

A LEGAL APPRAISAL OF THE PRACTICE OF DOUBLE-DECKER MARRIAGE IN NIGERIA*

Abstract

The institution of marriage is recognised, respected and held to be sacred and vital to human existence in Africa and the world over. Marriage is governed by both legislation and rules of customs especially in African setting and therefore can be contracted in many forms. It has become a common practice in Nigeria for parties who intend to contract a statutory marriage to marry first under customary law before the solemnization of the statutory marriage. This practice may be explained by the fact that though Western civilization and culture have permeated Nigerian society, most people even the most sophisticated understandably regard themselves as bound by the customary law of their place of origin. The Marriage Act has given validity to this practice by enabling couple who are married under customary law to marry each other under the statute. Similarly, customary law does not frown at the subsequent marriage under the Act after the initial customary marriage. The paper examines the position of such marriage and the question of whether the latter marriage (statutory marriage) superseded the former (customary marriage) or the former is converted to the later. The paper finds that lacunae exist in the Marriage Act as to the implication of such marriage. The study discovers the situation of non-issuance of marriage certificate and non-registration of customary marriages in Nigeria. The result is that couples who contract such marriage remain unprotected. To address this seemingly loophole, the paper recommends among other things, the amendment of the Marriage Act to clarify the status of the earlier customary marriage between the same couple who subsequently contract a marriage under the Act, provision for a more substantial formality such as marriage certificate after a customary marriage and registration of all marriages celebrated in Nigeria. This way, couples will be better protected and gain better understanding of the associated problems of such marriage in Nigeria.

Keywords: Double-Decker Marriage, Conversion theory, Co-existence theory, Marriage Act Issues, Problems, Solutions of Double-Decker Marriage.

1. Introduction

In every society, marriage is considered imperative because it is the foundation upon which the society is founded. The practice of marriage cuts across jurisdictions, race and tribes and the definition to be given to the concept will depend very much on the social and religious beliefs of a particular society. Nwogugu defined marriage as; ‘marriage is a universal institution which is recognised and respected all over the world as a social institution, marriage is founded on and governed by the social and religious norms of society’.¹ Basically, in Nigeria, the two forms of marriage a couple contracts are customary law marriage and statutory marriage. The word ‘Double-Decker’ is a coinage of Margaret Onokah which she used to describe a type of marriage that involves the celebration by the same couple, of a marriage under one system and their subsequent marriage under another system.² Double-Decker marriage is therefore a chameleonic type of marriage which has the flavour and characteristics of both the customary and statutory marriage. That is; contraction of a statutory law marriage by a couple who has previously contracted a customary law marriage. Double-Decker marriage is nowhere defined in the Marriage Act. The Act³ merely describes the nature of double-decker marriage that a couple with previous customary law marriage subsequently contract statutory law marriage and the subsequent statutory law marriage can only be between the same parties and the customary law marriage is every bit as valid and legal as a statutory marriage.

There are two main theories in relation to the double-decker marriage. One theory is the ‘conversion theory’ and the other is the ‘co-existence theory’. The conversion theory holds that the subsequent statutory marriage converts and supersedes the earlier customary marriage contracted by the parties such that the couple become exclusively subject to the provisions of the Marriage Act.⁴ Proponents of conversion insist that the two types of marriage are so different that they cannot easily accommodate each other and that both marriages convert the earlier one. A decree of dissolution of the statutory marriage is pronounced in the High court, which has exclusive original jurisdiction to dissolve statutory marriage⁵; the customary marriage is equally automatically dissolved. Furthermore, the argument of this theory is that, once couples after their customary marriage undergo a statutory marriage, the former customary marriage automatically converts its legality to the latter statutory marriage, therefore, the two marriages do not co-exist, but rather the customary marriage merges into the statutory marriage and loses all its characteristics, legal incidents and consequences. This was the decision of the court in the case of *Odive v Nweke Obor & Anor*⁶. To the co-existence theory, both marriages co-exist. The argument of the co-existence theorists was that, both the first customary marriage and the latter statutory marriage co-exist and both marriages incidents are legal and valid.⁷ And to terminate such marriage, it has to be dissolved differently in different courts. Accordingly, the Magistrate Courts would have jurisdiction to dissolve only the initial customary law marriage, while the subsequent Act or statutory marriage is to be dissolved by the High Court. This is the position of the court in *Afonne v Afonne*⁸ where the court held that; where two legally recognized marriages are involved, the party seeking dissolution and a decree should clearly specify which marriage or marriages he or she wants dissolved. Thus, the dissolution of the Marriage Act could not operate as *ipso facto* dissolution of the customary marriage.

