

**AN EXAMINATION OF THE MATRIMONIAL RELIEF OF  
SETTLEMENT OF PROPERTY UNDER NIGERIAN LAW:  
A NEED FOR REFORM\* \*\* \*\*\***

**ABSTRACT**

*With the increase in the rate of divorce in Nigeria, concerns have been raised regarding the extent, proportion and provisions of the law on how the properties of the marriage should be settled between the parties after divorce including their children in certain circumstances. These concerns have transcended to the unwillingness of some persons to go into statutory marriages for the fear that the spouse of the marriage would be given half and in other cases, the whole of the properties of the marriage. This could also be borne out of stories from foreign jurisdictions' practice on settlement of properties during the dissolution of the marriage where a spouse, is given half or all the properties. Such a spouse who claims the relief of settlement of properties is likely to be termed a gold-digger by the public, especially by those who are unaware of its existence under Nigerian law. This work highlights the provisions of the law relating to the protection and settlement of matrimonial properties in Nigeria and the practice in selected jurisdictions. This work recommended the need to amend the Matrimonial Causes Act to make more express and elaborate provisions in respect of the Settlement of properties.*

**KEYWORDS: Settlement, Property, Matrimonial Relief, Nigerian Law**

**1.0 INTRODUCTION**

Marriage is one of the most sacred unions in human existence. In Nigeria, a party who prays the court for an order of dissolution of a marriage must prove by credible evidence any of the grounds he or she is relying upon in establishing that the marriage has broken down irretrievable.<sup>1</sup>With the high

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rate of divorce cases in recent time,<sup>2</sup> there are concerns as to the extent and laws regulating the sharing of properties of the marriage during divorce proceedings. There is no doubt that the parties may have acquired properties before or after the marriage and the fear of losing these properties is likely to set in. During the proceedings for dissolution of marriage, the parties may be faced with the problem of how these properties should be shared. These properties may be in form of real estate, money, jewelry etc. The Matrimonial Causes Act contain provisions defining the extent of the properties to be shared, and the persons entitled to benefit from the settlement amongst other provisions.

Settlement of property is not peculiar to Nigerian jurisprudence as the laws of many countries in the world make provisions guiding how the properties of a marriage may be shared. It must be admitted that these laws have their unique differences as what is obtainable in Nigeria may not be obtainable in other jurisdictions. In April, 2023, news went around of a Moroccan footballer, Achraf Hakimi whose wife, Hiba Abouk filed a divorce petition claiming half of his entire wealth. According to the report, unknown to her, Achraf Hakimi did not own any property in his name as he had registered his properties under his mother's name.<sup>3</sup> This is just one of the many uncertain circumstances that may arise in respect of the settlement of properties. A good understanding of the legal position in respect of the settlement of properties in Nigeria and an insight into the law and practices in other jurisdictions will help in reducing the uncertainty of parties to a marriage as to the fate of properties of the marriage upon dissolution of the marriage.

## **2.0 What is Settlement of Property?**

Settlement of property often referred to as property settlement in matrimonial cases can be defined as the sharing of properties of a marriage by the parties or by the court during the dissolution of the marriage. It can also be said to be an agreement entered into by a husband and a wife in connection with a divorce

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<sup>1</sup> Matrimonial Causes Act. Cap M7 Laws of the Federation of Nigeria, 2004, s 15(2)

<sup>2</sup> Sharon Osaji 'Marriage Experts Worry Over Rising Divorce Among Young Couples' Why Divorce is Rising in Nigeria' (*Punch*, 23 April 2023) <https://punchng.com/marriage-experts-worry-over-rising-divorce-among-young-couples/> accessed 24 April, 2023

<sup>3</sup> AdeuyiSeun, 'Divorce: Hakimi's Wife Loses Out as Player Registers all Assets in Mother's Name' (*Daily Trust*, 14 April, 2023) <http://www.dailytrust/divorce-hakimis-wife-loses-out-as-player-registers-all-assets-in-mothers-name/> accessed 24 April, 2023

that provides for the division of their assets between them.<sup>4</sup> Settlement of property is one of the ancillary reliefs provided under the Matrimonial Causes Act (MCA). It is important to note that this relief must be claimed in the petition or in the respondent's cross-petition for the court's consideration in granting same. This is anchored on the principle of law that a court cannot grant what is not claimed by a party to a suit.

