a decree of divorce if the habits or conduct of the petitioner have conduced or contributed to the existence of the facts relied upon by the petitioner.[57]It is not all the conduct of the petitioner that may conduce or contribute to the fact on which the petition is based. The conduct in issue must involve some elements of misconduct such as desertion or adultery. There must be some wrongful acts or omission that supports the request for divorce.[58]

There must be a distinct causal connection between the habit or conduct complained of and the fact upon which the petition is based.[59]The conduct must be its immediate cause, it is not sufficient to show that they were connected by a series of events. Hence, the conduct complained of must have contributed substantially to the respondent's offence. For instance, on a petition by a husband based on the fact of his wife's drinking habit, a decree may be refused where the evidence shows that the husband, by his drinking habit, contributed to the wife's conduct.[60]

4. Causes of divorce

There are many factors contributing to the increasing divorce rate in Nigeria among which are; high expectations, interference from third parties, lack of trust, lack of intimacy, lack of proper communication, entering into marriage for wrong reasons, lack of proper attention to spouse owing to parental duties, premarital pregnancy and childbearing, sharing different views about finances, loss of physical attraction and the likes. In order to have a better understanding of these points, they shall be discussed briefly.

High expectations: Sometimes, one of the couples might come up with financial burdens that are beyond the couple. This is common among women who always compare their husbands with other men in terms of financial ability. When this is the case in any home, there is the likelihood that such marriage will end up in divorce because the woman will always feel insecure financially.

Interference from third parties: Marriage has been defined as the union between one man and one woman to the exclusion of all others. When couples start inviting third parties to settle marital issues, then there is the tendency that their relationship as husband and wife may be threatened especially

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[56] Section 28(b) Matrimonial Causes Act, Cap M7,LFN 2004
[57] See Section 28(c) M.C.A 2004
[58] See Hoevecker v Hoevecker (1936) 57 CLR 639, 655.
[59] See Hall v Hall (1902) 21 N.Z.L.R, 251: Trinder v Trinder (1915) 34 N.Z.L.R 78: Adams v Adams (1926) 45 N.Z.L.R 308.
[60] See Rice v Rice (1894) 15 NSWLR (D) 17.

where the third party is an in-law who is not neutral in his or her judgment. That is, where the third party makes it so obvious that he or she is in support of one of the spouses.

Lack of trust: Marriage is supposed to be built on trust, and in a situation where couples no longer trust each other, there is the tendency that such marriage will end up in divorce.

Lack of intimacy: If couples are not close enough to themselves, the relationship becomes dull and boring and over time, the marriage may end up in divorce. This is common among career women who are always attached to their work, this makes husbands to feel neglected and gradually, the love between them may start diminishing until it finally dies. It is also common among couples who live apart due to work.

Lack of proper communication: When couples find it difficult to express themselves freely, the bond of love between them will grow weak and the marriage may eventually end up in divorce if care is not taken. This could be as a result of harsh response from the other partner especially from the husband. In most cases when women do not always get friendly response from their husbands, they keep to themselves and then develop an attitude of being indifferent to whatever the husband says or does.[61]

Entering into marriage for wrong reasons: When either of the parties contract marriage for wrong reasons: For instance when someone enters into a marriage with the wrong motive that his or her spouse is financially buoyant to some extent but eventually discovers that he/she had a wrong impression about his/her spouse's financial status after the marriage had been signed, there is the likelihood that such marriage will end up in divorce.[62]

Lack of proper attention to spouses owing to parental duties: Many spouses give less attention to their spouses due to parental responsibilities thereby neglecting their spouses. In most cases, this attitude is exhibited among wives because they tend to shift their attention away from their husbands and then direct it to their children when they start having children. Men do not always like this fact, although few men may complain but majority of them do not complain but they feel hurt by this attitude. If such situation is not properly handled, the marriage may end up in divorce.

