

**CHAPTER 29**  
**THE LAW OF MARRIAGE ACT**

**An Act to regulate the law relating to marriage, personal and property rights as between husband and wife, separation, divorce and other matrimonial reliefs and other related matters.**

[12th February, 1971 - s. 166  
and 1st May, 1971 - s. 1]

Act No. 5 of 1971  
G.N. No. 109 of 1971  
Acts Nos.  
23 of 1973  
15 of 1980  
9 of 1996

**PART I**  
**PRELIMINARY PROVISIONS (ss 1-8)**  
**(a) General (ss 1-2)**

**1. Short title**

This Act may be cited as the Law of Marriage Act.

**2. Interpretation**

(1) In this Act, except where the context otherwise requires—

"**adopted child**" means a child adopted in accordance with the provisions of the Adoption of Children Act <sup>i\*</sup>, and references in this Act to adoption shall be construed accordingly;

"**Board**" means a Marriage Conciliation Board established under the provisions of section 102;

"**child**" includes an adopted child;

"**court**" means any Court having jurisdiction under section 76;

"**decree**" includes a decree of a foreign court which is recognised as effective under section 91;

"**dowry**" means any payment of stock, goods, money or other property made or promised in consideration of an intended marriage;

"**infant**" or "**infant child**" means a child who has not attained the age of eighteen years;

"**kadhi**" means a Muslim priest or preacher or a leader of a Muslim community who has been licensed under this Act to celebrate marriages in Islamic form;

"**marriage**" has the meaning attributed to it in section 9, and any reference to a marriage means a marriage whether contracted before or after the commencement of this Act and whether contracted in Tanzania or elsewhere;

"**matrimonial home**" means the building or part of a building in which the husband and wife ordinarily reside together and includes—

- (a) where a building and its curtilage are occupied for residential purposes only, that curtilage and any outbuildings thereon; and
- (b) where a building is on or occupied in conjunction with agricultural land, any land allocated by the husband or the wife, as the case may be, to his or her spouse for her or his exclusive use;

"**matrimonial proceeding**" means any proceeding instituted under Parts II and VI of this Act or any comparable proceeding brought under any written law repealed by this Act, in any court;

"**minimum age**" in relation to marriage, has the meaning attributed to it in section 13;

**"Minister"** means the Minister responsible for legal affairs;

**"minister of religion"** means any minister, priest or other person who is empowered to celebrate marriages by the laws of any religion according to the rites of which marriages may be celebrated under the provisions of this Act, and includes a kadhi;

**"party"** in relation to a marriage or intended or purported marriage, means the husband or the wife or the intended or purported husband or wife, as the case may be;

**"prohibited relationship"** has the meaning attributed to it in section 14;

**"religion"** means, in the case of any system of religious belief which is divided into denominations, sects or school, any such denomination, sect or school and includes any non-denominational body or other association of a religious nature;

**"specified religion"** means Christianity or a religion specified in an order made by the Minister under the provisions of section 25;

**"ward"** means a ward established under the Local Government (District Authorities) Act <sup>ii\*</sup> or the Local Government (Urban Authorities) Act <sup>iii\*</sup>.

(2) Reference in this Act to a monogamous marriage includes a marriage originally polygamous or potentially polygamous the character of which has been converted to monogamous by declaration made under section 11 and a reference to a polygamous or potentially polygamous marriage shall be given the corresponding interpretation.

#### **(b) Appointments (ss 3-8)**

### **3. Appointment of Registrar-General, Deputy and Assistant Registrars-General**

(1) The President shall appoint a public officer to be Registrar-General of Marriages and Divorces for the purposes of this Act.

(2) There shall be a Deputy Registrar-General and as many Assistant Registrars-General of Marriages and Divorces as the Minister shall consider necessary.

### **4. Appointment of registration areas**

The Minister may, by notice in the *Gazette*, appoint any area of Tanzania to be a registration area for the purposes of this Act.

### **5. Appointment of district registrars**

(1) There shall be a district registrar for each registration area and as many assistant district registrars as the Minister shall consider necessary.

(2) In the absence or during the illness or incapacity of the district registrar, the senior assistant district registrar for the time being stationed in the registration area shall act as a registrar.

(3) District registrars and assistant district registrars may be appointed individually by name or collectively as the holders of specified public offices.

(4) The Registrar-General may, by writing under his hand, delegate any of his functions under this Act to a district registrar.

### **6. Appointment of registrars**

Every district registrar and every *kadhi* and minister of religion who is licensed under section 30 shall be a registrar for the purposes of this Act.

### **7. Appointment of registration officers**

(1) There shall be registration officers for such areas as the Minister may decide, to perform duties as may be prescribed and generally to assist district registrars in the administration of the provisions of this Act.

(2) Registration officers may be appointed individually by name or collectively as the holders of specific public offices.

### **8. Appointment of registrars for foreign countries**

(1) The Minister may, by notice in the *Gazette*, appoint any member of the

diplomatic staff of the United Republic in any country to which this section applies, either individually by name or as the holder of a public office, to be the registrar for the purposes of this Act in respect of that country.

(2) The Minister shall, by notice in the *Gazette*, designate the countries to which this section applies.

(3) This section shall apply to any country which has notified the Government of the United Republic that it does not disapprove of the contracting of marriages at the Embassy, High Commission or consulate of the United Republic in that country.

## **PART II**

### **MARRIAGE (ss 9-41)**

#### **(a) The Nature of Marriage (ss 9-12)**

#### **9. Meaning of marriage**

(1) Marriage means the voluntary union of a man and a woman, intended to last for their joint lives.

(2) A monogamous marriage is a union between one man and one woman to the exclusion of all others.

(3) A polygamous marriage is a union in which the husband may, during the subsistence of the marriage, be married to or marry another woman or women.

#### **10. Kinds of marriage**

(1) Marriages shall be of two kinds, that is to say—

- (a) those that are monogamous or are intended to be monogamous; and
- (b) those that are polygamous or are potentially polygamous.

(2) A marriage contracted in Tanzania whether contracted before or after the commencement of this Act, shall—

- (a) if contracted in Islamic form or according to rites recognised by customary law in Tanzania, be presumed, unless the contrary is proved, to be polygamous or potentially polygamous; and
- (b) in any other case, be presumed to be monogamous, unless the contrary is proved.

#### **11. Conversion of marriages**

(1) A marriage contracted in Tanzania may be converted—

- (a) from monogamous to potentially polygamous; or
- (b) if the husband has one wife only, from potentially polygamous to monogamous, by a declaration made by the husband and the wife, that they each, of their own free will, agree to the conversion.

(2) A declaration under subsection (1) shall be made in the presence of a judge, a resident magistrate or a district magistrate and shall be recorded in writing, signed by the husband and the wife and the person before whom it is made, at the time of its making.

(3) The judge or magistrate before whom a declaration is made under this section shall forthwith transmit a copy thereof to the Registrar-General.

(4) No marriage shall be converted from monogamous to potentially polygamous or from potentially polygamous to monogamous otherwise than by a declaration made under this section.

(5) No marriage between two Christians which was celebrated in a church in Christian form may, for so long as both the parties continue to profess the Christian faith, be converted from monogamous to polygamous and the provisions of this section shall not apply to any such marriage, notwithstanding that the marriage was preceded or succeeded by a ceremony of marriage between the same parties in civil form or any other form.

## **12. Duration of marriage**

A marriage, whether contracted in Mainland Tanzania or elsewhere, shall for all purposes of the law of Mainland Tanzania subsist until determined—

- (a) by the death of either party thereto;
- (b) by a decree declaring that the death of either party thereto is presumed;
- (c) by a decree of annulment;
- (d) by a decree of divorce; or
- (e) by an extra-judicial divorce outside Tanzania which is recognised in Tanzania under the provisions of section 92.

### **(b) Restrictions on Marriage (ss 13-17)**

## **13. Minimum age**

(1) No person shall marry who, being male, has not attained the apparent age of eighteen years or, being female, has not attained the apparent age of fifteen years.

(2) Notwithstanding the provisions of subsection (1), the court shall, in its discretion, have power, on application, to give leave for a marriage where the parties are, or either of them is, below the ages prescribed in subsection (1) if—

- (a) each party has attained the age of fourteen years; and
- (b) the court is satisfied that there are special circumstances which make the proposed marriage desirable.

(3) A person who has not attained the apparent age of eighteen years or fifteen years, as the case may be, and in respect of whom the leave of the court has not been obtained under subsection (2), shall be said to be below the minimum age for marriage.

## **14. Prohibited relationships**

(1) No person shall marry his or her grandparent, parent, child or grandchild, sister or brother, great-aunt or great-uncle, aunt or uncle, niece or nephew, as the case may be.

(2) No person shall marry the grandparent or parent, child or grandchild of his or her spouse or former spouse.

(3) No person shall marry the former spouse of his or her grandparent or parent, child or grandchild.

(4) No person shall marry a person whom he or she has adopted or by whom he or she was adopted.

(5) For the purposes of this section, relationship of the half blood shall be as much an impediment as relationship of the full blood and it shall be immaterial whether a person was born legitimate or illegitimate.

(6) For the purposes of this section grandparent, grandchild, greatchild, great-uncle and great-aunt include, as the case may be, grandparent, grandchild great-uncle and great-aunt of any degree whatsoever.

(7) Persons who are, by this section, forbidden to marry shall be said to be within the prohibited relationships.

## **15. Subsisting marriage**

(1) No man, while married by a monogamous marriage, shall contract another marriage.

(2) No man, while married by a polygamous or potentially polygamous marriage, shall contract a marriage in any monogamous form with any other person.

(3) No woman who is married shall, while that marriage subsists, contract another marriage.

(4) Nothing in this section shall be construed as preventing the parties to a marriage to go through another ceremony of marriage:

Provided that where parties who are already married go through another

ceremony of marriage, such subsequent ceremony shall not, subject to the provisions of subsection (5) of section 11, affect the status or the legal consequences of their first marriage.

#### **16. No marriage save of free will**

(1) No marriage shall be contracted except with the consent, freely and voluntarily given, by each of the parties thereto.

(2) For the purposes of this Act consent shall not be held to have been freely or voluntarily given if the party who purported to give it—

- (a) was influenced by coercion or fraud;
- (b) was mistaken as to the nature of the ceremony; or
- (c) was suffering from any mental disorder or mental defect, whether permanent or temporary, or was intoxicated, so as not fully to appreciate the nature of the ceremony,

and references in this Act to "consent" or "consent freely given" in relation to a party to a marriage or an intended marriage shall be construed as meaning consent freely given and voluntarily.

#### **17. Requirement of consent**

(1) A female who has not attained the apparent age of eighteen years shall be required, before marrying, to obtain the consent—

- (a) of her father; or
  - (b) if her father is dead, of her mother; or
  - (c) if both her father and mother are dead, of the person who is her guardian,
- but in any other case, or if all those persons are dead, shall not require consent.

(2) Where the court is satisfied that the consent of any person to a proposed marriage is being withheld unreasonably or that it is impracticable to obtain such consent, the court may, on application, give consent and such consent shall have the same effect as if it had been given by the person whose consent is required by subsection (1).

(3) Where a marriage is contracted in Islamic form or in accordance with the rites of any specified religion or in accordance with the customary law rites, it shall be lawful for the kadhi, minister of religion or the registrar, as the case may be, to refuse to perform the ceremony if any requirement of the relevant religion or person other than a person mentioned in subsection (1) has not been complied with:

Provided that nothing in this subsection shall be construed as empowering the kadhi, minister of religion or registrar to dispense with any requirement of subsection (1).

#### **(c) Preliminaries to Marriage (ss 18-24)**

#### **18. Notice of intention to marry**

(1) Subject to the provisions of section 23, where a man and a woman desire to marry, they shall, at least twenty-one days before the day when they propose to marry, give notice of their intention to a registrar or a registration officer.

