

MATRIMONIAL CAUSES ACT, 1971, (ACT 367)

An Act to provide for matrimonial causes and for other matters connected therewith.

PART 1- DIVORCE

PART 2- OTHER MATRIMONIAL CAUSES

PART 3- FINANCIAL PROVISION, CHILD CUSTODY, OTHER RELIEF

PART 4- JURISDICTION

PART 5- MISCELLANEOUS

Part 1- Divorce

- 1) Any party to a marriage may present a petition to a court for a divorce and the sole ground for granting a divorce will be that the marriage has broken down beyond reconciliation.
- 2) To prove that a marriage has broken down irreparably, a party has to prove at least one of a number of facts including desertion, adultery, unreasonable behaviour not supportive of marital consortium, inability to resolve differences despite diligent efforts and a period of 2-5 years of the parties not living together and within which the circumstances lead the court to determine that the marriage has broken down irreparably.
- 3) It is the preserve of the court to decide whether the marriage has broken down beyond reconciliation. It is also the duty of the court to promote reconciliation if on hearing the facts of the case, it is so minded to do so.
- 4) A petition for divorce is not to be presented to the court within the first 2 years of a marriage unless on special leave of the court.

Part 2 – Other Matrimonial Causes

- 1) Annulment¹ of a marriage- A petition can be presented to the court for a marriage to be declared a nullity for reasons that the marriage is void² or voidable³. A marriage may be declared a nullity or may be invalidated for a number of reasons including;
 - That one party deliberately refuses to consummate the marriage.
 - That at the time of the marriage a party was of unsound mind or has recurrent attacks of insanity that the other party was unaware of.
 - That unknown to the husband, the wife was pregnant by another man at the time of the marriage.

¹ Annulment means to cancel, and it differs from divorce because the marriage is deemed not to be legally valid in the first place.

² Void is to say, the marriage is not valid.

³ Voidable is to say, a party can choose to invalidate the marriage if they so choose.

- That unknown to the other party to the marriage, one of the parties to the marriage was suffering from an incurable venereal disease that is communicable.
- 2) A marriage that is void is void even though no court has declared it a nullity.
 - 3) A marriage may be dissolved on the presumption of death, if a party can show that for 7 years or more, the other party to the marriage has been continually absent from him or her and he or she has no valid reason to believe that the spouse has been living within that period.
 - 4) Any party to a marriage can petition a court for maintenance on grounds that the spouse has deliberately neglected to provide or to make reasonable contribution towards the upkeep of the spouse, a child or the household; except that a wife will not be said to have deliberately neglected the husband unless she is reasonably expected in all the circumstances of the case to provide or contribute to the upkeep of her husband.

Part 3- Financial Provision, Child Custody and Other Relief

- 1) Financial provision or maintenance may be ordered to be paid to a spouse either during the pendency of a matrimonial action or at the end. The court will not do this without enquiring into the circumstances and standard of living of the parties to a marriage.
- 2) Orders for financial provision expire on the remarrying of the one who benefits from the order or the death of the one who benefits or against whom the order is made.
- 3) Orders for the care, custody and maintenance of a child will cease automatically when the child reaches the age of 21 years unless other circumstances dictate otherwise.
- 4) A court will settle property rights between parties to a matrimonial action by ordering transfers of property or by ordering monetary payments either in gross or in instalments.
- 5) The court may make an order for custody and reasonable access to any person for the benefit of a child of a household.
- 6) The court may make restraining orders to prevent a party from leaving the jurisdiction, or removing a child from the jurisdiction, or from interfering with or harming the other party or a child of the household for as long as it thinks fit or from disposing of property that may be in dispute.
- 7) A court may also order a party to return a child to the jurisdiction.

Part 4- Jurisdiction (not included)

Part 5- Miscellaneous

- Gifts made to a spouse in the will of the other spouse become invalid when the marriage between the parties is dissolved or annulled unless the will specifically states otherwise.
- **This law applies to all monogamous marriages. However, a party to a marriage which is not monogamous can apply to the court under this law for any of the reliefs provided under this law.**