In Nigeria, settlement of property can be ordered in favour of either of the spouse and the children of the marriage who are less than 21 years. It can also be ordered in special circumstances in favour of children above 21 years. The interest of the children is paramount in any proceeding which affects their interests.<sup>5</sup> The court can also make equitable orders for the benefit of the children or the parties even in respect of properties which are subject of ante-nuptial or post-nuptial settlements.<sup>6</sup>

### **3.0 Other Related Ancillary Reliefs**

Some ancillary reliefs which a party in a matrimonial action may claim before the Court are as follows:

#### **3.1 Custody**

This is one of the ancillary reliefs a party may seek from the Court in a matrimonial cause action. In granting custody, the court considers the overall interest of the child or children of the marriage.<sup>7</sup> The court may give custody to a person other than a party to the marriage where it is in the best interest of the child. The court may also take into consideration the capacity of the party seeking custody to give the child a balanced upbringing in order to provide a good education for the child.

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<sup>4</sup> Property Settlement. <https://www.vocabulary.com/dictionary/property%20settlement> accessed 24 April, 2023

<sup>5</sup> Matrimonial Causes Act. Cap M7 Laws of the Federation of Nigeria, 2004, s 71(1)

<sup>6</sup> *Oladimeji Aremu Sunmonu v Olumayowa Ajoke Sunmonu* (2021) LPELR-56002 (CA)

<sup>7</sup> Matrimonial Causes Act. Cap M7 Laws of the Federation of Nigeria, 2004, s 71

### **3.2 Maintenance**

Maintenance is one of the ancillary reliefs provided under the MCA in Nigeria.<sup>8</sup> It is a sum of money ordered to be paid by a spouse to another spouse upon dissolution of a marriage or judicial separation. Maintenance can either be awarded in favour of a party to the marriage or the children of the marriage for their welfare, educational advancement or for any legal basis as the case may be. In granting the relief of maintenance, the court is enjoined to have regard to the means, earnings, capacity of the parties and other relevant circumstances. Other factors can also be taken into consideration as the facts of the case demand.

### **3.3 Damages in Respect of Adultery**

Adultery is the voluntary sexual intercourse between a married person and someone other than the person's spouse.<sup>9</sup> The proof of adultery is often very difficult as the act that constitutes adultery is done in the most secret places.<sup>10</sup> A person who has committed adultery with a party to a marriage may be joined to the proceedings and a relief for damages claimed against such a person. In awarding damages, consideration may be given to such matters as damage done to the party by blow to his/her honour, the hurt to his/her family life and injury to his/her feelings.<sup>11</sup>

### **4.0 Legal Framework on Matrimonial Property in Nigeria**

#### **4.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended)<sup>12</sup>**

The Constitution of the Federal Republic of Nigeria, 1999(as amended) is the law from which all other laws derive their validity. It guarantees freedom to own immovable property anywhere in Nigeria and provides for freedom from discrimination.<sup>13</sup> Although there is no specific reference to matrimonial properties or settlement of matrimonial properties, the provision of the

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<sup>8</sup> *Ibid*, s 70

<sup>9</sup> BA Garner, *Black's Law Dictionary*( 8<sup>th</sup> Edition, St Thomas Reuters, 2004) 56

<sup>10</sup> DI Efevwerhan, *Principles of Civil Procedure in Nigeria* (SnaapPress Limited, Enugu, Nigeria, 2004)589

<sup>11</sup> *Benjamin Folorunsho Alabi v Eunice Ifewunmi Alabi* (2007) LPELR-8203(CA)

<sup>12</sup> Cap C23, LFN, 2004.