(2) A notice given under this section shall contain—

- (a) the names and ages of the parties and the places where they reside;
- (b) the names of the parents of the parties and the places where they reside;
- (c) a statement that the parties are not within the prohibited relationships;
- (d) where the intended wife is below the apparent age of eighteen years, the name of the person, if any, giving consent to the marriage or the reason why no such consent is being given;
- (e) a statement in relation to each party that he or she is a bachelor or spinster, married, a widower or widow, or divorced, as the case may be and where either party is divorced, particulars of the divorce;

- (f) a statement that the marriage is intended to be of monogamous or polygamous or potentially polygamous character, as the case may be;
- (g) where the marriage is to be polygamous, the names of the wives of the husband;
- (h) the date when and the place where the parties desire to marry; and
- (i) where both the parties are Christians and it is intended to celebrate the marriage in a church in Christian form, a declaration by the intended husband that he is not already married to another woman,

and shall be signed by both parties and, where the consent of the court to the intended marriage has been obtained, the notice shall be accompanied by a certified copy of the order giving that consent.

#### **19. Publication of notice of intention**

It shall be the duty of a registrar or registration officer who receives a notice of intention to cause the intention to be made known locally by such means as may be prescribed and, until any regulations are made in that behalf, by such means as are customarily used to make known matters of public importance and by any other means he may consider desirable.

#### **20. Notice of objection**

(1) Any person may give notice of objection to the registrar or registration officer to whom the notice of intention was given, on the ground that he or she is aware of facts which, under the provisions of this Act, constitute an impediment to the intended marriage.

(2) Where a man married under a polygamous marriage has given notice of an intended marriage, his wife or, if he has more than one wife, any of his wives may give notice of objection to the registrar or registration officer to whom the notice of intention was given, on the ground that—

- (a) having regard to the husband's means, the taking of another wife is likely to result in hardship to his existing wife or wives and infant children, if any; or
- (b) the intended wife is of notoriously bad character or is suffering from an infectious or otherwise communicable disease or is likely to introduce grave discord into the household.

(3) A person who has given notice of objection may at any time withdraw it, but any such withdrawal shall be in writing, signed by him or her.

#### **21. Procedure on notice of objection**

(1) It shall be the duty of a registrar or registration officer who receives a notice of objection to transmit it, together with the notice of intention—

- (a) where the notice of objection was given under subsection (1) of section 20, to the court; and
- (b) where the notice of objection was given under subsection (2) of section 20, to the Board.

(2) A registrar or registration officer who receives a notice of objection shall not celebrate or participate in the intended marriage and shall take all lawful action within his power to prevent it from being contracted, pending notification that the objection has been withdrawn or dismissed.

#### **22. Determination of objection**

(1) On receipt of a notice of objection and notice of intention transmitted to it under section 21, the court or the Board, as the case may be, shall require the attendance of the parties to the intended marriage and of the objector and shall hear them and their witnesses, if any, and any other persons the court or the Board may think necessary to hear for a just determination of the objection, and shall make findings on

the facts alleged in the notice of objection and shall either, by order, direct that the intended marriage is not to be contracted or shall dismiss the objection.

(2) The court or the Board, as the case may be, shall send a certified copy of its decision to the registrar or registration officer to whom the notice of intention was given.

### **23. Power of Registrar-General to dispense with requirement of notice**

(1) The Registrar-General may, subject to the provisions of section 24, by licence in the prescribed form, dispense with the giving of notice, as required by section 18 on proof to his satisfaction—

- (a) that the parties are not within the prohibited relationships;
- (b) that there is no impediment of a subsisting marriage;
- (c) that the parties are not below the minimum age of marriage;
- (d) that any consent required under section 17 has been obtained; and
- (e) that there is some good and sufficient reason for dispensing with the giving of notice.

(2) The proof required by subsection (1) shall be in the form of a statutory declaration but the Registrar-General may require such further or other evidence as he may deem necessary.

### **24. Lodging of objections with Registrar-General**

Any person who has reason to believe that a marriage is intended and that there are good grounds for believing that a valid objection could be made to such marriage under section 20, may give notice of objection to the Registrar-General and where such notice is given, the Registrar-General shall not, unless such notice has been withdrawn, exercise his power under section 23 to dispense with the giving of the notice.

#### **(d) Contracting of Marriage (ss 25-37)**

### **25. Manner of contracting marriage**

(1) A marriage may, subject to the provisions of this Act, be contracted in Tanzania—

- (a) in civil form; or
- (b) in civil form or, where both the parties belong to a specified religion, according to the rites of that religion; or
- (c) if the intended husband is a Muslim, in civil form or in Islamic form; or
- (d) where the parties belong to a community or to communities which follow customary law, in civil form or according to the rites of the customary law.

(2) The Minister shall have power, by order published in the *Gazette*, to authorise the celebration of marriages according to the rites of the religions specified in such order, and may at any time and from time to time vary any such order by the addition thereto or the deletion therefrom of the name of any religion but so that the deletion of the name of a religion shall be without prejudice to the validity of any marriage contracted under the rites thereof prior to the publication of such order.

(3) For the purposes of this Act—

- (a) a marriage in Islamic form means a marriage contracted in the manner recognised by Islam or by any school or sect of that faith;
- (b) a marriage in Christian form means a marriage celebrated in a church in the manner recognised by the Christian faith or by any denomination or sect of that faith.

### **26. Time for contracting marriage**

Subject to the provisions of section 23, at least twenty-one days shall elapse between the giving of notice of intention to marry and the contracting of the intended marriage.

### **27. Witnesses**

(1) Every marriage shall be contracted in the presence of at least two witnesses.

(2) No person shall be competent to act as a witness to a marriage who is below the age of eighteen years or who is unable to understand the nature of the ceremony by reason of mental illness or intoxication or who does not understand the language in which the ceremony is conducted, unless the whole of the ceremony is interpreted into a language which he or she can understand.

(3) For the avoidance of doubt, it is hereby declared that the District Registrar in whose presence a marriage in civil form is contracted shall not be competent to be a witness to the marriage for purposes of this section or of section 38 or section 154.

#### **28. Marriage to be public**

(1) Any member of the public may attend a marriage in civil form so far as the accommodation in the office of the district registrar may reasonably permit.

(2) Any person who is a follower of the religion according to the rites of which a marriage is contracted may attend that marriage.

(3) Any member of the community to which the parties or either of them belong may attend a marriage contracted in Islamic form or according to rites recognised by customary law.

#### **29. Procedure for marriages in civil form**

A marriage may be contracted in civil form in the presence of the district registrar in his office or in such other place as may have been authorised by licence issued under section 31, in the manner following—

(a) the intended husband shall say to the intended wife words to the following effect either in English or Kiswahili—

*"I (giving his name) take you (giving her name) to be my wife"*

and the intended wife shall say to the intended husband words to the following effect either in English or Kiswahili—

*"I (giving her name) take you (giving his name) to be my husband";*

(b) the marriage shall thereupon be complete but the parties shall be at liberty to add any additional rite;

(c) the parties may, if they so wish, request the district registrar to make an entry in the register whether the marriage shall be monogamous or polygamous, and upon such request being made and upon satisfying himself that both the parties have freely and voluntarily made the request, the district registrar shall comply therewith.

#### **30. Marriages according to religious rites and licensing of ministers**

(1) A marriage may be celebrated according to the rites of a specified religion in any place habitually used as a place of public worship or a place of gathering by the followers of that religion, by a minister of that religion who has been licensed in that behalf by the Registrar-General:

Provided that no minister of religion shall be compelled to celebrate any marriage.

(2) The Registrar-General may, on the application of the proper authority of any specified religion, by notice published in the *Gazette*, license any minister of that religion to celebrate marriage and may at any time, in like manner, cancel any such licence.

(3) A marriage may be celebrated in Islamic form by any kadhi or by a registration officer who is a Muslim.

(4) A Muslim priest or preacher may, on application made by him, be licensed as a kadhi either generally or for any specified community.

(5) Every licence granted under section 7 of the Marriage Ordinance <sup>iv\*</sup> and not cancelled shall be deemed to be a licence granted under this section.

**31. Power of Registrar-General to authorise marriages in places not otherwise permissible**

The Registrar-General may, if he is satisfied that there is some good and sufficient reason, by licence in the prescribed form, authorise—

- (a) the contracting of a marriage in civil form, in a place other than the office of the district registrar; or
- (b) the celebration of a marriage according to the rites of a specified religion, in a place other than one habitually used as place of public worship or gathering.

**32. Duty of kadhis and registration officers to attend marriages**

It shall be the duty—

- (a) of every kadhi or registration officer to whom notice has been given that a marriage is intended to be contracted in Islamic form; and
- (b) of every registration officer to whom notice has been given that a marriage is intended to be contracted according to rites recognised by customary law,

so far as is reasonably practicable, to attend that marriage.

**33. Issue of marriage certificate or transmission of statement of particulars**

(1) When a marriage has been contracted in the presence of a district registrar or kadhi or celebrated by a minister of religion, the district registrar, kadhi or minister, as the case may be, shall forthwith complete in duplicate a marriage certificate in the prescribed form and sign the same and cause it to be signed by the parties and by two witnesses to the marriage and shall hand one part to the parties and retain the other.

(2) When a marriage has been contracted in the presence of a registration officer, he shall forthwith complete a statement of particulars relating to the marriage in the prescribed form and shall sign the same and cause it to be signed by the parties and by two witnesses and shall send the same to the district registrar, if the marriage was contracted according to rites recognised by customary law, or to the kadhi, if the marriage was contracted in Islamic form.

(3) On receipt of a statement of particulars from a registration officer under subsection (2), the district registrar or kadhi, after registering the marriage in accordance with section 43, shall issue a marriage certificate in duplicate, retain one part and send the other to the registration officer for transmission to the parties.

**34. Marriages in Tanzanian Embassies, etc., abroad**

(1) A marriage may be contracted in the presence of the registrar in an Embassy, High Commission or consulate of the United Republic in any country which has been designated by the Minister in accordance with subsection (2) of section 8, subject to the following conditions, that is to say, that the registrar shall be satisfied—

- (a) that at least one of the parties is a citizen of the United Republic;
- (b) that each party has capacity to marry according to the provisions of this Act;
- (c) that in the case of the intended wife who is a citizen of the United Republic or is domiciled in Tanzania, any consent required by section 17 has been obtained;
- (d) where either party is not domiciled in Tanzania, that the proposed marriage, if contracted, will be regarded as valid in the country where that party is domiciled;
- (e) that notice of the proposed marriage has been given at least twenty-one days previously in accordance with the requirements of section 18 and that no notice to objection has been received;
- (f) where a party is not a citizen of the United Republic and the law of the country of which he or she is a citizen provides for the issue of certificates of no impediment that such certificate has been issued in respect of that party.

(2) The procedure for the contracting of marriage in a Tanzania Embassy, High

Commission or consulate shall be similar to that for the contracting of civil marriages under this Act, and the provisions of this Act relating to the issue of marriage certificates and to the registration of marriages shall apply as if the registrar appointed for that foreign country were a district registrar and the marriage shall be valid for the purposes of this Act accordingly.

(3) References in this Act or any other written law to a marriage contracted in Tanzania shall, unless the context otherwise requires, include references to a marriage contracted in accordance with this section.

### **35. Issue of certificates of no impediment**

(1) If a citizen of the United Republic domiciled in Tanzania desires to contract marriage in any foreign country in accordance with the law of that country and the law of that country requires him or her to produce a certificate that no legal impediment to the intended marriage is known to the responsible authority in Tanzania, he or she may apply to the Registrar-General for the issue of a certificate.

(2) If a registrar has been appointed under this Act for the country in which the marriage is intended to be contracted, the application shall be sent to the registrar for transmission to the Registrar-General.

(3) On receipt of an application under this section, the Registrar-General shall cause all such inquiries to be made as are practicable and, if no impediment is shown, he shall issue the required certificate.