A possible third theory is of the view that the subsequent statutory marriage is of no legal effect, meaning that the customary marriage supersedes statutory marriage. This third theory is the Abeyance school of thought. To this end, we reason, that since customary law is generally not codified once a statutory marriage is contracted after the customary one; the former operates in abeyance until the statutory

*By Nwamaka Adaora IGUH, PhD, Reader and Head, Department of Private and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria, Email: zinachidi2014@gmail.com; and

*Chinonso Angela MADUAGWU, LLB, LLM Candidate, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria, Email: angelasplashie@gmail.com

¹EI Nwogugu, *Family Law in Nigeria* (3rd Edition, Ibadan, Heinemann Educational Books Nig Ltd, 1990) p.198

²MC Onokah, *Family Law* (1st Edition, Ibadan, Spectrum Books Limited, 2003) p.143

³Marriage Act CAP M6 Laws of the federal Republic of Nigeria, 2004 section 33(1)

⁴MP Furnston, ‘Polygamy and the Wind of Change’ (1961), *International & Comparative Law Quarterly*, Vol 10(1), p.180-186

⁵Matrimonial Causes Act CAP M7 Laws of Federation of Nigeria, 2004 section 2(1)

⁶(1973) E.C.S.N.L.R., 733

⁷n1

⁸(1975) E.C.S.N.L.R 159 at pp.168-169

marriage is dissolved.⁹ Thus, the effect is that without dissolving the customary law marriage, after the statutory one, the couples remain married to each other. It seems from the above expressed theory, one can say is in line with practice because if a husband does not ask for a refund of the bride price he paid, the family of the wife would make all efforts to see that the bride price is returned. This is so despite the fact that the marriage between the parties has been dissolved under the statute.

2. Legal Framework for Marriage in Nigeria

Constitution of the Federal Republic of Nigeria 1999 (as amended): the constitution is the supreme law of the land of the Federal Republic of Nigeria. The constitution is the ground norm which has binding force on all authorities which also acts of individuals and parliaments must not contravene. Where there is an inconsistency between the constitution and any law, such other law to the extent of inconsistency is null and void and of no effect whatsoever.¹⁰ The constitution of the Federal Republic of Nigeria provides that 'every person shall be entitled to assembly freely and to associate with other persons, and in particular, he may form or belong to any political party, trade union or any other persons, and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interests'.¹¹ Relying as it were on the above law, marriage is a kind of association and there should be absolute freedom for all persons who wish to indulge in such union or association whether double-decker, statutory or customary marriage without restriction. Marriage is a fundamental domestic union, a union of one man and one woman or when vitiated, a union of two or more persons, with love and creation of family its benchmark.¹² Sequel to the above consideration, the right to form association is very fundamental to the very existence of man.¹³ It is a natural right which derives directly from the natural propensity of man to live and act in common and co-operation with his fellows and as such, the right is obviously inviolable and alienable.¹⁴ The constitution states *inter alia*;

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person, be subjected either expressly by, or in the practical application of any law enforced in Nigeria or any executive or administrative action of government, for disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, place of origin, sex, religious or political opinions are not made subject to.¹⁵