Premarital pregnancy and childbearing: Pregnancy and childbearing prior to marriage significantly increases the likelihood of future divorce. [63]

Sharing different views about finances: When couples share different views about finances, there is the likelihood that the marriage will end up in divorce. For instance, where one of the parties believes in saving up money for the future or to buy something and the other couple believes in living for today, he/she does not believe in saving for future, there will be problem in the home which may eventually lead to divorce.

Loss of physical attraction: When one of the couples loses physical attraction, this could cause problem that might eventually lead to divorce. For instance when a wife who was slim before

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[61] See www.redbookmag.com/love/ Visited on 28 February 2024
[62] See www.redbookmag.com/love/ Visited on 28 February 2024
[63] Williams H. Doherty: "How Common is Divorce and what are the Reasons? www.divorce .edu/filesuploads/lessons3 Visited on 21 February 2024

marriage now grows very fat after some years of marriage, she may no longer be appealing to her husband and this could cause problem in the home.

Insecurity is another factor that contributes to divorce by couples worldwide including Nigeria. Researchers have discovered that some personality factors expose people to more risk of divorce, and one of the major factors is feeling insecure about yourself and your self-worth. Individuals who feel insecure are more likely to become unhappy in their marriages over time and they are more likely to end up in divorce

5. Right to Custody under the Matrimonial Causes Act

Under the Matrimonial Causes Act, Section 71 makes provisions for custody of children and it establishes the welfare principle. However, under the MCA, both parties to the marriage (father and mother) have custody right over children of the marriage provided the welfare principle is considered. In the case of **Nwosu v Nwosu**, the Court of Appeal held that both parties have equal rights in matters of custody of the children of the marriage. [64] In other words, both the mother and the father have equal rights of custody over the children of the marriage but the welfare of the children is paramount in deciding who among the parties takes custody. Obaseki .J. S C buttressed this fact when he held that

where in proceedings before any court, the custody or upbringing of any minor is in question, the court in deciding the question shall regard the welfare of the minor as the first and paramount consideration and shall not take into consideration whether from any point of view the claim of the father in respect of such mother is superior to that of the mother or the claim of the mother is superior to that of the father

The Court (Obaseki J.S.C) held that running through the whole of Section 71 of the M.C.A, "is the paramount and dominant position the welfare of the child occupied, in the variety of matters to be considered before making the order"

It is very important to understand what the meaning of "welfare of the child" is, in determining the custody of the child in any divorce and custody proceedings. On the meaning and content of the term "welfare" Karibi Whyte J.S.C *said that:*

it was a composite of many factors such as emotional attachment to a particular parent, mother or father; the inadequacy of facilities such as educational, religious, or opportunities for proper upbringing, what the court deals in is the lives of human beings and ought not to be regulated by rigid formulae. All relevant factors ought to be considered and the paramount consideration being the welfare of the child[65]

In deciding what is the welfare of the child, factors that have been regarded as relevant by the courts include the degree of familiarity between the child and each of the parties respectively, the amount of affection between the child and each of the parties, the respective income and educational/social status of each of the parties, respective accommodation and environment of each of the parties, the arrangements made by the parties for the education of the children, the fact that one of the parties currently lives with a third party who is of an opposite sex who may not welcome the children of the marriage, the fact that in principle, children should not be separated but should grow up together as

[64] Nwosu v Nwosu (2012), 8 NWLR, PT 1301
[65] Nigerian Family Law: Principles and cases and statutes and commentaries. PP 89

siblings, the fact that in cases of children of tender years, custody should normally be awarded to the mother because of the bond between mother and child, except where other considerations make this undesirable[66] and the fact that one of the parties is still young, and may wish to remarry, and the child may become an impediment to that party. [67]

In the case of **Ihonde v Ihonde[68]**, Lambo .J. considered some of the above mentioned factors in awarding custody of the child of the marriage to the father. In that case, the wife/petitioner deserted the husband/respondent and the child of the marriage in April 1968 when the child was only ten months old, and the child saw the mother only once before the hearing on 30 March 1972. In awarding custody to the husband/respondent, Lambo .J. stated as follows:

It was no surprise therefore, that when the parties, their counsel, and the child appeared before me in Chambers, the child hardly recognized the petitioner as his mother-a most pathetic situation for a mother to find herself. Persistent and gentle request by me in the presence of all the parties for the child to go to his mother and kiss her were turned down and the boy clung steadfastly to his father the respondent. One could readily see from this that there is no iota of any filial affection towards the petitioner from her son…. The question now is whether it would be in the paramount interest of the child that he should be committed to the care and protection of a mother whom he had only seen once perhaps cursorily since the past four years- the mother having deserted him at the tender age of ten months

The emotional attachment of a child to a particular parent is very important in deciding the issue of custody of a child. This can be seen in the words of Lambo .J. stated above. This is so because a child who is not emotionally balanced will not be happy and this could serve as an impediment to the child's success educationally.

Another factor to be considered in deciding the welfare of a child is the opportunity of education that is available to the child. Although the education of a child is very important, the court has however considered the moral value that culture will have on the up-bringing of a child in relation to education. In **Theresa Williams v Rasheed Williams[69]**, the Supreme Court made it clear that custody of a child essentially concerns not only the control of the child but also carries with it, the necessary implications of the preservation and care of the child's person physically, mentally and morally. In other words, the education of the child should also include moral values which the child will learn in the course of his/her studies. The court granted joint custody of the child in question to both parties as against the husband's claim of custody to the child on the ground that he will enroll her in a school in London where her brothers were schooling because of the fact that he wanted them to grow up together as siblings.

According to Obaseki J.S.C, "education is in the best interest of a child only if it is in a proper environment. For a child of tender years, education outside proper environment that is, country of origin was bound to give a distorted view of life and could not in the final analysis be in the best interest of the child. It appears to be the fashion among certain classes of people to regard provision of education opportunities for children of tender years outside this country as the ultimate. Their

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[66] Oladetohun v Oladetohun, (1972) 2 UILR, 289, Tagbo v Tagbo, Afonja v Afonja, (1971) 1 UILR, 105, Williams v Williams ((1966) 1 All NLR, 36
[67] Okafor v Okafor (1976) 6 CCHCJ, 1722
[68] Ihonde v Ihonde, (1972) Unreported Suit No 32/64
[69] Williams v Williams (1966) 1 All NLR, 36

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Majebi Samuel Amune, 2025, 9(1):1-20

judgment has not yet been called into question and until then, time will tell whether what has been done is in the best interest of the child."

The court is of the view that education can only be in the best interest of a child if it is given in a Nigerian school where it will be easy for the child to learn Nigerian cultures and not in a foreign school where he/she will be taught and brought up in foreign culture. Oputa J.SC was of the opinion that an education that alienates a child from his roots, its soundness notwithstanding, is to be viewed with a suspicious eye by the court in custody cases. He said that:

A Nigerian should be trained to live in Nigeria and not to become an expatriate in his own country. According to the learned justice, a boarding school in England was not a fitting substitute to a mother's care and attention. He also added that there are periods in a girl's life when she is undergoing the slow advance to maturity when she needs her mother to discuss and answer her many questions about herself, her development, both physiological and psychological

The age and sex of a child is another factor that the court has considered in determining the welfare of a child in custody cases. In **Oyelowo v Oyelowo,**[70] the Court of Appeal had occasion to consider whether a trial judge could take the age and sex of a child into consideration whilst making an order of custody of such a child. In that case, the trial judge made the following comment while granting custody of two male children aged 10 and 9 respectively to their father, the petitioner thus:

"*As male children, their rightful and natural place is their father's home. It does not matter how long they stay away from it, they will one day long for it. I think it will be in their interest if they got familiar with the localities and environment of their father's home before it is too late for them to be regarded as part of the family of their own father. I think they should be allowed to grow there so that they may not in future be regarded as strangers there"*

The Respondent appealed on the ground that the trial judge wrongly exercised his judicial discretion in awarding custody of the children by deviating from the guidelines listed in Section 71 of the M.C.A which is the welfare principles. It was argued that in taking the ages and sex of the children into consideration, the trial judge had introduced extraneous considerations into the exercise of his discretion. The appeal was dismissed by a majority verdict. Kutiji J.C.A dissenting: In the view of Nnaemeka (as he then was) who gave the lead judgment, the lower court had based its decision on what it regarded as the paramount interest of the children. Having found that either of both parties could provide a good home for the children, the court was entitled to consider the issue of age and gender.