### **36. Recognition of marriages contracted abroad**

A marriage contracted outside Tanzania, other than a marriage contracted under section 34, shall be recognised as valid for all purposes of the law of Tanzania, if—

- (a) it was contracted in a form required or permitted by the law of the country where it was contracted;
- (b) each of the parties had, at the time of the marriage, capacity to marry under the law of the country of his or her domicile; and
- (c) both parties freely and voluntarily consented to the marriage or, where either party did not freely and voluntarily consent to the marriage, the parties have freely and voluntarily consummated the marriage;
- (d) where either of the parties is a citizen of the United Republic or is domiciled in Mainland Tanzania, both parties had capacity to marry according to this Act.

### **37. Recognition of marriages contracted in Embassies, etc., in Tanzania**

A marriage contracted in any Embassy, High Commission or consulate in Tanzania of a country designated under subsection (2) of section 8 shall be recognised as valid for all purposes of the law of Tanzania, if—

- (a) it was contracted in a form required or permitted by the law of the country whose Embassy, High Commission or consulate it is or in a form permitted under this Act; and
- (b) each of the parties had, at the time of the marriage, capacity to marry under the law of the country of his or her domicile; and
- (c) both parties freely and voluntarily consented to the marriage or, where either party did not freely and voluntarily consent to the marriage, the parties have freely and voluntarily consummated the marriage; and
- (d) where either of the parties is a citizen of the United Republic or in domiciled in Tanzania, both parties had capacity to marry under this Act.

#### **(e) Void Ceremonies, Voidable Marriages and Legitimacy (ss 38-41)**

### **38. Void ceremonies**

(1) A ceremony purporting to be a marriage shall be a nullity—

- (a) save where leave has been granted under subsection (2) of section 13, if either

- party thereto is below the minimum age for marriage;
- (b) if the parties thereto are within the prohibited relationships;
- (c) if either party is incompetent to marry by reason of an existing marriage;
- (d) if the court or a Board, in the exercise of the power conferred by section 22, has directed that the intended marriage is not to be contracted;
- (e) the consent of either party was not freely and voluntarily given thereto;
- (f) unless both parties are present in person at the ceremony;
- (g) if both parties knowingly and wilfully acquiesce in a person officiating thereat who is not lawfully entitled to do so;
- (h) unless two competent witnesses are present thereat;
- (i) if the intended marriage is expressed to be of a temporary nature or for a limited period;
- (j) if the wife was a widow or a divorced woman prior to the marriage, and her previous marriage having been contracted in Islamic form, she contracts the other marriage during the customary period of *iddat*.

(2) Notwithstanding the provisions of paragraph (f) of subsection (1), a marriage shall not be void by reason only of the absence of a party if the witnesses before whom the party gave his or her consent are present at the ceremony.

### **39. Voidable marriages**

Subject to the provisions of sections 97 and 98, a marriage shall be voidable if—

- (a) at the time of the marriage—
  - (i) either party was incapable of consummating it;
  - (ii) either party was subject to recurrent attacks of insanity or epilepsy;
  - (iii) either party was suffering from venereal disease in a communicable form; or
  - (iv) the wife was pregnant by some person other than the husband; or
- (b) the marriage has not been consummated owing to the wilful refusal of one party to consummate it;
- (c) the wife had not attained the age of eighteen years and consent to the marriage as required by section 17 had not been given and the court sees good and sufficient reason to set the marriage aside.

### **40. Voidable marriage valid until annulled**

A voidable marriage is for all purposes a valid marriage until it is annulled by a decree of the court.

### **41. Matters not affecting validity**

A marriage which in all other respects complies with the express requirements of this Act shall be valid for all purposes, notwithstanding—

- (a) any non-compliance with any custom relating to dowry or the giving or exchanging of gifts before or after marriage;
- (b) failure to give notice of intention to marry as required by this Act;
- (c) notice of objection to the intended marriage having been given and not discharged;
- (d) the fact that any person officiating thereat was not lawfully entitled to do so, unless that fact was known to both parties at the time of the ceremony;
- (e) any procedural irregularity; or
- (f) failure to register the marriage.

## **PART III REGISTRATION OF MARRIAGES, ANNULMENTS AND DIVORCES AND EVIDENCE OF MARRIAGE (ss 42-55)**

#### **42. Maintenance of marriage registers**

(1) Every registrar shall maintain a register of marriages in the prescribed form: Provided that it shall be permissible for two or more ministers of religion who are licensed under section 30 to maintain one register if that register is kept in a place of worship or such other place as may be approved by the Registrar-General.

(2) The Registrar-General shall maintain a register of foreign marriages.

#### **43. Duty to register marriages and procedure to be followed**

(1) Where a marriage is contracted in civil form, it shall be the duty of the district registrar forthwith to register it.

(2) When a marriage is celebrated by a minister of religion according to the rites of a specified religion, it shall be his duty forthwith to register it.

(3) When a marriage is contracted in Islamic form in the presence of a *kadhi*, it shall be his duty forthwith to register it.

(4) When a marriage is contracted in the presence of a registration officer in Islamic form (no *kadhi* being present) or according to customary law rites, it shall be the duty of the registration officer to take necessary steps to register the marriage with the district registrar or a *kadhi*.

(5) When a marriage is contracted according to customary law rites and there is no registration officer present, it shall be the duty of the parties to apply for registration, within thirty days after the marriage, to the registrar or registration officer to whom they gave notice of intention to marry.

(6) A registration officer to whom an application is made under subsection (5) shall satisfy himself that the marriage was validly contracted and shall then proceed in the manner set out in subsection (2) of section 33.

(7) A *kadhi* or district registrar who receives a statement of particulars sent to him under section 33, or under subsection (5) or (6) shall forthwith register the marriage:

Provided that, before registering any such marriage, the *kadhi* or district registrar may make such further inquiries as he thinks necessary to satisfy himself that the marriage was validly contracted and that the facts set out in the statement of particulars are correct.

(8) A marriage may be registered under subsection (7) notwithstanding that application for registration was not made within the prescribed time.

#### **44. Registration of subsisting unregistered marriages**

(1) Either party to a subsisting marriage contracted before the commencement of this Act, which has not been registered under the provisions of any written law heretofore in force, may apply to the district registrar or to a *kadhi* or to a registration officer for the registration of that marriage:

Provided that such application shall not be made to a registration officer in respect of a marriage contracted otherwise than under customary law.

(2) On receipt of an application under this section, the district registrar, *kadhi* or registration officer shall make such inquiries as he may think necessary to satisfy himself that the alleged marriage was validly contracted.

(3) Where application has been made to a registration officer, and he has satisfied himself as aforesaid, he shall send a statement of particulars relating to the marriage to the district registrar, with a certificate that he is satisfied that the marriage was validly contracted under customary law.

(4) Where application has been made to a district registrar or *kadhi* and he has satisfied himself as aforesaid or where a district registrar has received a statement of particulars from a registration officer, with his certificate, he shall, subject to the provisions of subsection (5), register the marriage.

(5) Where application for registration has been made by one party to an alleged marriage and the other party—

- (a) denies that there was such a marriage; or
- (b) cannot be found and the marriage is disputed by any member of his or her immediate family, the district registrar or kadhi shall not register the alleged marriage unless there is produced to him a declaratory decree of the court that the alleged marriage was validly contracted.

#### **45. Registration of marriages contracted abroad**

(1) When any person who is a citizen of the United Republic has contracted a marriage outside Tanzania otherwise than under the provisions of section 34, he or she or his or her spouse may apply to the Registrar-General for the registration of that marriage under this Act and the Registrar-General, on being satisfied that the marriage is one that should be recognised as valid under the provisions of section 36, shall register the marriage.

(2) When any such marriage is contracted in a country for which a registrar has been appointed under section 8, an application under subsection (1) shall be sent to the Registrar-General through such registrar.

(3) The Registrar-General may accept as evidence of a marriage contracted in any country outside Tanzania, a marriage certificate issued in that country or such other evidence as he may consider sufficient.

(4) Where any such certificate is not in English or Kiswahili it shall be accompanied by a translation into English or Kiswahili certified to be correct by a consular officer or notary public or such other person as the Registrar-General may, in any particular case, approve.

#### **46. Returns to be sent to Registrar-General**

Within thirty days after the last day of every month, every registrar shall send to the Registrar-General a copy, certified to be a true copy, of all entries made during that month in the register of marriages in his custody:

Provided that where two or more ministers of religion are maintaining one register, any of them may certify the copy required by this section.

#### **47. Completed registers to be sent to Registrar-General**

(1) When any register of marriages maintained under this Act has been completed, the register shall forthwith send it to the Registrar-General.

(2) Every person who, immediately before the coming into force of this Act, was a registrar of marriages under the Marriage Ordinance<sup>v\*</sup> shall, as soon as practicable thereafter, send all registers of marriages and divorces in his possession to the Registrar-General:

Provided that the Registrar-General may permit the use of any such registers for registration under this Act until new registers in the form prescribed under this Act are available.

#### **48. Maintenance of index, searches, inspection and copies**

(1) The Registrar-General shall maintain an index showing the names of all parties to registered marriages.

(2) Any person may require a search to be made in the index and shall be entitled to inspect—

- (a) the entry in the marriage register relating to any marriage, if that register has been sent to the Registrar-General under section 47; or
- (b) in any other case, the certified copy of that entry sent to the Registrar-General under section 46,

or to receive a copy of that entry or of the certified copy of that entry, as the case may

be, certified to be a true copy.

(3) For the purposes of this section, references to any entry in a register of marriages include references to an entry in a register of marriages kept under any written law heretofore in force.

#### **49. Maintenance of register of annulments and divorces**

The Registrar-General shall maintain a register of annulments and divorces and shall forthwith enter therein the prescribed particulars and of all decrees of annulment and divorce sent to him under section 50 and of all decrees of annulment and divorce for the registration which application is made under section 51.

#### **50. Copies of decrees of annulment and divorce to be sent to Registrar-General**

Every court which grants a decree of annulment or divorce shall forthwith send one copy of the decree, certified to be a true copy, to the and Registrar-General, for registration.

#### **51. Registration of foreign annulments and divorces**

(1) Where a marriage which was contracted in Tanzania is annulled or dissolved by the decree of a court outside Tanzania, either of the parties may apply to the Registrar-General General for the registration of such decree and the Registrar-General shall, upon being satisfied that the decree is one which should be recognised as effective under the provisions of section 91, register the decree.

(2) Any application under this section shall be accompanied by an office copy of the decree and, where that decree is not in English or Kiswahili, by a translation thereof into English or Kiswahili certified to be correct by a consular officer or notary public or such other person as the Registrar-General may, in any particular case, approve, and by a statutory declaration as to the facts which gave the court jurisdiction.

#### **52. Endorsement of marriage registers**

(1) Where a marriage has been converted from monogamous to potentially polygamous or from potentially polygamous to monogamous, the Registrar-General shall, on receipt of a copy of the declaration made under section 11, cause the entry in the register of marriages relating to the marriage to be endorsed with a note to that effect and with such reference as will enable the declaration to be traced.

(2) Where a decree of annulment or divorce, wherever granted, has determined a marriage which was contracted in Tanzania and which has been registered under the provisions of this Act or any written law heretofore in force, the Registrar-General shall, on registering that decree, cause the entry in the register of marriages relating to that marriage to be marked with the word "Determined" and a reference to the proceedings in which the decree was granted.

#### **53. Correction of errors**

(1) The Registrar-General, or any registrar on the directions of the Registrar-General, may correct any error in any register or in any marriage certificate.

(2) Every such correction shall be made in such a way so as not to render illegible any writing thereon and every such correction shall be authenticated by the signature of the Registrar-General or of the registrar, as the case may be, and the date of the correction shall be endorsed thereon.

(3) Where application is made for the correction of a marriage certificate, the Registrar-General or the registrar, as the case may be, shall require the production of the certificate issued to the parties so that it may similarly be corrected, but may dispense with such production where he is satisfied that it is impossible or impracticable.

#### **54. Power of Minister to restrict provisions relating to registration**

The Minister shall have power by notice published in the *Gazette*, to suspend the provisions of this Act relating to registration of marriages contracted according to rites

recognised by customary law in relation to any registration area, to be specified in such notice, where he considers that adequate facilities for such registration do not exist.