<sup>13</sup> Constitution of the Federal Republic of Nigeria, 1999(as amended). Cap C23, LFN, 2004, s 42.

Nigerian constitution which guarantees freedom from discrimination has helped in securing property right of parties to a marriage.

#### **4.2 Matrimonial Causes Act, 1970**

The Matrimonial Causes Act (MCA) is the principal legislation on settlement of properties in matrimonial cases in Nigeria. Section 72 of the MCA states that:

*The court may, in proceedings under this Act, by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of the marriage such settlement of property to which the parties are, either of them is, entitled (whether in possession or reversion) as the Court considers just and equitable in the circumstances of the case.*

A clear interpretation of section 72 of the MCA is that the settlement of property must be as the court considers just and equitable for the benefit of all or any of the parties. Settlement of property is therefore based on what the court considers to be just and equitable in the circumstances of any particular case.

#### **4.3 Married Women's Property Act, 1882**

The Act protects property rights of women under statutory marriage. The Act gives women the right to acquire, hold to dispose property acquired before or after marriage.<sup>14</sup> This right is very important and upon divorce, women's rights may be enforced. The Act also confers on the Judge power to make orders in respect of property in dispute as he thinks fit.<sup>15</sup> This discretion given to the Judge may also extend to disputes involving matrimonial properties.

#### **4.4 Violence Against Persons Prohibition Act, 2015**

The Act makes it an offence for any person to forcefully evict his or her spouse from the matrimonial home or refuse him or her access. Although the Act does not specifically deal with how properties should be shared upon dissolution of marriage, it protects the parties from forceful denial of usage of

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<sup>14</sup> Married Women's Property Act, 1882, Cap M6 LFN, 2004, s 1

<sup>15</sup> *Ibid*, s 17

the matrimonial home. A person who chases the spouse from the matrimonial home is liable upon conviction to a term of imprisonment not exceeding two years or to a fine not exceeding N300,000.00 or both.<sup>16</sup>

On the other hand, it is also an offence for any person to attempt to forcefully evict a spouse from the matrimonial home or attempt to refuse a spouse entry to the matrimonial home and same is punishable with a term of imprisonment not exceeding 1 years or to a fine not exceeding ₦200,000.00 or both.<sup>17</sup>

### **5.0 Marriage to which Settlement of Property Apply**

In Nigeria, there are three recognized types of marriages. These are customary marriage; Islamic marriage; and statutory marriage. Marriage under Islamic law can also be classified as customary marriage and often referred to as customary Islamic law. Settlement of property under the MCA applies only to a statutory marriage.<sup>18</sup> Under the MCA,<sup>19</sup> marriage does not include a marriage entered into according to Muslim rites or other customary law. In *Rose NdibulumEnwezor v Christopher IfeanyEnwezor & Anor*,<sup>20</sup> the Court held that marriage under the Matrimonial Causes Act for the purpose of maintenance, custody and settlement does not include one conducted under customary law.

In the case of a divorce by parties to a customary and Islamic law marriages, there is no requirement on any of the parties to settle properties with the other. Consideration is rarely given to the woman's right to matrimonial properties under customary marriages. Even where a woman was allocated a room in the compound, she had to vacate it upon divorce.<sup>21</sup>

### **6.0 Examination of the Relief of Settlement of Property in Nigeria**

For the purpose of clarity, the relief of settlement of property under the MCA will be discussed under the following headings:

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<sup>16</sup> Violence Against Persons Prohibition Act, 2015, s 9(1)

<sup>17</sup> *Ibid*, s 9(2)

<sup>18</sup> Matrimonial Causes Act, 1970, Cap M7 LFN, 2004, s 72

<sup>19</sup> *Ibid*, s 69

<sup>20</sup> (2012) LPELR -8544)