This is a right to freedom from discrimination. It is unfortunate that some traditional and cultural acceptance, many of which are endemic in Nigerian marriages. A notable instance is Widowhood rights; the Igbo custom does not permit a woman to dispose of any property she acquired during the marriage without the consent of her husband. The disinheritance of females has been given effect in cases like *Nzekwu v Nzekwu*¹⁶ but there is a paradigm shift in the decisions of *Mojekwu v Ejikeme*¹⁷ where it was now expressly stated that females (daughters and wives) can inherit, hold and deal with real property. The constitution vests in the federal government the exclusive powers to make laws on matrimonial causes. It provides that the National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in Part 1 of the second schedule.¹⁸ It further provides that the National Assembly to make laws for peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List shall save as otherwise provided in the Constitution, be to the exclusion of houses of assembly of states.¹⁹ Item 61, part 1 of the second schedule of the Constitution also confers the National Assembly exclusive powers for the formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto. The Constitution provides that the evolution and promotion of family is encouraged.²⁰

Marriage Act: The Marriage Act is the primary legislation that provides for the celebration of marriage in Nigeria. The marriage Act regulates only statutory marriages and not customary marriages. It is pertinent to note that statutory marriage is different from a church marriage. The fact that a marriage ceremony is celebrated in a church does not necessarily mean that it was contracted under the Act. For a church marriage to be recognized as statutorily, it must comply with the requirements of the Act.²¹ Statutory marriage or otherwise called Court marriage in Nigeria is a union of a man and woman as defined by the Marriage Act must fully comply with other requirements of the law for any reason²², such a marriage shall become invalid unless the reasons specially stated in the Act.²³ Furthermore, any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be capable, during the continuance of such marriage, of contracting a valid marriage under customary law; but, save as aforesaid, nothing in this Act contained shall be affect the validity of any marriage contracted under or in accordance with any customary law, or in any manner apply to marriages so contracted.²⁴ Whoever breach the above provision shall be liable to imprisonment for five years.²⁵ These provisions expressly allow the validity of both the customary marriage earlier conducted by the parties and the statutory marriage subsequently contracted by the same couple. In other words, there is an acceptable order in the practice of double-decker marriage. The customary

⁹CE Ochem & CT Emejuru, 'Dissolution of Double-Decker Marriage under Nigeria Law' (2017), *Journal of Property and Contemporary Law*, vol 5(1), P.277

¹⁰CFRN CAP C39 LFN, 1999 s.4(5)

¹¹CFRN CAP C39 LFN, s.40

¹²KM Mowoe, *Constitutional Law in Nigeria* (3rd Edition, Lagos, Malthouse Press 2008) p. 413-479

¹³*Ibid*

¹⁴*Ibid*

¹⁵CFRN CAP C 39 LFN, 1999 (as amended) s.42

¹⁶(1997) 7 NWLR (pt 283) CA

¹⁷(2014) 9 NWLR (pt 1412) 293

¹⁸CFRN CAP C39 LFN, 1999 (as amended) s.4(2)

¹⁹*Ibid*, s.4(3)

²⁰*Ibid*, s.17(3)(h)

²¹Marriage Act CAP M6 Laws of the Federation of Nigeria, 2004 section 6-30

²²*Ibid*, s.33(1)

²³*Ibid*, s.32(2)(a)-(d) and s.33(3)

²⁴*Ibid*, s.35

²⁵*Ibid*, s.47

marriage must precede that statutory marriage. The proceedings for the two marriages must not be held simultaneously or about the same time or thereafter.

Matrimonial Causes Act: this Act has been the primary piece of the legislation regulating the process of statutory dissolution of marriage in Nigeria till date. The Act vests exclusive jurisdiction of matrimonial causes in the court. The Act further provides that jurisdiction to hear and determine matrimonial causes under the Act is the high court of any state in Nigeria²⁶, provided that the petitioner is domicile in Nigeria for three years prior the proceeding.²⁷ This procedure overrides the common law principle where a woman takes the domicile of her husband. It provides instances where a marriage could become void or voidable under Nigerian law.²⁸ Such instances may include where the consent of one of the parties to the marriage was obtained by duress or fraud, or a party is mistaken as to the identity of the other party, or the nature of the ceremony performed. The Matrimonial Causes Act provides for reliefs sought by petitioner in matrimonial actions in Nigeria to include; dissolution of marriage, nullity of marriage, judicial separation, jactitation of marriage and restitution of conjugal rights.²⁹ However, the most commonly relief sought by petitioner in the matrimonial actions is dissolution of marriage. A petition under the Act by a party to a marriage may be presented by either party to the marriage upon the ground that the marriage has broken down irretrievably.³⁰ The Act encourages parties to embrace reconciliation when filing for dissolution of marriage especially on the ground of adultery, living apart and desertion.³¹ According to Ifemeje, Matrimonial Causes Act has failed to draw conclusion between reconciliation and conciliation.³² Therefore, there is need for the Act to draw a distinction between reconciliation and conciliation. It is pertinent to note that Matrimonial Causes Act does not have explicit provisions for the dissolution of Customary Marriage.