#### **55. Evidence of marriage**

The following documents shall be admissible in evidence without proof in any court or before any person having power under any written law to receive evidence, as being *prima facie* evidence of the facts recorded therein—

- (a) a marriage certificate issued under this Act or any law in force before the commencement of this Act;
- (b) a copy of such marriage certificate purporting to be certified as a true copy by the registrar having custody of the original;
- (c) an entry in any register of marriages kept under this Act or any written law heretofore in force;
- (d) a copy of an entry in any such register purporting to be a true copy so certified by the Registrar-General or the registrar having custody of the register;
- (e) a copy of an entry in a return sent to the Registrar-General in accordance with section 46, certified by the Registrar-General to be a true copy of such entry;
- (f) an entry made, prior to the coming into force of this Act, in any register of marriages maintained by the proper authority of the "Baraza Kuu la Waislamu wa Tanzania" (BAKWATA), the Shia Ith'nasheri, the Shia Imami Ismaili, the Bohora or any other community or a copy of any such entry certified by a proper officer of that authority to be a true copy;
- (g) in relation to a marriage celebrated in a place of worship at a time when the official registration of such marriages was not required, an entry in any register of marriages kept by the proper authority of the religion concerned or a copy of any such entry sealed with the seal, if any, of that authority and certified under the hand of the registrar or other proper officer of that authority to be a true copy.

### **PART IV**

#### **PROPERTY, RIGHTS, LIABILITIES AND STATUS (ss 56-68)**

#### **56. Rights and liabilities of married women**

A married woman shall have the same right as has a man to acquire, hold and dispose of property, whether movable or immovable, and the same right to contract, the same right to sue and the same liability to be sued in contract or in tort or otherwise.

#### **57. Equality between wives**

For the avoidance of doubt, it is hereby declared that, subject to the express provisions of any written law, where a man has two or more wives they shall as such, enjoy equal rights, be subject to equal liabilities and have equal status in law.

#### **58. Separate property of husband and wife**

Subject to the provisions of section 59 and to any agreement to the contrary that the parties may make, a marriage shall not operate to change the ownership of any property to which either the husband or the wife may be entitled or to prevent either the husband or the wife from acquiring, holding and disposing of any property.

#### **59. Special provisions relating to matrimonial home**

(1) Where any estate or interest in the matrimonial home is owned by the husband or the wife, he or she shall not, while the marriage subsists and without the consent of the other spouse, alienate it by way of sale, gift, lease, mortgage or otherwise, and the other spouse shall be deemed to have an interest therein capable of being protected by caveat, caution or otherwise under any law for the time being in force relating to the registration of title to land or of deeds.

(2) Where any person alienates his or her estate or interest in the matrimonial

home in contravention of subsection (1), the estate or interest so transferred or created shall be subject to the right of the other spouse to continue to reside in the matrimonial home until—

- (a) the marriage is dissolved; or
- (b) the court on a decree for separation or an order for maintenance otherwise orders,

unless the person acquiring the estate or interest can satisfy the court that he had no notice of the interest of the other spouse and could not by the exercise of reasonable diligence have become aware of it.

(3) Where any estate or interest in the matrimonial home is owned by the husband or by the wife and that husband or wife, deserts his or her spouse, the deserted spouse shall not be liable to be evicted from the matrimonial home by or at the instance of the husband or the wife, as the case may be, or any person claiming through or under him or her, except—

- (a) on the sale of the estate or interest by the court in execution of a decree against the husband or wife, as the case may be; or
- (b) by a trustee in bankruptcy of the husband or wife, as the case may be.

(4) Nothing in this section shall be construed as affecting any of the provisions of the Rent Restriction Act <sup>vi\*</sup>, conferring upon a party to a marriage the right of continuing to reside in any premises of which her or his spouse or former spouse is or was a tenant.

#### **60. Presumptions as to property acquired during marriage**

Where during the subsistence of a marriage, any property is acquired—

- (a) in the name of the husband or of the wife, there shall be a rebuttable presumption that the property belongs absolutely to that person, to the exclusion of his or her spouse;
- (b) in the names of the husband and wife jointly, there shall be a rebuttable presumption that their beneficial interests therein are equal.

#### **61. Gifts between husband and wife**

Where, during the subsistence of a marriage, either spouse gives any property to the other, there shall be a rebuttable presumption that the property thereafter belongs absolutely to the donee.

#### **62. No liability for antecedent debts of spouse**

Subject to the provisions of the Bankruptcy Act <sup>vii\*</sup> no person shall be liable for any debt contracted by his or her spouse prior to their marriage.

#### **63. Duty to maintain spouse**

Except where the parties are separated by agreement or by decree of the court and subject to any subsisting order of the court—

- (a) it shall be the duty of every husband to maintain his wife or wives and to provide them with such accommodation, clothing and food as may be reasonable having regard to his means and station in life;
- (b) it shall be the duty of every wife who has the means to do so, to provide in similar manner for her husband if he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health.

#### **64. Presumption of wife's authority to pledge her husband's credit, etc.**

(1) Subject to the provisions of subsections (2) and (3), a wife is presumed, unless the contrary is proved, to have authority to pledge her husband's credit, or to borrow money in his name, or to use any of his money which is in her possession or under her control, or to convert his movable property into money and use the same, so far as such credit or money is required for the purchase of necessaries for herself and the infant children of the marriage, appropriate to the husband's means and way of life.

- (2) Such authority shall be presumed only—
- (a) where the husband and wife are living together;
  - (b) where the husband and wife are separated under an agreement which provides that the husband will pay maintenance to the wife and he has failed to comply with that agreement;
  - (c) where the husband has deserted his wife or by his conduct has compelled her to leave him.

(3) Notwithstanding anything in subsections (1) and (2), no such authority shall be presumed where it is proved that the wife is living openly in an adulterous association.

(4) The presumption of authority set out in subsection (1) may be rebutted by evidence—

- (a) that the wife was already receiving a sufficient allowance or sufficient maintenance or had sufficient means;
- (b) that the wife already had a sufficiency of the goods so purchased; or
- (c) that the goods so purchased were excessive in quantity or extravagant having regard to the husband's means,

and it is immaterial that the person giving credit or lending money may have been unaware of the fact.

#### **65. Husband and wife and the law of tort**

As from the commencement of this Act—

- (a) no husband shall be liable for the torts of his wife by reason only of his being her husband;
- (b) a husband and wife shall have the same liability in tort towards each other as if they were unmarried;
- (c) neither a husband nor a wife shall be entitled to claim damages, in an action arising out of any negligent act or breach of duty, in respect of the loss or impairment of consortium.

#### **66. No right of spouse to inflict corporal punishment**

For the avoidance of doubt, it is hereby declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse.

#### **67. Agreements to live apart**

The parties to a marriage may, by writing signed by each other, agree to live apart and any such agreement, including any provisions as to maintenance, matrimonial property and the custody of the infant children, if any, of the marriage shall be valid and enforceable:

Provided that the court shall have power, whether the agreement was made before or after the coming into force of this Act and notwithstanding any provision to the contrary in any such agreement, on the application of either party at any time and from time to time to vary or set aside any such provisions—

- (i) where it is satisfied that the circumstances have changed in any material respect; or
- (ii) where it is satisfied that the agreed arrangements are not in the best interests of the children.

#### **68. Status of widows**

Notwithstanding any custom to the contrary, a woman whose husband has died shall be free—

- (a) to reside wherever she may please; and
- (b) to remain unmarried or, subject to the provisions of section 17, to marry again

any man of her own choosing:

Provided that where the parties were married in the Islamic form the widow shall not be entitled to remarry until after the expiration of the customary period of *iddat*.

## **PART V**

### **MISCELLANEOUS RIGHTS OF ACTION (ss 69-75)**

#### **69. Right to damages for breach of promise of marriage**

(1) A suit may be brought for damages for the breach of a promise of marriage made in Tanzania whether the breach occurred in Tanzania or elsewhere, by the aggrieved party or, where that party is below the age of eighteen years, by his or her parent or guardian:

Provided that—

- (a) no suit shall be brought against a party who, at the time of the promise, was below the age of eighteen years;
- (b) no damages shall be awarded in any such action in excess of loss actually suffered as a result of expenditure incurred as a direct result of the promise.

(2) A suit may similarly be brought in respect of the breach of a promise of marriage made in any other country but only if such an action would lie under the law of that country as well as under this Act.

(3) No suit shall be brought for specific performance of a promise of marriage.

#### **70. Limitation of actions for breach of promise**

Notwithstanding the provisions of any law regulating limitation of actions for the time being in force, no suit shall be brought for damages for the breach of a promise of marriage more than one year after the date of the breach.

#### **71. Right to return of gifts**

A suit may be brought for the return of any gift made in contemplation of a marriage which has not been contracted, where the court is satisfied that it was made with the intention on the part of the giver that it should be conditional on the marriage being contracted, but not otherwise.

#### **72. Right to damages for adultery**

(1) A husband or wife may bring a suit for damages against any person with whom his or her spouse has committed adultery:

Provided that no such proceeding shall lie—

- (a) where the aggrieved party has consented to or connived at the adultery;
- (b) where damages in respect of the alleged adultery have been claimed in a petition for divorce.

(2) A suit brought under this section shall be dismissed if the defendant satisfied the court that he or she did not know and could not, by the exercise of reasonable diligence, have known that the person with whom he or she committed the act of adultery was married.

#### **73. Right to damages for enticement**

(1) A husband or wife may bring a suit for damages against any person who has, for any reason, enticed or induced his or her spouse to desert him or her.

(2) A suit brought under this section shall be dismissed if the court is satisfied that the conduct of the plaintiff has been such as to justify or excuse his or her spouse leaving the matrimonial home.

#### **74. Assessment of damages for adultery or enticement**

(1) Damages for adultery or enticement shall be in the discretion of the court but shall not include any exemplary or punitive element.

(2) In assessing such damages, the court shall have regard—

- (a) to any relevant custom of the community to which the parties belong; and

- (b) in cases of adultery, to the question whether husband and wife were living together or apart.

**75. Jurisdiction of primary courts** A primary court shall have jurisdiction to entertain a suit under this Part where the parties were married in accordance with customary law or in Islamic form or, in the case of a suit under section 69 or section 71, if the court is satisfied that had the parties proceeded to marry they would have married in accordance with customary law or in Islamic form.

## **PART VI**

### **MATRIMONIAL PROCEEDINGS (ss 76-144)**

#### **(a) Jurisdiction, Procedure and General Provisions (ss 76-93)**

##### **76. Jurisdiction of courts**

Original jurisdiction in matrimonial proceedings shall be vested concurrently in the High Court, a court of a resident magistrate, a district court and a primary court.

##### **77. Right to invoke jurisdiction**

(1) Any person may petition the court for a declaratory decree—

- (a) if he or she is domiciled in Tanzania;
- (b) if he or she is resident in Tanzania;
- (c) where the decree sought is as to the validity of a ceremony which took place in Tanzania and purported to be a marriage.

(2) Any person may petition the court for a decree of separation if he or she has been resident in Tanzania for at least one year immediately preceding the commencement of the proceeding and is present in Tanzania at the time of the presentation of the petition.

(3) Any person may petition the court for a decree of annulment or a decree of divorce if he or she—

- (a) is domiciled in Tanzania;
- (b) has been resident in Tanzania for at least one year immediately preceding the presentation of the petition:

Provided that in the case of a petition for annulment under subsection (2) of section 96 such petition may be lodged by a party who is resident in Tanzania at the time when such petition is lodge, for whatever duration such party may have been resident in Tanzania.

(4) Any person may apply to the court for maintenance, or for custody of infant children or for any other matrimonial relief if—

- (a) he or she is domiciled in Tanzania;
- (b) he or she is resident in Tanzania at the time of the application; or
- (c) both parties to the marriage are present in Tanzania at the time of the application.

(5) Subject to provisions to this section a court in Tanzania shall have jurisdiction to entertain any of the proceedings referred to in this section notwithstanding that the marriage was contracted outside Tanzania.