<sup>21</sup> *Oloko v Giwa* (1939) 15 NLR 31

## **6.1 Persons Who can Benefit from the Relief of Settlement of Property**

This relief can be granted in favour of any of the parties to a statutory marriage. The relief can also be granted in favour of the children of the marriage. The general rule is that the relief of settlement of properties will not be granted in favour of a child of the marriage who is above the age of 21 years. However, where there are circumstances warranting that the child despite being above 21 years of age should be awarded the relief, the relief will be granted.<sup>22</sup> A major concern is whether the court can make an order for settlement of property in favour of the child of the marriage where neither of the parties has asked for relief in the petition or cross-petition as the case may be. This situation is further complicated since the children are not parties to the proceedings. There is a need for this provision to be expanded to give the court the power to make the order in favour of the children where it considers it appropriate even where the parties do not make a claim for same.

## **6.2 Properties to which Settlement of Property Apply**

Marital property has not been defined as marital property. The basic guiding principle for the settlement of property under the Matrimonial Causes Act is what the court considers just and equitable in the circumstances of any particular case. This leaves the Court with a lot of discretionary powers. It is worthy of note that this discretion must be exercised judiciously and judicially. Judicial authorities have firmly established guiding principles which courts are enjoined to take into consideration in determining any question of settlement of property. These are:

- a. Whether or not the property in question or some other property was acquired by the parties or by one of the parties during the course of the marriage; and
- b. The contribution of each party to the acquisition of the property.
- c. What is just, fair and equitable to do in the circumstances in settling the property.

The law in Nigeria does not presume that properties acquired in the course of the marriage are jointly owned. It follows that where a party claims that a property acquired in the course of the marriage is jointly owned, that party

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<sup>22</sup> Matrimonial Causes Act, 1970, Cap M7 LFN, 2004, s 72(3)

must present evidence which can be oral or documentary to show that such properties are jointly owned. The party must state the nature of his or her contribution to the acquisition of the property. In *EbimieweiEtebu v Joyce Ebiere Ebiagbe*,<sup>23</sup> the Respondent at the trial court made a bare assertion that she contributed to the construction of the property in contention without giving particulars of the contribution while the Appellant testified that the Respondent contributed nothing to the construction. The court of Appeal held that the Respondent's bare assertion ought to be substantiated and having not been substantiated, it remained in the realm of assertion and was not accepted by the court.

It must be noted that even as joint ownership or contributions to the acquisition of property may be considerations in the settlement of the property, it is not determined solely upon these considerations as the primary consideration is what the court considers just and equitable in the circumstances of each case.<sup>24</sup>

It is worthy of note that the contribution of a party does not have to be in the nature of monetary contribution for the purchase or development of the property. It is acceptable that the contribution can come by way of mental and/or financial contribution to the business of a husband by a wife where the property is purchased from the profits of the business.<sup>25</sup>

From the above guiding conditions for the exercise of the court's discretion, a key factor to be considered is the time at which the property was purchased in determining whether the property can be subject to the settlement by the court or not. This is because for a property to be subject of settlement by parties to a marriage, the property should have been purchased in the course of the marriage. A property purchased before the marriage but which payment was completed after and in the course of the marriage as the case of property purchased on mortgage is still considered to be purchased in the course of the marriage.<sup>26</sup> A property purchased before the marriage but developed in the course of the marriage is also considered as one acquired in the course of the marriage.

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<sup>23</sup> (2018) LPELR-46250 (CA)

<sup>24</sup> *Oladimeji Aremu Sunmonu v OlumayowaAjoke Sunmonu* (2021) LPELR-56002 (CA)

<sup>25</sup> *Alexander Ibeabuchi v Nneka Ibeabuchi* (2016) LPELR-41268(CA)

<sup>26</sup> *ibid*



The trial court in *Ibeabuchi's case* awarded a house to the Respondent and her son despite evidence that the 3 children of the previous marriage were living in the house and there was no evidence that the Appellant owned a house or houses apart from the one awarded to the Respondent. The Court of Appeal held that the justice of the case demands that the Appellant who acquired the house during the subsistence of a previous marriage (that is, before the marriage with the Respondent) and living with him are 3 children should not have been deprived of the house in which they were living.