Matrimonial Causes Rule: the Matrimonial Causes Rules are the rules that dictate the procedure for the matrimonial proceedings in the court. It is the subsidiary legislation consisting of the procedural rules governing the resolution of matrimonial disputes in Nigeria.³³ The procedural steps to be adopted by the petitioner and respondent to a petition must comply with the laid down rules stipulated in the matrimonial causes rule.³⁴ Failure to comply with the provisions of these rules may be inimical to the proceedings while in some instances it will only amount to an irregularity.

Evidence Act: according to Evidence Act;³⁵ there is a presumption as to the existence of a marriage, where a man and a woman are living together (cohabiting), it can easily be presumed that they are living together as husband and wife. Similarly, where the man and the woman went through a regular ceremony of marriage under the Act or customary law, their marriage is presumed to be valid. Statutory marriage to be dissolved by the High Court requires the spouses to give or show in court either oral (testimony) evidence, documentary (best evidence rule) evidence, real (material) evidence, electronically generated or stored evidence to prove their case. The Evidence Act makes provisions for facts which does not need to be proved by evidence in courts.³⁶ However, it denies customary law the same status. By virtue of Evidence Act two methods of proving customary law is by giving evidence to establish it and by judicial notice.³⁷ The law permits the opinion of persons who are specially skilled in the relevant native law and custom.³⁸

Criminal Code Act: most times people mistake double-decker marriage for specie of marriage that gives the man the right to contract statutory and customary marriage to several wives. This is a misconception. The Criminal Code Act states thus; ‘any person who, having a husband or wife living, marries in any case in which such marriage is void because of its taking place during the life of such husband or wife is guilty of a felony and is liable to imprisonment for seven years.³⁹ So when a husband while still in his first marriage under the Act subsists marries a second wife, is a criminal act and he is liable to seven years imprisonment under the Act.

International Instruments: the concept and institution of marriage as a civil right enjoys international laws protection. The Universal Declaration of Human Rights (UDHR) provides as follows ‘men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during the marriage and its dissolution’.⁴⁰ Similarly, the international covenant on Economic, Social and Cultural Rights (ICESCR) provides for the right to marriage⁴¹ and thus to the establishment of family even in stronger words, thus; the widest possible protection and assistance should be accorded to the family.

3. Legal Issues of Double-Decker Marriage in Nigeria

The Lacunae created by the Silence of Section 33(1) of the Marriage Act: this section states; ‘No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had.’ A careful analysis of the above provision, the Marriage Act recognises the two marriages under two different system and is possible for the couple to perform the two in this order; customary law marriage and

²⁶Matrimonial Causes Act CAP M7 Laws of Federation of Nigeria, 2010 section 2(1)

²⁷*Ibid*, s.2(3) and s.7

²⁸*Ibid*, s.3(1)(a)-(e) and s.5

²⁹*Ibid*, s.15(2)(a)-(h)

³⁰*Ibid*, s.15(1)

³¹*Ibid*, s.11-14

³²SC Ifemeje, *Contemporary Issues in Nigerian Family Law* (1st Ed, Enugu, Nolix Educational Publishers 2008) p.115

³³Nasiru Tijani, *Matrimonial Causes in Nigeria: Law and Practice* (Lagos, Renaissance Law Publishers LTD, 2007) p.111

³⁴Matrimonial Causes Rule CAP 220 Laws of Federation, 2004 Order v Rule 1-6

³⁵Evidence Act CAP E14 Laws of Federation of Nigeria, 2011 section 166

³⁶*Ibid*, s.122

³⁷*Ibid*, s.16(1)