##### **78. Transfer of proceedings**

Where a matrimonial proceeding has been instituted in a magistrate's court it shall be lawful, at any time before judgment, for the High Court, on the application of either of the parties or of the magistrate or on its own motion to transfer the proceeding to itself or to some other magistrate's court.

##### **79. Power of magistrate to state case**

A magistrate hearing a matrimonial proceeding may at any stage of the proceeding state in the form of a special case for the opinion of the High Court or any question of law arising in the proceeding.

**80. Appeals**(1) Any person aggrieved by any decision or order of a court of a resident magistrate, a district court or a primary court in a matrimonial proceeding may appeal therefrom to the High Court.

(2) An appeal to the High Court shall be filed in the magistrate's court within forty-five days of the decision or order against which the appeal is brought.

(3) Save to the extent provided in any rules made under this Act, the provisions of the Civil Procedure Code <sup>viii\*</sup> relating to appeals shall not apply to appeals under this Act.

(4) Any person aggrieved by a decision or order of the High Court in its appellate jurisdiction may appeal therefrom to the Court of Appeal on any ground of law or mixed law and fact.

(5) Any person aggrieved by a decision or order of the High Court in its original jurisdiction may appeal therefrom to the Court of Appeal.

(6) Notwithstanding the provisions of this section or any other written law, an appeal against a declaratory decree granted under paragraph (e) of subsection (2) of section 94, may be filed within ninety days of such decree.

**81. Form of proceedings**

Subject to the provisions of section 93–

- (a) every proceeding for a declaratory decree or for a decree of annulment, separation or divorce, shall be instituted by a petition;
- (b) every application for maintenance, or for custody of children, or for any other matrimonial relief whatsoever shall, unless included in a petition for a declaratory decree or for annulment, separation or divorce, be by summons in chambers.

**82. Alternative reliefs**

It shall be lawful to include in any petition for matrimonial relief a prayer in the alternative for any other matrimonial relief.

**83. Cross-prayers for relief**

The respondent to any petition for matrimonial relief may include in his or her answer to the petition a cross-prayer for the same or any other form of matrimonial relief and the court shall have power to grant any relief on such cross-prayer that it might have granted on a petition for the relief sought.

**84. Petitions to be heard in open court**

All petitions in matrimonial proceedings shall be heard in open court:

Provided that–

- (a) the court shall have power in its discretion, in exceptional circumstances, to order that the public be excluded from any hearing;
- (b) where, to comply with the requirements of paragraph (b) of subsection (2) of section 125, the court questions an infant as to his or her wishes regarding custody, it shall do so in chambers.

**85. Connivance**

Evidence of misconduct by a husband or a wife shall not be inadmissible in any matrimonial proceeding on the ground of connivance by the aggrieved spouse but no person shall be entitled to any relief by reason only of misconduct at which he or she has connived.

**86. Condonation**

Evidence of misconduct by a husband or a wife shall not be inadmissible in any matrimonial proceeding on the ground that the misconduct was condoned by the aggrieved spouse.

**87. Power of court to dismiss proceedings on account of non-disclosure**

The court shall have power to dismiss any petition or application or make such other order as it may think fit, including an order as to costs, in any case where it is satisfied that the petitioner or applicant has attempted to deceive the court in any material respect or has wilfully failed to make a full disclosure of all relevant facts.

**88. Mutual decrees not to be granted**

In any case where there is a cross-prayer or a cross-petition for matrimonial relief, the court shall not grant decrees in favour of both the petitioner and of the respondent, except as regards any ancillary relief.

**89. Abolition of decree nisi**

For the avoidance of doubt, it is declared that relief by way of annulment, separation or divorce may be granted by a single decree and a decree granting relief shall no longer be preceded by a decree *nisi*.

**90. Costs in matrimonial proceedings**

(1) Costs in matrimonial proceedings shall be in the discretion of the court:

Provided that a woman shall not be ordered to pay the costs of her husband or former husband unless the court is satisfied that she has sufficient means of her own to make such an order reasonable.

(2) At any stage of a matrimonial proceeding, the court may, in its discretion, order a man to furnish security for the payment of the costs in that proceeding of his wife or former wife.

**91. Recognition of decrees of foreign courts**

Where a court of competent jurisdiction in any foreign country has passed a decree in any matrimonial proceeding, whether arising out of a marriage contracted in Tanzania or elsewhere, such decree shall be recognised as effective for all purposes of the law of Tanzania—

- (a) if the petitioning party was domiciled in that court or had been resident there for at least two years prior to the filing of the petition; or
- (b) being a decree of annulment or divorce, it has been recognised as effective in a declaratory decree of a court of competent jurisdiction in the country of domicile of the parties or either of them.

**92. Recognition of extra-territorial divorces**

Where any person has obtained a divorce, otherwise than by decree of a court in Tanzania, in any foreign country, the divorce shall be recognised as effective for all purposes of the law of Tanzania if—

- (a) it was effective according to the law of the country of domicile of each of the parties at the time of the divorce; or
- (b) it has been recognised as effective in a declaratory decree of a court of competent jurisdiction in the country of domicile of the parties or either of them.

**93. Special provisions regulating proceedings in primary courts**

Notwithstanding the provisions of this Act, and subject to any rules made hereunder, where any matrimonial proceeding is instituted in a primary court it may be instituted, tried and disposed of in the same manner as any civil proceeding instituted in a primary court and the provisions of the Magistrates' Courts Act <sup>ix\*</sup>, and of any rules made thereunder regulating the institution, hearing and disposal of a proceeding of a civil nature in primary courts, shall apply, *mutatis mutandis*, to every such matrimonial proceeding.

**(b) Declaratory Decrees (ss 94-95)**

**94. Power of court to grant declaratory decrees**

(1) In any proceedings under this Part, the court may, on the petition of any interested person, grant a declaratory decree, with or without consequential relief, and

no such proceedings shall be open to objection on the ground that it is a declaratory decree that is sought or that no consequential relief is claimed.

(2) Without prejudice to the generality of subsection (1), the court may–

- (a) on the petition of any person who was a party to a ceremony purporting to be a marriage, whether such ceremony took place in Tanzania or any other country, grant a decree declaring the ceremony to have been or not to have been a valid marriage for the purposes of the law of Tanzania;
- (b) on the petition of any person who desires to establish that he or she or either of his or her parents was born legitimate, grant a decree declaring that the parents or, as the case may be, the grandparents of such person were lawfully married;
- (c) on the petition of any person who claims that his or her marriage was determined under Islamic or customary law prior to the coming into force of this Act, grant a decree declaring that the marriage was or was not so determined;
- (d) on the petition of any person who claims that his or her marriage has been annulled or dissolved under the law of any country other than Tanzania, grant a decree declaring that, for the purposes of the law of Tanzania, the marriage was or was not so determined; or
- (e) on the petition of any person who can show reasonable grounds for supposing that his or her spouse is dead, grant a decree declaring that such spouse is presumed to be dead,

or may, as the case may be, dismiss the petition.

#### **95. Effect of declaratory decrees**

(1) A decree declaring that one of the parties to a marriage is presumed to be dead shall, if that party is not in fact dead, operate to determine the marriage as from a date ninety days from the date of the decree, where no appeal or notice of appeal, as the case may be, has been filed within that time, or in any other case on the final determination of the appeal or, where a second appeal lies, on the final determination of that appeal or on the expiration of the time for giving notice of appeal.

(2) Any other declaratory decree or the decision on appeal from any such decree shall be conclusive as between, and binding upon, all persons who were parties to the proceedings or were served with notice thereof and all persons claiming under any such persons.

#### **(c) Annulment (ss 96-98)**

#### **96. Power of court to annul a voidable marriage**

(1) The court shall have power to grant a decree of annulment in respect of any marriage which is voidable under the provisions of section 39:

Provided that–

- (a) where the petition is founded on an allegation that at the time of the marriage the respondent was subject to recurrent attacks of insanity or epilepsy or was suffering from venereal disease in a communicable form or was pregnant by a person other than the petitioner, the court shall not grant a decree unless it is satisfied–
  - (i) that the petition was filed within one year of the date of the marriage; and
  - (ii) that at the time of the marriage the petitioner was ignorant of the fact alleged; and
  - (iii) that marital intercourse has not taken place with the consent of the petitioner since discovery by the petitioner of that fact;
- (b) where the petition is founded on an allegation that at the time of the marriage the intended wife was below the age of eighteen years and that consent as required by section 17 was not given, the court shall not grant a decree unless it

is satisfied that the petition was filed before that party attained the age of eighteen years.

(2) The court shall have power to grant a decree of annulment in respect of any marriage contracted outside Tanzania or in any foreign embassy, High Commission or consulate in Tanzania where the court is satisfied that any of the conditions specified in section 36 or, as the case may be, section 37 has not been complied with.

**97. Parties to petition for annulment**

(1) Subject to the provisions of subsection (2), a petition for annulment of a marriage may only be brought by one of the parties to the marriage and where the petition is founded on an allegation of facts of which one party was ignorant at the time of the marriage may only be brought by that party and where the petition is founded on the wilful refusal of one party to consummate the marriage, may only be brought by the other party.

(2) A petition for annulment of a marriage on the ground that one of the parties was below the age of eighteen years and that the consent of his or her parent or guardian or of the court to the marriage had not been given may be brought by the parent or guardian of that party.

**98. Effect of decree of annulment**

(1) The parties to a marriage which has been annulled by a decree of the court shall be deemed never to have been married:

Provided that a decree of annulment shall not—

- (a) render any child of the marriage illegitimate;
- (b) render lawful anything which was done unlawfully during the marriage or render unlawful anything which was done lawfully during the marriage;
- (c) affect the competence or compellability of either spouse as a witness in respect of anything done or any privilege in respect of communications made during the marriage; or
- (d) relieve the husband of any debt properly incurred on his behalf by his wife during the marriage.

(2) A decree of annulment shall be effective as from a date thirty days from the date of the decree if no appeal or notice of appeal, as the case may be, has been filed within that time and in any other case on the final determination of the appeal or, where a second appeal lies, on the final determination of that appeal or on the expiration of the time for giving notice of appeal.

**(d) Separation and Divorce (ss 99-101)**

**99. Right to petition for separation or divorce**

Subject to the provisions of sections 77, 100 and 101, any married person may petition the court for a decree of separation or divorce on the ground that his or her marriage has broken down but no decree of divorce shall be granted unless the court is satisfied that the breakdown is irreparable.

**100. Restriction on petition for divorce during first two years of marriage**

(1) No person shall, without the prior leave of the court, petition for divorce before the expiry of two years from the date of the marriage which it is sought to dissolve.

(2) Leave shall not be granted to petition for divorce within two years of the marriage except where it is shown that exceptional hardship is being suffered by the person applying for such leave.

(3) An application may be made to the court under this section either before or after reference to a Board under section 101.

**101. Requirement of prior reference to Board**

No person shall petition for divorce unless he or she has first referred the

matrimonial dispute or matter to a Board and the Board has certified that it has failed to reconcile the parties:

Provided that this requirement shall not apply in any case—

- (a) where the petitioner alleges that he or she has been deserted by, and does not know the whereabouts of, his or her spouse;
- (b) where the respondent is residing outside Tanzania and it is unlikely that he or she will enter the jurisdiction within the six months next ensuing after the date of the petition;
- (c) where the respondent has been required to appear before the Board and has wilfully failed to attend;
- (d) where the respondent is imprisoned for life or for a term of at least five years or is detained under the Preventive Detention Act <sup>x\*</sup> and has been so detained for a period exceeding six months;
- (e) where the petitioner alleges that the respondent is suffering from an incurable mental illness;
- (f) where the court is satisfied that there are extraordinary circumstances which make reference to the Board impracticable.

#### **(e) Marriage Conciliation Boards (ss 102-104)**

**102. Conciliation Boards** (1) The Minister shall establish in every ward a Board to be known as a Marriage Conciliation Board and may, if he considers it desirable so to do, establish two or more such Boards in any ward.

(2) Where the Minister is satisfied that any community in Tanzania has established for itself a committee or a body of persons to perform the functions of a Marriage Conciliation Board and that it is desirable that such committee or body of persons be designated to be the Board having jurisdiction over the members of that community, the Minister may so designate such committee or body of persons.