It may be difficult for parties to keep receipts or documentary evidence of their contributions to the property acquired in the course of the marriage. In *Ogunnubi v Ogunnubi*<sup>27</sup>, the Appellant argued that the Respondent did not produce any document to authenticate her claim to the ownership of the properties. The court held that the relationship being a marital relationship, it would be strange for the Respondent to have kept documents showing what she was expending in building the house for their marital union. The Court of Appeal agreed with the lower court and held that, "It happens often that a good number of transactions embarked upon during the course of a marriage are done on trust based on the relationship of marriage and as such, it is not expected that such transactions would be documented as in a business/commercial relationship."

### **6.3 Settlement of Properties of a Void Marriage**

While it is obvious that properties of a valid statutory marriage can be settled during its dissolution, the question arises whether or not properties of a void marriage can be shared between the parties where a court holds that the marriage was void *ab initio*. The MCA in defining marriage states that "marriage" includes a purported marriage that is void. A void marriage is still a marriage but it is one that produces no legal consequences. The answer to this is in the affirmative as the relief can be granted even where the marriage is declared by the court to be void.<sup>28</sup>

In *Gboyega Oyeyemi v Sharon AdesolaOni*,<sup>29</sup> the court of Appeal affirmed the trial court's decision which ordered that the property of the marriage be shared

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<sup>27</sup> (2021) LPELR-53497(CA)

<sup>28</sup> *Kafi v Kafi* (1986) 3 NWLR (27) 175

<sup>29</sup> (2019) LPELR-48765(CA)

equally despite having declared that the marriage was a nullity. The court held that:

*“Section 17 of the Married Women’s Property Act confers on the Judge the powers to make orders in respect of properties in dispute as he thinks fit and such an order must be fair and equitable. That the parties share proceeds of sale equally is what is expected in equity. If on the other hand the fact that the marriage is void means no property rights accrue, then the parties were simply living together as friends or in a similar manner...It will be unconscionable for any party to claim exclusive possession”*

#### **6.4 Settlement of Property Where the Principal Relief Fails**

A claim for settlement of property will not be granted where the main relief which the party seeking for it fails. The Matrimonial Causes Act states that a court in exercising the discretionary power provided in section 75 of the MCA, after the dismissal of a principle relief, cannot make an order under section relating to settlement of property which is an ancillary relief under section 72 of the Act. Section 75 (1) to (3) of the Matrimonial Causes Act provides that –

*(1) Save as provided by this section, the court shall not make an order under this Part of this Act where the petition for the principal relief has been dismissed.*

*(2) Where-*

*(a) the petition for the principal relief has been dismissed after a hearing on the merits: and*

*(b) the court is satisfied that:*

*(i) the proceedings for the principal relief were instituted in good faith to obtain that relief;*

*And (ii) there is no reasonable likelihood of the parties becoming reconciled, the court may if it considers that it is desirable to do so, make an order under section 72 of this Act.*

*(3) The court shall not make an order under this act by virtue of subsection (2) of this section unless it has heard the proceedings for*

*the order at the same time as, or immediately after the proceedings for the principal relief.*

The court cannot rely on the provision of section 75 of the MCA where the principal relief fails to make an order in relation to settlement of property. Where a petition for dissolution of marriage fails (being the principal relief), the parties still owe each other reciprocal rights such as right to own property jointly or individually, right to maintenance, provision of accommodation, conjugal rights etc.<sup>30</sup> It is reasoned that the basis for this is that since the parties continue to have full legal obligations upon the failure of the principal reliefs, it would be unfair and irrational to share their properties between them.