As a general rule however, children of tender ages are usually in the custody of their mothers.[71] This fact was explained by Oputa J (as he then was) in Phoebe **Tagbo v John Tagbo** [72]thus:

………….. As a general rule, children of tender age are usually left in the custody of their mothers. Chinwe is a girl of under- seven years. She has lived with her mother all along. There is evidence that she is very well looked after by the petitioner who has a good job, a good house, and a handsome income of just two thousand pounds per annum. All necessary arrangements for the child's education have been made by the petitioner. The child "Chinwe" does not from the father's own evidence even

[70] Oyelowo v Oyelowo, (1987) 2 NWLR PT 56
[71] Phoebe Tagbo v John Tagbo, See also Nike Olakojo v Olayinola Olakojo, Suit HOY/23/73 and Christine Ann Adams v Derek Humphrey Adams, 2 All N. L. R. 82
[72] Tagbo v Tagbo, HCECS,

know the respondent, her father. Will it not be callous and unkind to uproot this child from her familiar surroundings and from the love of a mother whom she knows and then cast her adrift unto a father who no doubt, loves her equally but whom unfortunately, she does not know and will only gradually learn to know and love? I am satisfied that the interest of the child "Chinwe" will be better served if she is left with her mother, the petitioner. I will therefore grant to the petitioner the custody of the child of the marriage.

The courts consider the welfare principle far above any other factor. For instance, in awarding custody of the only child of the marriage to the respondent in Angelina **Ijeoma Okafor v Samuel Maduke Okafor**, the court considered the welfare principle in awarding custody to the father who from the facts of the case was proved to be the cruel deserter and suspected adulterer.[73] Oputa .J (as he then was) said:

In the case before me, the respondent is definitely the guilty party. He has been proved to be the cruel deserter and suspected adulterer, but the child "Hope" knows him and loves him and has lived with him since her birth. The child was brought to court she looked well dressed and well cared for. There was a passionate scene in court when the child on being asked whether she knows the petitioner physically ran away as the petitioner approached and clung desperately unto her father. The child "Hope" does not know the petitioner and I do not see that it will be to the emotional welfare of the child to uproot her from her familiar surroundings in her father's, house for their home has been broken up and has now become a house and commit her to the charge of someone who though mother, is to her a complete stranger.

However, in spite of the fact that children of tender age are always in custody of their mothers, the courts have always considered the fact that the children should be as close as possible to their fathers as was also made clear in the case of Tagbo v Tagbo that has just been considered above. Oputa J also *stated in the case thus:*

It is therefore necessary and also in the interest of the child herself that she should also know her father. For this reason, the respondent should have the right of access to the child and I order that the child should spend her holidays alternatively with the petitioner and the respondent starting with the forthcoming Christmas holidays. The petitioner who has custody should endeavor to bring the child "Chinwe" and her father the respondent closer together so that before the Easter holidays 1973, there will be no difficulty in sending "Chinwe" to spend her holidays with her father the respondent

The issue of welfare of the children of the marriage is very important to the extent that it has even been stated in Section 57 of the MCA[74] that where there are children to a marriage that is to be dissolved by the courts, the court shall not grant the decree of divorce until it is satisfied that proper provision has been put in place for the children of the marriage. Section 57 of the M.C.A 1970 provides thus: "Where there are children of the marriage in relation to whom this section applies, the decree nisi shall not become absolute unless the court by order has declared

(a) That it is satisfied that proper arrangement in all the circumstances has been made for the welfare and where appropriate, the advancement and education of those children, or

[73] Okafor v Okafor (1976) 6, CCHCJ 1722
[74] See Section 57 Matrimonial Causes Act, Cap M7, LFN 2004

(b) That there are such circumstances that the decree nisi should become absolute notwithstanding that the court is not satisfied that such arrangements have been made
(2) In this section, children of the marriage in relation to whom this section applies' means
(a) The children of the marriage who are under the age of sixteen years at the date of decree nisi, and
(b) Any children of the marriage in relation to whom the court has in pursuance of the next succeeding sub-section ordered that this section shall apply.[75]

In other words, the decree nisi shall not be made absolute if the court is not satisfied that proper arrangement has been made for the welfare of the children of the marriage.