#### **103. Composition and jurisdiction of Boards**

(1) Every Board shall consist of a Chairman and not less than two and not more than five other members.

(2) The Board having jurisdiction for the purposes of this Act shall be—

- (a) the Board or any one of the Boards established for the ward within which the husband or intended husband resides, or, where the husband or intended husband is not resident in Tanzania, the Board established for the ward within which the wife or the intended wife resides;
- (b) where both parties belong to the same community, the Board, if any, designated to be the Board for that community.

#### **104. Proceedings of Boards**

(1) A Board to which a matrimonial dispute or matter has been referred shall require the attendance of the parties and shall give each of them an opportunity of being heard and may hear such other persons and make such inquiries as it may think fit and may, if it considers it necessary, adjourn the proceeding from time to time.

(2) Where a Board is of the opinion that it is necessary for it to require the attendance of any person before it, it may by notice in writing require such person to attend before the Board on the date and at the time and place specified in such notice.

(3) Where a person on whom a notice under subsection (2) is served fails to comply with such notice, the Board may apply to a primary court or a district court for a summons to be issued to such person to appear before the Board on the date and at the time and place specified in such summons.

(4) Every summons issued under subsection (3) shall be in the same form and shall have the same effect as a summons issued by a court requiring the attendance of a

witness in any suit, and any non-compliance with such summons shall constitute a contempt of court and be punishable accordingly.

(5) If the Board is unable to resolve the matrimonial dispute or matter referred to it to the satisfaction of the parties, it shall issue a certificate setting out its findings.

(6) A Board may append to its certificate such recommendations relevant to the matter or dispute referred to it as it may think fit.

(7) The proceedings of a Board shall not be invalid by reason only of the fact that it did not have jurisdiction under subsection (2) of section 103.

(8) No advocate shall appear or act for any party in any proceeding before a Board and no party shall be represented by any person other than a member of his or her family, without leave of the Board.

(9) Subject to the provisions of this section and any rules made in that behalf under this Act, every Board shall regulate its own procedure.

#### **(f) *Petitions and Determination (ss 105-113)***

#### **105. Parties to petitions**

(1) No person shall be made a co-respondent to a petition for a decree of separation.

(2) Where a petition for a decree of divorce includes an allegation of adultery on the part of the respondent, the petitioner, may, and if so directed by the court shall, make the person with whom the adultery is alleged to have been committed a co-respondent.

#### **106. Contents of petitions**

(1) Every petition for a decree of separation or divorce shall contain—

- (a) particulars of the marriage between the parties and the names, ages and sex of the children, if any, of the marriage;
- (b) particulars of the facts giving the court jurisdiction;
- (c) particulars of any previous matrimonial proceedings between the parties;
- (d) a statement of the principal allegations which it will be sought to prove as evidence of the breakdown of the marriage;
- (e) where the petitioner has been guilty of any marital misconduct, an admission of such misconduct;
- (f) the terms of any agreement regarding maintenance or the division of any assets acquired through the joint efforts of the parties or, where no such agreement has been reached, the petitioner's proposals; and
- (g) particulars of the relief sought.

(2) Every petition for a decree of divorce shall be accompanied by a certificate by a Board, issued not more than six months before the filing of the petition in accordance with subsection (5) of section 104:

Provided that such certificate shall not be required in cases to which the proviso to section 101 applies.

(3) A petition for a decree of divorce which includes an allegation of adultery may include a prayer that the co-respondent be condemned in damages in respect of the alleged adultery:

Provided that a prayer for damages for adultery shall not be included in a petition for divorce if damages for the alleged adultery have already been claimed in a suit brought under section 72.

#### **107. Evidence that marriage has broken down**

(1) In deciding whether or not a marriage has broken down, the court shall have regard to all relevant evidence regarding the conduct and circumstances of the parties and, in particular—

- (a) shall, unless the court for any special reason otherwise directs, refuse to grant a

decree where a petition is founded exclusively on the petitioner's own wrongdoing; and

(b) shall have regard to the custom of the community to which the parties belong.

(2) Without prejudice to the generality of subsection (1), the court may accept any one or more of the following matters as evidence that a marriage has broken down but proof of any such matter shall not entitle a party as of right to a decree—

- (a) adultery committed by the respondent, particularly when more than one act of adultery has been committed or when adulterous association is continued despite protest;
- (b) sexual perversion on the part of the respondent;
- (c) cruelty, whether mental or physical, inflicted by the respondent on the petitioner or on the children, if any, of the marriage;
- (d) wilful neglect on the part of the respondent;
- (e) desertion of the petitioner by the respondent for at least three years, where the court is satisfied that it is wilful;
- (f) voluntary separation or separation by decree of the court, where it has continued for at least three years;
- (g) imprisonment of the respondent for life or for a term of not less than five years, regard being had both to the length of the sentence and to the nature of the offence for which it was imposed;
- (h) mental illness of the respondent, where at least two doctors, one of whom is qualified or experienced in psychiatry, have certified that they entertain no hope of cure or recovery;
- (i) change of religion by the respondent, where both parties followed the same faith at the time of the marriage and where according to the laws of that faith a change of religion dissolves or is a ground for the dissolution of marriage.

(3) Where it is proved to the satisfaction of the court that—

- (a) the parties were married in Islamic form;
- (b) a Board has certified that it has failed to reconcile the parties; and
- (c) subsequent to the granting by the Board of a certificate that it has failed to reconcile the parties, either of them has done any act or thing which would, but for the provisions of this Act, have dissolved the marriage in accordance with the Islamic law,

the court shall make a finding that the marriage has irreparably broken down and proceed to grant a decree of divorce.

(4) When hearing a petition for a decree of divorce, the court may admit and found its decisions, wholly or partly, on evidence which is substantially the same as that on which a decree of separation has previously been granted.

#### **108. Duties of court on petition for separation or divorce**

It shall be the duty of a court hearing a petition for a decree of separation or divorce—

- (a) to inquire, so far as it reasonably can, into the facts alleged and to consider whether those facts, or such of them as are proved, show that the marriage has broken down;
- (b) to inquire into the arrangements made or proposed as regards maintenance and the division of any matrimonial property and to satisfy itself that such arrangements are reasonable;
- (c) to inquire into the arrangements made or proposed as regards the maintenance and custody of the infant children, if any, of the marriage and to satisfy itself that such arrangements are in the best interests of the children; and

- (d) in the case of a petition for divorce, where the court is satisfied that the marriage has broken down, to consider whether the breakdown of the marriage is irreparable.

#### **109. Power of court on claim to damages for adultery**

(1) Where, in a petition for divorce, damages for adultery have been claimed against a co-respondent—

- (a) if, after the close of the evidence for the petitioner, the court is of the opinion that there is not sufficient evidence against the co-respondent to justify requiring him or her to reply, the co-respondent shall be discharged from the proceedings; or
- (b) if, at the conclusion of the hearing, the court is satisfied that adultery between the respondent and the co-respondent has been proved, the court may award the petitioner damages against the co-respondent.

(2) The provisions of section 74 shall apply to the assessment of damages awarded under this section.

(3) The court may award damages against a co-respondent under this section notwithstanding that the petition is, as against the respondent, dismissed or adjourned.

(4) The court shall have power, when awarding damages under this section, to direct that such damages, or any part of them, be vested in trustees upon trust to apply the income thereof for the benefit of the infant children, if any, of the marriage or, where the petitioner is required to pay maintenance to the respondent, in or towards the payment of that maintenance, and subject thereto in trust for the petitioner.

#### **110. Power of court to grant decree of separation or divorce**

(1) At the conclusion of the hearing of a petition for separation or divorce, the court may—

- (a) if satisfied that the marriage has broken down and, where the petition is for divorce, that the break down is irreparable, grant a decree of separation or divorce, as the case may be, together with any ancillary relief; or
- (b) if not so satisfied, dismiss the petition, and where there is a cross-petition or cross-prayer the court may if satisfied as aforesaid, grant a decree on the petition or on the cross-petition or cross-prayer as it may deem fit with any ancillary relief to either party or, if not so satisfied, dismiss both the petition and the cross-petition or cross-prayer.

(2) Where the petition or the cross-petition or cross-prayer, if any, is for a decree of divorce, the court may adjourn the proceedings for such period, not exceeding six months, as the court may think fit, for further inquiries or further attempts at reconciliation to be made and may direct that inquiries or attempts be made by a Board.

(3) Where a decree of separation or divorce is granted, it shall include provision for the maintenance and custody of the infant children, if any, of the marriage:

Provided that the court may grant a decree which includes an interim order as to custody, reserving its final order pending further inquiries as to the most satisfactory arrangements that can be made.

#### **111. Effect of decree of separation**

A decree of separation shall relieve the parties of the duty to cohabit and to render each other help and companionship and, except so far as the decree otherwise provides, of the duty to maintain each other, but shall not dissolve their marital status.

#### **112. Effect of decree of divorce**

(1) Subject to the provisions of subsection (3), a decree of divorce shall dissolve the marital status of the parties as from a date thirty days from the date of the decree, if no appeal or notice of appeal, as the case may be, has been filed within that time, or in

any other case, on the final determination of the appeal or, where a second or subsequent appeal lies, on the final determination of that appeal or on the expiration of the time for giving notice of appeal.

(2) A marriage which has been dissolved shall not be an impediment to the subsequent marriage of either of the parties thereto.

(3) Where a decree of divorce is granted pursuant to the provisions of subsection (3) of section 107, the marriage shall, unless the court otherwise directs, be deemed to have been dissolved as from the date when the dissolution would, but for this Act, have taken effect in accordance with the Islamic law.

### **113. Power of court to set aside or vary decrees of separation**

(1) The court shall set aside a decree of separation on the joint application of the parties.

(2) The court may set aside a decree of separation on the application of either party where it is satisfied that the decree was obtained as the result of misrepresentation or mistake of fact.

(3) The court may vary the terms of the decree of separation on the application of the parties or either of them where there has been any material change in the circumstances.

### **(g) Division of Assets and Maintenance as between Husband and Wife (ss 114-124)**

#### **114. Power of court to order division of matrimonial assets**

(1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or to order the sale of any such asset and the division between the parties of the proceeds of sale.

(2) In exercising the power conferred by subsection (1), the court shall have regard—

- (a) to the customs of the community to which the parties belong;
- (b) to the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
- (c) to any debts owing by either party which were contracted for their joint benefit; and
- (d) to the needs of the infant children, if any, of the marriage,

and subject to those considerations, shall incline towards equality of division.

(3) For the purposes of this section, references to assets acquired during the marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

#### **115. Power of court to order maintenance for spouse**

(1) The court may order a man to pay maintenance to his wife or former wife—

- (a) if he has refused or neglected to provide for her as required by section 63;
- (b) if he has deserted her, for so long as the desertion continues;
- (c) during the course of any matrimonial proceedings;
- (d) when granting or subsequent to the grant of a decree of separation;
- (e) when granting or subsequent to the grant of a decree of divorce;
- (f) where the parties were married in Islamic form, for the customary period of *iddat* following the date on which the divorce takes, or is deemed to have taken, effect;

(g) if, after a decree declaring her presumed to be dead, she is found to be alive: Provided that where the marriage has been dissolved, the wife shall not, unless the court for special reason so directs, be entitled to maintenance for herself for any

period following the date when the dissolution takes effect.

(2) The court shall have the corresponding power to order a woman to pay maintenance to her husband or former husband where he is incapacitated, wholly or partially, from earning livelihood by reason of mental or physical injury or ill-health, and the court is satisfied that having regard to her means it is reasonable so to order.

(3) The power to order maintenance in the cases referred to in paragraphs (d), (e), (f) and (g) of subsection (1) shall extend to cases where the decree was granted by a foreign court, if it is one which is recognised as effective under the provisions of section 91 and, for this purpose, a declaratory decree recognising as effective a divorce obtained otherwise than by decree of a court shall be deemed to be a decree of divorce.