Principal reliefs to which section 75 of the Matrimonial Causes Act relates are reliefs referred to in section 114(1) (a) or (b) of the MCA. These are:

- a. Proceedings for a decree of dissolution of marriage; nullity of marriage; judicial separation; restitution of conjugal rights; or jactitation of marriage.
- b. Proceedings for a declaration of the validity of the dissolution or annulment of a marriage by decree or otherwise or of a decree of judicial separation, or for a declaration of the continued operation of a decree of judicial separation, or for an order discharging a decree of judicial separation.

### **6.5 Where a Party Refuses to Transfer the Property after a Settlement Order**

Upon the grant of a relief for settlement of property in favour of a party, the party against whom the relief is granted may be directed by the court to execute a deed or instrument in favour of the party in whose favour the relief is granted. Where such a party refuses to execute the deed, the Court may appoint an officer or any other person to execute the deed and to do all acts and things necessary to give validity and operation to the deed or instrument.<sup>31</sup> A deed executed in such manner resulting from that circumstance shall be valid.

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<sup>30</sup> *Ademola Babatunde Idowu v Margaret Adenike Idowu* (2018) LPELR-50522(CA)

<sup>31</sup> Matrimonial Causes Act, 1970, Cap M7 LFN, 2004, s 74(1)

## **6.6 Concealment of Properties Acquired in the course of the Marriage**

It is clear from the wording of the MCA that the properties which the court has the power to order settlement must be owned by all or either of the parties to the marriage. It does not matter that the party is in possession or entitled to it in reversion. It may happen that a party may conceal property acquired in the course of the marriage or acquire such properties in the name of a third party. The MCA does not cover such circumstances. This could be explored by parties leaving the other with virtually nothing in the event that the marriage is dissolved. This concealment may be by way of acquiring properties in the names of third parties. Where this is the case, there will be no property of the concealing party to be shared upon filing a petition for divorce. It is argued that where it is discovered that a party to a marriage has unduly concealed properties acquired in the course of the marriage, the court should hold that such properties are subject to a marital settlement where the other party can prove such concealment.

## **6.7 Sale of Property Acquired by Parties to a Marriage**

The possibility of a party to a marriage selling the properties acquired during the marriage and before settlement is made cannot be overlooked. It may also well be possible that such sale may be aimed at depriving the other party of the property which would have been subject to settlement during dissolution of the marriage. It appears that where a party to a marriage sells a marital property without the consent of the other party, such sale can be set aside. In the unreported case of *Caroline Aina v Pius Aina*, the couple who had been married for 35 years lived in the property for more than 30 years. After the retirement of the husband in 2018, he sold the property for N20 million naira and relocated back to his hometown in Ondo State. His wife challenged the sale, claiming that as his wife, and joint owner, the husband cannot sell the property without her consent and sued the husband praying the Court to void the sale. In resolving the issue, the court held thus:

*This inference of trust, the one for the other is readily apparent when each has made a financial contribution to the purchase price or the mortgage installment. The financial contribution may be direct as where it is actually stated to be a contribution towards the price or installments. It may be indirect contribution as where it is actually stated to be a contribution towards the price or installments. It may be indirect as where both go out to work and one pays for the*

*housekeeping and other the mortgage installments. It doesn't matter who pays what as long as there is a substantial financial contribution towards the family expenses, it raises the inference of trust. We should give money right over social justice.*<sup>32</sup>

Going further on the issue of ownership, Justice Olatokun ruled that:

*Where joint ownership of property exists, it means that each party has an equal propriety right of ownership I the said land, notwithstanding the weight of contribution made by each party and can jointly exercise such right in respect of the property. The position off the law is settled that where a property is jointly owned, the consent of the other is required before disposing the property.*<sup>33</sup>

## **6.8 What a Party must Prove to be Entitled to the Relief**

From the above examination of the law in respect to settlement of property and the court's attitude when faced with such cases, the following can be said to be the key elements that a party must plead and establish in evidence to succeed in an action for settlement of properties:

- a. The party must give full particulars of the properties to which the settlement would apply to. This is because a party who desires a court to settle property in his or her favour must explicitly state the properties in the pleading.<sup>34</sup> This is in furtherance of the trite principle of law that a court will only grant a relief claimed by a party.
- b. The party must plead and lead credible evidence in relation to the property as jointly owned or his or her contribution to the purchase or development of the property.
- c. The party must establish that the property was acquired in the course of the marriage or where gotten before the marriage, it was developed in the course of the marriage.