In a situation where one of the parties is very anxious for the care and control of the children and the other party is proposing care and control to a third party, in principle, care and control is usually given to the party who wants to exercise care and control over the children of the marriage.

6. Suggestions and Conclusions

The welfare principle has been the main consideration for awarding custody to either parent in divorce proceedings. It will be an encouraging idea if the consent of the children in question is sought and considered in a case where the children are old enough to make the choice of which of the parents they would prefer to live with. Most often than not, the courts have always given consideration to the welfare of the children in question, but the children's consent should be considered also where they are old enough to make a choice, that way, their happiness and well-being will also be secure.
Female children should always be given special consideration in child custody cases in divorce proceedings. It is an acceptable fact that children should not be uprooted from the environment they are familiar with according to Oputa .J[76]it will be a good idea if the safety of the child is guaranteed by ensuring that the child is not sexually abused as she grows up in sole custody of the father. There have been cases where father has been found sleeping with his daughter where he lives with her alone upon divorce from his wife (the child's mother).[77]The court can get this achieved by utilizing services of the welfare officers.

Section 71 (2) of the M.C.A empowers the courts to adjourn divorce and custody proceedings until a report has been obtained from a welfare officer on such matters relevant to the proceedings as the court considers desirable and such report may thereafter be received in evidence. In **Oladetohun v Oladetohun,[78]** Adefarasin .J. applying this provision said that the primary consideration was the welfare of the child and what was best for its upbringing. He stated further thus: "The matter of custody in the facts of this case is such an intricate one that I consider it should not be rushed…… I think it is desirable that the court should be assisted by the investigations and advice of a welfare officer as provided for under Section 71 (2) of the Matrimonial Causes Decree 1970"

[75] See Section 57 Matrimonial Causes Act, Cap M7, LFN 2004
[76] See Okafor v Okafor (1976) 6 CCHCJ 1722, 1927
[77] A similar incident occurred in an area called Agege in Lagos in March 2007 where a father was beating up his daughter in the early hours of a day. The daughter confessed to neighbors who came to her rescue that her father has been sleeping with right from her very tender age.
[78] Oladetohun v Oladetohun (1972) 2 U.I.L.R 289

From the above provisions of the M.C.A, it is desirable that custody issues should not be done in haste. It requires enough time that will enable the court to be able to find out more information that will be useful to it in awarding custody of the children of a marriage.

Spouses are also enjoined to always find a way of resolving issues amicably among themselves. They should always try to discuss issues that give them concern among themselves. In most cases of marriage breakdown, communication breakdown had always been the major problem between parties. When they are bold enough to discuss issues that are of major concern to them, their marriage will be salvaged from breaking down irretrievably. In other words, the line of communication must be kept open between spouses and each person must be accessible by the other party.

However, where parties are not bold enough to discuss issues bothering them, it will be appropriate if they can resort to writing them down and exchanging it with their spouses. That way, many problems that could lead to the breakdown of the marriage could be resolved.

Spouses should also give consideration to the cost of good marital therapy before considering filling a divorce suit in court. They should always consider how much divorce suit will cost them financially, emotionally, psychologically, and even the stigma it will bring on their children both presently and in the nearest future. Most parent always discourage relationship with anyone who comes from a broken home, and this will have a long term impact on young people that find themselves in such situations both emotionally and psychologically.