#### **116. Assessment of maintenance**

In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the means and needs of the parties but shall have regard also—

- (a) to the degree of responsibility which the court apportions to each party for the breakdown of the marriage; and
- (b) to the customs of the community to which the parties belong.

#### **117. Power of court to order security for maintenance**

The court may in its discretion when awarding maintenance order the person liable to pay such maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay such maintenance or part thereof out of the income from such property and, subject thereto, in trust for the settlor.

#### **118. Compounding maintenance**

An agreement for the payment, in money or other property, of a capital sum in settlement of all future claims to maintenance, shall not be effective until it has been approved, or approved subject to conditions, by the court, but when so approved shall be a good defence to any claim for maintenance.

#### **119. Duration of orders for maintenance**

Save where an order for maintenance is expressed to be for any shorter period or where any such order has been rescinded, every order for maintenance shall, subject to the provisions of section 120, expire—

- (a) if the maintenance was unsecured, on the death of the husband or of the wife, whichever is the earlier;
- (b) if the maintenance was secured, on the death of the spouse in whose favour it was made.

#### **120. Right to maintenance to cease on remarriage**

(1) The right of any divorced woman to receive maintenance from her former spouse under any order of court shall cease on her remarriage.

(2) The right of any man to receive maintenance from his former wife under any order of court shall cease upon his remarriage.

(3) The right of any divorced person to receive maintenance from his or her former spouse under an agreement shall cease on his or her remarriage unless the agreement otherwise provides.

#### **121. Power of court to vary orders for maintenance**

The court may at any time and from time to time vary, or may rescind, any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom the order was made, or, in respect of secured maintenance, of the legal personal representatives of the latter, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

## **122. Power of court to vary agreements for maintenance**

Subject to the provisions of section 118, the court may at any time and from time to time vary the terms of any agreement as to maintenance made between husband and wife, whether made before or after the coming into force of this Act, where it is satisfied that there has been any material change in the circumstances and notwithstanding any provision to the contrary in any such agreement.

## **123. Maintenance payable under order of court to be inalienable**

Maintenance payable to any person under an order of court shall not be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever save for a debt due to the Government.

## **124. Recovery of arrears of maintenance and enforcement of maintenance orders**

(1) Subject to the provisions of subsection (3) arrears of unsecured maintenance payable under any agreement shall be recoverable as a debt from the defaulter and, where they accrued before the making of a receiving order against the defaulter, shall be provable in his or her bankruptcy and, where they accrued due before his or her death, shall be a debt from his or her estate.

(2) Subject to the provisions of subsection (3) arrears of unsecured maintenance payable under an agreement and which accrued before the death of the person entitled thereto, shall be recoverable as a debt by the legal personal representatives of such person.

(3) No amount owing as maintenance payable under an agreement shall be recoverable in any suit if it accrued more than three years before the institution of the suit.

(4) Every order for maintenance made by a court shall be enforceable, in respect of any maintenance accrued thereunder, in the same manner as a decree for payment of money passed by that court, and the provisions of the Civil Procedure Code<sup>xi\*</sup> relating to enforcement and execution of decrees for payment of money shall apply *mutatis mutandis* to the enforcement of an order for maintenance.

### **(h) Custody and Maintenance of Children (ss 125-137)**

## **125. Power of court to make order for custody**

(1) The court may, at any time, by order, place an infant in the custody of his or her father or his or her mother or, where there are exceptional circumstances making it undesirable that the infant be entrusted to either parent, of any other relative of the infant or of any association the objects of which include child welfare.

(2) In deciding in whose custody an infant should be placed the paramount consideration shall be the welfare of the infant and, subject to this, the court shall have regard to—

- (a) the wishes of the parents of the infant;
- (b) the wishes of the infant, where he or she is of an age to express an independent opinion; and
- (c) the customs of the community to which the parties belong.

(3) There shall be a rebuttable presumption that it is for the good of an infant below the age of seven years to be with his or her mother but in deciding whether that presumption applies to the facts of any particular case, the court shall have regard to the undesirability of disturbing the life of the infant by changes of custody.

(4) Where there are two or more children of a marriage, the court shall not be bound to place both or all in the custody of the same person but shall consider the welfare of each independently.

## **126. Orders subject to conditions**

(1) An order for custody may be made subject to such conditions as the court

may think fit to impose, and subject to such conditions, if any, as may from time to time apply, shall entitle the person given custody to decide all questions relating to the upbringing and education of the infant.

(2) Without prejudice to the generality of subsection (1), an order for custody may—

- (a) contain conditions as to the place where the infant is to reside, as to the manner of his or her education and as to the religion in which he or she is to be brought up;
- (b) provide for the infant to be temporarily in the care and control of some person other than the person given custody;
- (c) provide for the infant to visit a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody at such times and for such periods as the court may consider reasonable;
- (d) give a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody the right of access to the infant at such times and with such frequency as the court may consider reasonable; or
- (e) prohibit the person given custody from taking the infant out of Tanzania.

#### **127. Declaratory order as to unfitness of parent to have custody**

(1) The court may, when granting a decree of separation or divorce or at any time thereafter, on the application of the father or the mother of any infant of the marriage, or where the father or mother is dead, on the application of a relative of the deceased parent, make an order declaring either parent to be a person unfit to have the custody of the infant and may at any time rescind any such order.

(2) Where an order has been made under subsection (1), and has not been rescinded, the parent thereby declared to be unfit shall not, on the death of the other parent, be entitled to the custody of such infant unless the court otherwise orders.

#### **128. Custody of children deemed legitimate**

Where a marriage is a nullity or is annulled under section 96 the mother shall, in the absence of any agreement or order of court to the contrary, be entitled to the custody of the infant child, if any, of the marriage.

#### **129. Duty to maintain children**

(1) Save where an agreement or order of court otherwise provides, it shall be the duty of a man to maintain his infant children, whether they are in his custody or the custody of any other person, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his means and station in life or by paying the cost thereof.

(2) Subject to the provisions of subsection (1), it shall be the duty of a woman to maintain or contribute to the maintenance of her infant children if their father is dead or his whereabouts are unknown or if and so far as he is unable to maintain them.

#### **130. Power of court to order maintenance for children**

(1) The court may at any time order a man to pay maintenance for the benefit of his infant child—

- (a) if he has refused or neglected to adequately provide for him or her;
- (b) if he has deserted his wife and the infant is in her charge;
- (c) during the pendency of any matrimonial proceedings; or
- (d) when making or subsequent to the making of an order placing the infant in the custody of any other person.

(2) The court shall have the corresponding power to order a woman to pay or contribute towards the maintenance of her infant child where it is satisfied that having regard to her means it is reasonable so to order.

(3) An order under subsection (1) or subsection (2) may direct payment to the person having custody or care and control of the infant or to the trustees for the infant.

**131. Power of court to order security for maintenance**

The court may, in its discretion, when ordering payment of maintenance for the benefit of an infant, order the person liable to pay such maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay such maintenance or part thereof out of the income from such property, and subject thereto, in trust for the settlor.

**132. Duration of orders for custody and maintenance**

Save where an order for custody or maintenance of an infant is expressed to be for any shorter period or where any such order has been rescinded, it shall expire on the attainment by the infant of the age of eighteen years.

**133. Power of court to vary orders for custody or maintenance**

The court may at any time and from time to time vary, or may rescind, any order for the custody or maintenance of an infant on the application of any interested person, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

**134. Power of court to vary agreement for custody or maintenance**

The court may at any time and from time to time vary the terms of any agreement relating to the custody or maintenance of an infant, whether made before or after the commencement of this Act, notwithstanding any provision to the contrary in any such agreement, where it is satisfied that it is reasonable and in the interest of the welfare of the infant so to do.

**135. Recovery of arrears of maintenance**

The provisions of section 124 shall apply, *mutatis mutandis*, to orders for the payment of maintenance for the benefit of an infant.

**136. Court to have regard to advice of welfare officers, etc.**

(1) When considering any question relating to the custody or maintenance of any infant, the court shall, whenever it is practicable, take the advice of some person, whether or not a public officer, who is trained or experienced in child welfare but shall not be bound to follow such advice.

(2) No proceeding shall be invalid by reason only of non-compliance with the provisions of subsection (1).

**137. Power of court to restrain taking of infant out of Tanzania**

(1) The court may, on the application of the father or the mother of an infant—

- (a) where any matrimonial proceeding is pending; or
- (b) where, under any agreement or order of court, one parent has custody of the infant to the exclusion of the other,

issue an injunction restraining the other parent from taking the infant out of Tanzania or may give leave for such child to be taken out of Tanzania either unconditionally or subject to such conditions or on such undertaking as the court may think fit.

(2) The court may, on the application of any interested person, issue an injunction restraining any person, other than a person having custody of an infant, from taking the infant out of Tanzania.

(3) Failure to comply with an order made under this section shall be punishable as a contempt of court.

**(i) Other Reliefs (ss 138-140)**

**138. Power of court to set aside and prevent dispositions intended to defeat claims to maintenance**

(1) Where—

- (a) any matrimonial proceeding is pending;
- (b) any order made under section 114 has not been complied with;
- (c) an order for maintenance has been made under section 115 or section 130 and has not been rescinded; or
- (d) maintenance is payable under any agreement to or for the benefit of a spouse or former spouse or infant child,

the court shall have power on application—

- (i) to set aside a disposition if it is satisfied that any such disposition of property has been made by the spouse or former spouse or parent of the person by or on whose behalf the application is made, within the preceding three years, with the object on the part of the person making the disposition of reducing his or her means to pay maintenance or of depriving his or her spouse of any rights in relation to that property; and
- (ii) to grant an injunction preventing that disposition if it is satisfied that the disposition of property is intended to be made with any such object.

(2) For the purposes of this section, "disposition" includes a sale, gift, lease, mortgage or any other transaction whereby ownership or possession of the property is transferred or encumbered but does not include a disposition made for money or money's worth to or in favour of a person acting in good faith and in ignorance of the object with which the disposition is made, and "property" means property of any nature, movable or immovable, and includes money and choses in action.

### **139. Injunctions against molestation**

The court shall have power during the pendency of any matrimonial proceedings or on or after the grant of a decree of annulment, separation or divorce, to order any person to refrain from forcing his or her company on his or her spouse or former spouse and from other acts of molestation.

### **140. No proceedings to compel cohabitation**

No proceeding may be brought to compel a wife to live with her husband or a husband with his wife, but it shall be competent for a spouse who has been deserted to refer the matter to a Board.

### **(j) Reciprocal Arrangements for Enforcement of Maintenance Orders (ss 141-144)**

#### **141. Reciprocal arrangements with other countries for enforcement of maintenance orders**

(1) Where an agreement has been made with any country with respect to the reciprocal enforcement of maintenance orders, the Minister may, by order published in the *Gazette*, declare that the provisions of sections 142, 143 and 144 shall apply in the case of that country.

(2) For the purposes of this section and sections 142, 143 and 144 "maintenance order" means an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or former wife or husband or former husband or infant child of the person against whom the order is made.

#### **142. Registration of orders made in other countries**

(1) Where a maintenance order has, whether before or after the commencement of this Act, been made against any person by any court in a country to which this section applies and a certified copy thereof has been transmitted to the Minister for the time being responsible for foreign affairs, the Minister shall send a copy to a court in Mainland Tanzania for registration and thereupon the order shall be registered in the prescribed manner.

(2) The court in which an order is to be so registered shall, if the court in which the order was made was a court of superior jurisdiction, be the High Court, and in any

other case, be a court of a resident magistrate.

#### **143. Enforcement of registered orders**

(1) An order which has been registered under section 142 may, from the date of registration, be enforced as if it had been an order made by the court in which it is registered.

(2) Where such an order is made by a magistrate's court, it shall be sent to the Minister through the Registrar of the High Court.

#### **144. Transmission of orders made in Tanzania**

(1) Where a court in Tanzania has, whether before or after the commencement of this Act, made a maintenance order against any person and it is proved to that court that the person against whom the order is made is resident in a country to which this section applies, the court shall send a certified copy of the order to the Minister responsible for foreign affairs for transmission to that country.