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<sup>32</sup> Ogunsakin Mustapha, 'Court Gives Wife Equal Rights Over Husband's Property' (*Gavel International*, 26 April, 2023) <<https://thegavel.com.ng/court-gives-wife-equal-rightsover-husbands-property/>> accessed 29 April, 2023

<sup>33</sup> *ibid*

<sup>34</sup> *Oladapo Olufunlayo Ogunnubi v Omonolanle Adenike Ogunnubi* (2021) LPELR-53497 (CA)

## **7.0 Settlement of Property in Selected Jurisdictions**

### **7.1 United Kingdom**

Section 25 of the Matrimonial Causes Act, 1973 applicable in the United Kingdom list the factors to be considered when dealing with financial claims involving property, savings, pensions and maintenance. The Act enjoins the court to have regards to all the circumstances of the case, with the welfare of a minor or any child of the family who has not attained the age of eighteen.<sup>35</sup> In practical terms, this means providing a home for the children.<sup>36</sup> Other considerations listed in the section<sup>37</sup> are:

- a. The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- b. The financial need, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- c. The standard of living enjoyed by the family before the breakdown of the marriage;
- d. The age of each party to the marriage and the duration of the marriage;
- e. Any physical or mental disability of either of the parties to the marriage;
- f. The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including the contribution by looking after the home or caring for the family;
- g. The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- h. In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

The conditions which the court takes into consideration in the United Kingdom are more detailed as it not only takes into consideration the

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<sup>35</sup> United Kingdom Matrimonial Causes Act, 1973, s 25(1)

<sup>36</sup> D Emma, 'How Are Assets Divided in Divorce?' <<https://www.nelsonlaw.co.uk/court-divide-matrimonial-assets-divorce>> accessed 22 April, 2023

<sup>37</sup> United Kingdom Matrimonial Causes Act, 1973, s 25(2)

immediate needs and circumstances of the parties but also future considerations.

## **7.2 Ghana**

Previously, the attitude of the Ghanaian courts was that by customary law, properties acquired during the marriage were regarded as the man's property and not joint property of the man and the wife.<sup>38</sup> Gradually the position of the law changed and a wife could be regarded as a joint owner of properties acquired during the marriage if she could provide evidence that she contributed substantially to the properties of the marriage.

The Ghanaian Constitution, 1992 made fundamental efforts in addressing this issue. Article 22(3) states as follows:

*With a view to achieving the full realization of the rights referred to in clause (2) of this article:*

- (a) Spouses shall have equal access to property jointly acquired during marriage.*
- (b) Assets which are jointly acquired during the marriage shall be distributed equitably between the spouses upon dissolution of marriage.*

Unlike the Nigerian Constitution, the Ghanaian Constitution made specific provisions in relation to marital properties. The Ghanaian courts have followed this constitutional provision in holding that properties acquired in the course of the marriage are jointly owned by the parties and ought to be shared equitably where it is just and equitable to do so.<sup>39</sup>

The current position of Ghanaian law is that as long as the property was acquired after the marriage, the courts will presume that it is marital property and belongs to both husband and wife unless the parties present evidence that they did not intend to acquire it jointly. There is no requirement on either of the parties to prove a substantial contribution to the purchase of the property. This position although aimed at achieving equity and fairness may be prone to

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<sup>38</sup> *Quartey v Martey & Anor* (1959) GLR 378

<sup>39</sup> *Gladys Mensah v Stephen Mensah* (2012) 1 SCGLR 391

abuse to gain financial advantage by a party to the marriage where such a party has not contributed in any way in relation to the properties.