³⁸*Ibid*, s.68, 70, 73

³⁹Criminal Code Act CAP C38 Laws of Federation of Nigeria, 2004 section 370

⁴⁰UDHR United Nation General Assembly: New York (1948), article 16

⁴¹ICESCR 993 UNTS 3, 1966 article 10(1)

thereafter statutory law marriage but the law is silent on the implication of contracting the two types of marriages. The law is silent on whether the latter marriage (statutory marriage) superseded the former (customary marriage) or the former is converted to the latter. A controversy surrounds double-decker marriage which is seen in the conversion and co-existence theory. A judicial interpretation on the silence of the law is seen in the decided case of *Ohochukwu v Ohochukwu*⁴² where the court decide that two marriages co-exist and a dissolution of English marriage is dissolved by the judge and that of the Nigeria marriage dissolution to be handled separately possibly in Nigeria. So, the Ohochukwu were still validly and legally married even as at the time of the dissolution of the English marriage. Similarly, in the Nigerian case of *Odivo v Nweke Obor & Anor*,⁴³ the lacunae created by the silence of the law are left unsettled and unresolved.

The Status and Property Acquired during the Subsistence of the Marriage: since the law is silence on the implication of such marriage, the status and property acquired during the subsistence of the marriage is questioned. If one relied on the two marriages co-existence, then the wife is at disadvantage position to her husband under the customary law marriage. Again, if customary law marriage is converted into the statutory law marriage, the wife being at disadvantaged position under customary law does not arise as she will automatically rely on her statutory law marriage. Furthermore, in the case of *Toyin Arajulu v James Monday*⁴⁴, the issue in context was on determination on the joint or exclusive ownership of the property within the content of the previous martial relationship. The court analysed the provisions of the Married Women Property Law of Oyo State⁴⁵ drawing a distinction between property acquired before marriage and that acquired during a marriage and the court states; denying the ownership of title acquired before marriage would be repugnant to natural justice, equity and good conscience. Furthermore, the constitution of Nigeria makes provision for every citizen the rights to own properties and to be protected from all forms of discrimination on account of sex, religion.⁴⁶The above raised issue of status and property acquired during the subsistence of the marriage is a mirage despite the provisions of the law and judicial intervention, marriage under customary law leave a woman at a disadvantage position.

Termination of Marriage: that is the incompatibility between what terminates marriage under the Act and what terminates same under the customary law. For instance, in adultery and intolerability is a fact evidencing the irretrievable breakdown of marriage under the Act⁴⁷ such is only a ground for divorce available exclusively to the couple under the statutory law marriage whereas in the customary law marriage system, a wife has no right of action against the husband on ground of adultery. A husband could divorce his wife under customary law by simply throwing out his wife's cooking utensils and personal items, thereafter the wife packs up her belongings and return to her parents. Another mode of dissolving a marriage is for the man to personally return his wife to her parents. This is the decision of the court in *Okpanum v Okpanum*.⁴⁸ Relying on the theories is an action fully engulfed in controversy. To the co-existence theorist, termination of such marriage be dissolved differently in different courts and the conversion theorist avers such marriage termination is by High Court which has exclusive jurisdiction to dissolve the statutory marriages.⁴⁹ This is the decision of the courts in the following cases of *Afonne v Afonne*⁵⁰ and *Teriba v Teriba & Rickett*⁵¹. Termination of double-decker is not a straightforward thing, and the above raised issue remains unsettled.

The Non-Recognition of Double-Decker Marriage as a Class of Marriage under any Nigerian Law: there is no extant Nigerian law that recognizes double-decker marriage as a class of marriage in Nigeria. There are however provisions of the Marriage Act that gave validity to double-decker marriage.⁵²In other words, the Marriage Act only recognises the two marriages under different system.