(2) Where such an order is made by a magistrate's court, it shall be sent to the Minister through the Registrar of High Court.

### **PART VII**

#### **OFFENCES (ss 145-158)**

#### **145. False statement in notice of intention to marry or in notice of objection**

Any person who, when giving notice of intention to marry in compliance with section 18, or notice of objection to an intended marriage under section 20, makes any false statement shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years:

Provided that it shall be a good defence to a charge under this section, that the person charged had reasonable grounds for believing the statement to be true.

#### **146. Failure to attend before Board**

Any person who, having been required to attend before a Board, refuses or neglects to do so without reasonable excuse shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings.

#### **147. Giving false testimony, etc., before Board**

Any person who in or in relation to any proceeding before a Board—

- (a) knowingly makes a false statement; or
- (b) fabricates evidence or makes use of fabricated evidence;
- (c) destroys, mutilates or conceals any documentary evidence; or
- (d) attempts to influence any witness,

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years.

#### **148. Minimum age**

(1) Any person who is a party to a ceremony purporting to be a marriage knowing or having reason to believe that the other party is below the minimum age for marriage shall be guilty of an offence and shall be liable on conviction to imprisonment for three years.

(2) Any person who participates in any such ceremony knowing or having reason to believe that either party is below the minimum age for marriage shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years.

#### **149. Prohibited relationship**

(1) Any person who is a party to a ceremony purporting to be a marriage where the parties are within the prohibited relationships shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years:

Provided that it shall be a good defence to a charge under this section, that the

person charged did not know and could not reasonably have discovered the relationship.

(2) Any person who participates in any such ceremony knowing or having reason to believe that the relationship exists shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years.

#### **150. Prohibited ceremony**

(1) Any person who is a party to a ceremony purporting to be a marriage, knowing that the intended marriage has been prohibited by order of the court or of a Board under the powers conferred by section 22, shall be guilty of an offence and liable on conviction to imprisonment for three years.

(2) Any person who participates in any such ceremony knowing that the intended marriage has been so prohibited shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years.

#### **151. Coercion, fraud, etc.**

(1) Any person who is a party to a ceremony purporting to be a marriage knowing or having reason to believe that the consent of the other party was induced by any coercion or fraud on the part of himself or herself or of any other person, or by a mistake as to the nature of the ceremony, or that the other party was suffering from any mental disorder or mental defect, whether permanent or temporary, or was intoxicated, so as not fully to appreciate the nature of the ceremony shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

(2) Any person who participates in any such ceremony with the knowledge of the fact which makes the ceremony a nullity shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

#### **152. Polyandry and similar offences**

(1) A married woman who is a party to a ceremony whereby she purports to marry another man shall be guilty of an offence.

(2) A man who is a party to a ceremony whereby he purports to marry a woman who is married to another man knowing or having reason to believe that she is so married, shall be guilty of an offence.

(3) Any person guilty of an offence under subsection (1) or (2) shall be liable on conviction to imprisonment for a term not exceeding three years.

(4) Any person who participates in any such ceremony with knowledge of the fact which makes the ceremony a nullity shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

(5) It shall be a good defence for a person charged with an offence under subsection (1) or (2), that he or she believed his or her spouse, or the spouse of the person with whom he or she purported to contract marriage, as the case may be, to be dead or that the marriage had been dissolved and had reasonable grounds for that belief.

#### **153. Ceremony performed by unauthorised official**

Any person who is a party to or participates in a ceremony purporting to be a marriage knowing or having reason to believe that any person officiating thereat is not lawfully entitled to do so, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings.

#### **154. Absence of witness**

Any person who is a party to or participates in a ceremony purporting to be a marriage at which there are not at least two competent witnesses present shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings.

#### **155. Irregular marriages**

- (1) Any person who is a party to a ceremony of marriage where—
- (a) the intended wife is below the age of eighteen years and consent to the marriage, as required by section 18, has not been given;
  - (b) notice of intention to marry, as required by section 18, has not been given; or
  - (c) notice of objection to the intended marriage has been given and has not been dismissed or withdrawn,

shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding six months:

Provided that it shall be a good defence to a charge under paragraph (a) or paragraph (c) of this subsection, that the person charged did not know and had no reason to believe that the party was below the age of eighteen years or, as the case may, that he had no knowledge that notice of objection had been given, or that he reasonably believed that such had been dismissed or withdrawn.

(2) Any person who participates in any such ceremony with knowledge of the irregularity shall be guilty of an offence and shall be liable on conviction to the like penalty.

#### **156. Meaning of participation**

For the purposes of sections 148 to 155, inclusive, "to participate in" a ceremony means—

- (a) to officiate thereat;
- (b) to give consent thereto under section 17; or
- (c) to act as a witness thereto.

#### **157. Failing to apply for registration**

Any person who, being under a duty to apply for the registration of any marriage, fails to do so within the prescribed time, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings:

Provided that no person shall be charged with an offence under this section if the marriage has been registered under the provisions of subsection (8) of section 43.

#### **158. Unlawful attempt to prevent marriage**

(1) Any person who unlawfully attempts to prevent parties to an intended marriage to get married shall be guilty of an offence.

(2) Any person who with the intention to disturb or delay the celebration of any marriage, or with the intention of embarrassing the intended parties or any other person present at the place where a marriage ceremony is being, or is about to be, or has been, performed, causes a disturbance in, at or near such place shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months or both.

### **PART VIII**

#### **MISCELLANEOUS PROVISIONS (ss 159-167)**

#### **159. Presumption of validity of registered marriage**

The fact that a marriage has been registered under this Act or any other written law in force before the commencement of this Act providing for the registration of marriages shall raise a rebuttable presumption that such marriage was valid.

#### **160. Presumption of marriage**

(1) Where it is proved that a man and woman have lived together for two years or more, in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married.

(2) When a man and a woman have lived together in circumstances which give rise to a presumption provided for in subsection (1) and such presumption is rebutted in

any court of competent jurisdiction, the woman shall be entitled to apply for maintenance for herself and for every child of the union on satisfying the court that she and the man did in fact live together as husband and wife for two years or more, and the court shall have jurisdiction to make an order or orders for maintenance and, upon application made therefor either by the woman or the man, to grant such other reliefs, including custody of children, as it has jurisdiction under this Act to make or grant upon or subsequent to the making of an order for the dissolution of a marriage or an order for separation, as the court may think fit, and the provisions of this Act which regulate and apply to proceedings for, and orders of, maintenance and other reliefs shall, in so far as they may be applicable, regulate and apply to proceedings for and orders of maintenance and other reliefs under this section.

#### **161. Presumption of death**

(1) Where in any proceeding, whether civil, matrimonial or criminal, under this Act it is proved that a person has not been heard of for five years by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.

(2) Where a presumption under subsection (1) arises, the other party to the marriage shall not, by virtue of such presumption, be entitled to contract another marriage unless such other party obtains or has obtained a decree of dissolution of the marriage from the court on the ground of desertion or obtains a declaratory decree under section 94 and the provisions of section 95 apply:

Provided that this subsection shall not apply where the parties were married under a polygamous marriage and the presumption of death arises in relation to the wife.

#### **162. Rules and regulations**

(1) The Chief Justice may make Rules of Court for regulating the practice and procedure under Part II and Part VI of this Act, including the procedure on petitions and applications, the transfer of proceedings, the stating of cases and appeals to the High Court, the registration of maintenance orders, execution or enforcement of decrees or orders in matrimonial proceedings and for the forms to be used and the fees to be paid in respect thereof.

(2) Subject to the provisions of subsection (1), the Minister may make regulations prescribing anything which may be prescribed under this Act and for the better carrying into effect of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may—

- (a) prescribe forms of application for the specification of religions under section 25 and the licensing of ministers under section 30;
- (b) regulate the procedure of the Boards;
- (c) prescribe the manner in which notices of intention to marry are to be made known;
- (d) prescribe the forms to be used for the giving of any notice required by this Act to be given;
- (e) prescribe the forms of licences to be issued by the Registrar-General;
- (f) prescribe the form of marriage certificates;
- (g) prescribe the form of statement of particulars relating to a marriage to be used by registration officers;
- (h) prescribe the forms of the registers to be kept and the returns to be made under this Act;
- (i) prescribe the fees to be paid for services to be performed under this Act, or under any regulations made under this section.

#### **163. Repeal of certain laws**

The written laws set out in the First Schedule are hereby repealed.

#### **164. Amendment of certain laws**

The written laws set out in the first and second columns of the Second Schedule are hereby amended in the manner specified in relation thereto in the third column of that Schedule.

#### **165. Saving**

(1) Any subsisting union between a man and a woman which under any written or customary law constituted a valid marriage on the coming into force of this Act, shall continue to be such, notwithstanding any provision of this Act which might have invalidated it but for this section.

(2) All proceedings commenced under any written law or under customary law and relating to any matter provided for in this Act shall, so far as practicable, be continued under this Act and for this purpose—

- (a) every application for a separation order and every petition for judicial separation shall be deemed to be a petition for a decree of separation under this Act and the grounds set out in the application or petition shall be deemed to be the principal allegations which it will be sought to prove as evidence that the marriage has broken down:

Provided that where a co-respondent is named in a petition for judicial separation, he shall be discharged from the proceedings, without prejudice to any right of action the petitioner may have against him;

- (b) every petition for divorce, other than one on which a decree *nisi* has been granted, shall be deemed to be a petition for a decree of divorce under this Act and the grounds set out in the petition shall be deemed to be the principal allegations which it will be sought to prove as evidence of the breakdown of the marriage but every such petition shall, unless the court otherwise orders, be stayed pending reference to a Board.

(3) Notwithstanding the provisions of paragraph (2), where a decree *nisi* has been granted in any matrimonial proceedings, the proceedings shall continue as if this Act had not been enacted.

(4) An order for judicial separation or a decree of divorce granted under any written law hereby repealed shall, in relation to the powers of the court regarding maintenance, be deemed to be a decree of separation or divorce, as the case may be, granted under this Act.

(5) No marriage performed or purported to have been performed under the Marriage Ordinance<sup>xii\*</sup> shall be invalid by reason only of the fact that both the parties to such marriage or purported marriage were Muslims, Hindus, Buddhists, Pagans or persons professing the same religion or professing no generally recognised form of religion.

(6) The provisions of subsection (5) shall not be construed as validating any marriage to which that section applies which, prior to the coming into operation of this Act, has been declared invalid or annulled by a court of competent jurisdiction.

#### **166. Amendment**

(1) This section shall come into operation on the date on which this Act is published in the *Gazette*. [12th February, 1971]

(2) [Repeals s. 164 of the Penal Code<sup>xiii\*</sup>.]

(3) [Transitional provisions in relation to persons charged with or convicted of bigamy under the repealed s. 164 of R.L. Cap. 16.]

#### **167. Translation of Act into Kiswahili**

(1) The Minister shall, as soon as may be practicable after the publication of this

Act, cause this Act to be translated into Kiswahili and such translation to be published in the *Gazette*.

(2) The Minister shall, by order published in the *Gazette*, cause to be incorporated into the Kiswahili version of this Act, any amendment made to this Act.

(3) Where there is any dispute as to whether the translation of any of the provisions of this Act is a correct translation, the matter shall be referred to the Attorney-General whose decision thereon shall be final.

(4) The Minister may, from time to time, by order published in the *Gazette* modify or vary the Kiswahili translation of this Act in order to remove any ambiguity, inconsistency, uncertainty or inaccuracy.

(5) The provisions of subsection (1) shall not apply to the Schedules to this Act.

**FIRST SCHEDULE**  
**WRITTEN LAWS REPEALED**

R.L. Cap. 109 The Marriage Ordinance.

R.L. Cap. 111 The Matrimonial Causes (War Marriages) Ordinance.

R.L. Cap. 274 The District Courts (Separation and Maintenance)

Ordinance.

R.L. Cap. 275 The Maintenance Orders (Enforcement) Ordinance.

R.L. Cap. 364 The Matrimonial Causes Ordinance.

---