### **7.3 United States of America**

In the United States, there are two types of marital property laws. These laws vary according to the State of residence. The common law property system is the more prevalent legal framework in the United States and it is practiced by 41 States. Under this system, property that is acquired by an individual member of a married couple is the sole property of that individual. It is only when the deed or title to a given property is in the name of both spouses that both parties own a legal right to the property. In this situation, each spouse holds a half interest in the property.

Under this system, where one of the parties dies, their properties are distributed according to their will if any was made. Where no will was made, such properties will be subject to probate.

The second property system is practised by the community States. This is practised by nine States in the United States of America. Under this framework, all property acquired during the course of the marriage is considered to be marital property. It includes all income earned, all property bought using that income, and all debt taken during the course of the marriage.

Community property ownership can apply during the marriage (for instance, with respect to creditors), after one spouse dies (for the purpose of inheritance), and during divorce. Community States traditionally require that properties are shared equally. However, others now require or allow Judges to divide property equitably even where it results to inequitable distribution.<sup>40</sup>

It is worthy to note that property that spouses agree to exclude from marital property by signing prenuptial or a postnuptial agreement will be separate property. In distributing the property, the court will look at a list of factors such as the duration of the marriage, the value of the marital property, the

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<sup>40</sup>Richard Stim & E.A. Gjelten 'Property Division by States' (*DivorceNet*), [https://www.divorcenet.com/states/nationwide/property\\_division\\_by\\_state](https://www.divorcenet.com/states/nationwide/property_division_by_state) accessed 31 May, 2023



spouse's contribution to the property, the spouse's income and earning capacity, age of the spouse and so on.<sup>41</sup>

It is illegal for either spouse to hide assets in order to shield them from division during divorce. It may attract sanctions in some States while in others, the court may award a spouse a percentage of the hidden property.<sup>42</sup> In California, if a person fraudulently hides an asset from the spouse during divorce, a court can award 100 per cent of the asset to the other spouse as punishment.<sup>43</sup> If the failure to disclose the asset wasn't fraudulent, the court may still award 50% of its value to the other spouse.<sup>44</sup>

## **8.0 Conclusion**

Settlement of property is a relief recognized in Nigeria and provisions exist under Nigerian laws. It is not out of place for any party to a marriage to demand to be given a share of the properties acquired in the course of the marriage to which he or she contributed financially or through other forms of contribution to its purchase or development. Notwithstanding the claims made by any of the parties to the marriage, the court has to take into consideration what is just and fair from the circumstances in determining what the parties are entitled to. In as much as the sanctity of marriage needs to be protected, it is appropriate that the settlement process should be equitable enough to avoid any form of acrimony in the event the parties choose to go their separate ways by a divorce.

## **9.0 Recommendation**

It is recommended that just like the provisions of the Matrimonial Causes Act applicable to the United Kingdom, the factors that the court should consider in granting the relief of settlement of properties should be clearly spelt out rather than giving the court a wide discretion to apply what is equitable.

It is also recommended that there is need to utilize the provisions on settlement of properties to benefit not only the spouses in the marriage but also

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<sup>41</sup>N.Y.Dom.Rel.L.S 236

<sup>42</sup>Richard Stim, E.A. Gjelten 'Property Division by States' (*DivorceNet*) [https://www.divorcenet.com/states/nationwide/property\\_division\\_by\\_state](https://www.divorcenet.com/states/nationwide/property_division_by_state) accessed 31 May, 2023

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*

the children of the marriage even where the parties do not ask for same. This can be achieved by expressly allowing the court in deserving circumstances to make such order in favour of the children of the marriage.

Furthermore, it is recommended that there is also a need to make provisions preventing parties from selling or dealing adversely with properties acquired in the course of the marriage except with the consent of the other party. Where any of the parties have concealed matrimonial properties with the aim of depriving the other party who may have contributed morally to its development or acquisition, the court should hold that such properties are subject to settlement in the event of dissolution of the marriage and shared as the court considers equitable to do.