The Non-Issuance of Marriage Certificate and Non-Registration of Customary Marriage in Nigeria: the non-issuance of marriage certificate and non-registration of customary marriage is another identified issue. The law permit that marriages can be celebrated in the marriage registry before the Registrar after the parties to the intended marriage have given notice and obtained the registrar's certificate⁵³ and the registrar must be satisfied with the following factors listed in the Act⁵⁴ before the registrar issues his certificate. A statutory marriage may be proved by a production of certificate filed in the office of Registrar of any district and a certified copy of such entry.⁵⁵ The payment of bride price only serves as a legal validation of a customary law marriage.⁵⁶ These issues should be addressed and a couple who has gone through both type of marriage (customary marriage and then the statutory marriage) should simultaneously fulfil the requirements for registering their marriages as either statutory or customary marriage. The law should require couple to choose one form or other at the time of registration, after the marriage officers have explained the implications of both choices.

4. Problems of Double-Decker Marriage in Nigeria

Dualism in Marriage and Marriage Procedure in Nigeria: double-decker marriage creates a lot of practical problems leading to rather absurd situation. Dualism in marriage is a common way to describe the nature of double-decker marriages; the union of two marriage ceremonies by a man and a woman (statutory marriage and a customary marriage); becoming husband and wife under both native laws

⁴²(1960) 1 ALL E.R 253

⁴³(1973) E.C.S.N.L.R 733

⁴⁴(unreported) Suit No: 1/169/2015 delivered 28/2/2019 at High Court of Justice Court 1

⁴⁵Married Women Property Law of Oyo State CAP 83 Laws of Oyo State, Section 17, 20 and 35

⁴⁶CFRN CAP C39 LFN, 1999 (as amended) s.43

⁴⁷ Matrimonial Causes Act CAP M7 Laws of Federation of Nigeria, 2010 section 15(1)

⁴⁸ (1972) 2 E.C.S.N.L.R at p.581

⁴⁹MCA CAP M7 LFN, 2010 s.2(1)

⁵⁰Afonne v Afonne (Supra)

⁵¹ (1969) (unreported) Ibadan High Court 38

⁵²Marriage Act CAP M6 Laws of Federation of Nigeria, 2004 section 33, 35, 47

⁵³*Ibid*, section 27

⁵⁴*Ibid*, section 11 (1)

⁵⁵*Ibid*, section 32

⁵⁶n1 at 56-58

and the Act.⁵⁷ Double-decker marriage also involves dual and rigorous marriage procedure in the celebration of the marriage. The husband will have to follow the customs and tradition of the wife⁵⁸ and thereafter the laid down procedure laid in the Act.⁵⁹

Divergence of Views: different people hold different view about this type of marriage and have still not agreed on just one view. Some have argued that the latter Act marriage had the effect of converting the customary marriage into statutory marriage. It has also been argued by others that it created the statutory marriage which continued alongside with the existing customary marriage. In fact two theories arose due to these diverging views of the people and these are the conversion and the co-existence theories. Furthermore, according to the investigation carried out by Margaret Onokah, of the 210 double-decker married couples, 14.2% (30) believe that the dual rule applies to their double-decker marriages; 33.8% (71) of them believe that statutory marriage rules apply to the double-decker marriages, while a majority of 51.9% (109) believe that customary law rules override the rules of statutory marriage.⁶⁰ This will continue to create problem among couples not sure of what to follow until a new marriage law which combines the effects of both Act and customary law marriage emerges.

5. Benefits of Double-Decker Marriage in Nigeria

Aside the legal issues and problems of double-decker marriage, the marriage enjoys some benefits such as social, economic and judicial benefits.⁶¹

Social Benefits of Double-Decker Marriage include;

Peace and longevity of marriage relationship from the day the couples marries until the couples are truly and honestly satisfied with their lives or during divorce and after divorce. There is also the preservation of Custom and Tradition and as such the appropriate benefits accruing from both statutory and customary marriage. This in turn continues to water the soil of double-decker marriage notwithstanding the associated issues and problems.

Economic Benefits of Double-Decker Marriage include;

It is a source of Revenue Generation through the documentation and issuance of certificate. Statutory marriage gives certificate to couple at a certain amount paid before the issuance of the certificate.⁶² It enhances Stability in Gross Product Level of the Country as double-decker marriage enjoys peace and longevity; and where there is stable home, there would be stable economic activities of women which will ultimately in one way or the other contribute to the overall economic growth of the country.