According to a clergy man named Andy Bachman[79]

Children often bear the scars and burdens of divorce long after parents have moved on and started over. Short term damage of divorce on children is obvious, but it's when children become adults that you really see the cost: difficulty facing mature relationships of their own, difficulty raising children of their own….

Elizabeth Lesser[80] suggested that spouses should not consider divorce as solution to their marital issues until they have done enough honest self- examination on themselves. According to her, most marriages are not black and white, so when things go wrong and it deteriorates, both parties must have contributed mightily to the problem. In other words, the point that she is emphasizing is the fact that both parties can work the marriage out if only they can tolerate themselves.

Spouses should not rush into divorce always whenever there is a challenge in the marriage. When parties go for divorce as a solution to their marital challenges, it is like trading of a particular problem for another one.

Mutual respect: Spouses should endeavor to establish their marriage on the principle of mutual respect for each other. Each partner should ensure that the rights of the other party are not intentionally violated. This also helps reduce incidences of disagreement between couples which may eventually lead to the irretrievable breakdown of the marriage.

Spouses should always consider the fact that their marriage has concealed a lot of their personal defect from public view.[81] Marriage truly helps in concealing a lot of weakness of spouses that would

[79] See www.redbookmag.com/love/ Visited on 21 February 2024
[80] See www.redbookmag.com/love/sex Visited on 21 February 2024
[81] See www.redbookmag.com/love/ Visited on 1 March 2024

ordinarily have been visible to members of the public at large. In other words, it makes many people in the society accord more respect to each of the spouses than they would have ordinarily earned were they not married.

Helen Fisher, a scholar at Rutgers University once said ….

Do not go into divorce until you can vividly imagine your partner kissing somebody else, and you do not care. According to him, if you can imagine your partner being in a romantic relationship with another person and you are not bothered at all, that is when you can be really sure that you are due for divorce. The crucial question now is "how many divorced spouses really gave a thought to this very idea before making their decision to divorce?

Patience: This is required a lot in order to sustain a marriage. Although it may not be easy to exercise patience in certain circumstances, but when one is determined not to be provoked to the extent of reacting out of anger, patience will definitely come to play.[82] Truthfulness and transparency is another factor that can help preserve marital relationship. When spouses are honest to themselves, then they build a trust relationship which also strengthens marital relationship.

It is also suggested that the role of each spouse should be clearly spelt out in order to avoid constant frictions between the parties, the lesser the friction between spouses, the lesser the threat or possibility of separation or divorce.

It is also suggested that spouses should plan the family budget and finances together in order to avoid disagreement that may emanate from finance issues. This is because it has been observed that disagreement bordering on finance issues can easily break a marriage down irretrievably.

It is also suggested that spouses should try and spell out the number of children they intend to have in the marriage, and each party must abide by agreement reached on the number of children to have. The issue of having children beyond the numbers planned by spouses had caused breakdown of some marriages. This is because one of the spouses felt over- burdened financially by having additional children beyond the planned number.

It is suggested that above all, spouses should allow God lead and guide them in their marital relationship. When God is established as the head of the family, it helps the parties to know and understand God's plans for them and also what is required of each of them to do in order to build the relationship stronger.

Preventing divorce means giving the marriage institution more hope. It also gives the children and their parent the opportunity to live together as a family for life. Prevention of divorce also saves the society from problems created by children from broken homes. It is better for spouses to determine not to go into divorce and save themselves the pains associated with the issue of custody of the children of the marriage. This is because it is not in all cases that divorce brings solution to marital challenges. In most cases, divorce even compounds.

In conclusion, since custody of children of a marriage is very important in divorce proceedings, the courts should always consider the idea of seeking consent of the children involved where they are old enough to make choice of which of the parents they would prefer to live with. This way, the children will be able to live a happier life than a situation where they are just given over to either

[82] See www.redbookmag.com/love/ Visited on 1 March 2024

parent based on the facts of the case bearing in mind the welfare principle. Spouses should also try to accommodate and tolerate themselves in view of the fact that their decision will have a life-long impact not only on the children of the marriage, but also on the family and the society at large.