Judicial Benefits of Double-Decker Marriage includes;

It has led to development of case law in Nigeria through the cases that have risen up from problems of contracting such marriage and validity of the marriage.

Family Benefits such as consortium, joint foster care, adoption rights, rights to a portion of jointly owned property upon divorce and many other family benefits.

6. Conclusion and Recommendations

Marriage is universal, so it cuts across Nigeria and other countries of the world. Marriage in Nigeria could be statutory or customary marriage. A customary marriage is valid. A statutory marriage is also valid. Most people in Nigeria do both, which amounts to stacking one marriage on top of another, thus the 'double-decker' terminology. The reason, being on the value Nigerians placed on their cultures and tradition. Those who do not believe so are scared of being different. It is however also believed that only statutory marriages are legal and give security. This brings about the decision to get married under both systems. Irrespective of the reasons why people engage in double-decker marriage, Nigerians have failed to have a clear understanding of the legal issues and problems such marriages pose to them. The legal issues involved in double-decker marriage in Nigeria are enormous. Amongst such issues are; the controversy among the theorist, the silence of the Marriage Act on the subsequent marriage under the Act after the customary marriage, the non-Nigerian law recognition of double-decker marriage as a class of marriage under any Nigerian law, the incapability between what terminates marriage under the Act and what terminates same under the customary law, the status and property acquired in subsistence of the marriage and the non-codification of customary law marriage. Despite all the issues and problems associated with double-decker, there are still some uniqueness and importance that it possesses that still make couple's contract it not minding the problems that can follow. Double-Decker marriage is therefore a lawful union of parties built on the celebration of two different marriages of different systems by the same parties. The intention of the couple is to be bound by the rules governing each marriage and not otherwise. Similarly, the intention of the law makers is not to create confusion within the institution of marriage but rather to ensure maximum protection of the rights of the parties to the institution of marriage. However, due to the seemingly irreconcilable contentions and other problems associated with double-decker marriages in Nigeria, the following recommendations are proffered.

Amendment of Marriage Act

In order to clear controversies associated with double-decker marriages, there is the need for the law makers (National Assembly) to amend the Marriage Act to clarify the status of the earlier customary marriage between a couple where the same couple subsequently contract a marriage to each other under the Act. This will curb extravagant spending or unnecessary spending on celebration of multiple marriages. Another option would be to allow the practice of double-decker marriage with express provision for the implication of such union. This will bring about liberalisation of family and marriage laws in Nigeria towards recognising other systems of marriage in

⁵⁷FA Ibekwe, Concept of Double-Decker Marriage in Nigeria (2022)

<https://www.academia.edu/42993238/Concept-of-Double-Decker-Marriage-in-Nigeria> accessed 17/01/2023

⁵⁸*Ibid*

⁵⁹Marriage Act CAP M6 Laws of Federation of Nigeria, 2004 section 7-12

⁶⁰n2 at p.54

⁶¹n57

⁶²Marriage Act CAP M6 Laws of Federation, 2004 section 30(1)

Nigeria. For the law of a country cannot remain static but must keep abreast with the political, legal, economic and social developments of society.

Provision of a more Substantial Formality

There is need to provide more substantial formality for couples who enter double-decker marriage. There could be an issuance of marriage certificate after a customary marriage by a customary law court or Area Court. Furthermore, bye-laws may also make provisions for customary law marriage certificate that could be used for both official and record purposes, in lieu of statutory marriage certificate. This will help to allay all doubts in the minds of the couple because they then have more concrete evidence of marriage.

Provision for Record of Marriage in the Marriage Registry

It is also necessary to have records of all marriages celebrated in Nigeria, be it statutory or customary registered in the marriage registry. All marriages should be noted on public register. A couple who has gone through both type of marriage (that is, customary, then Statutory) should simultaneously fulfil the requirements for registering their marriages as either a statutory or a customary marriage. This affords certain securities to both the wife and the husband if things go awry. Registration would also help generate revenue for the government.