DOMICILE AND JURISDICTION OF COURTS IN MATRIMONIAL CAUSES: MATTERS ARISING * ** *** ****

ABSTRACT

Domicile has been the basis of the jurisdiction of courts in matrimonial causes in many jurisdictions because domicile connects a petitioner to a particular locality. However, the use of domicile is plagued with challenges that have over the years bred inconsistent decisions by the court when determining the personal law that should be applied to a case. This paper examines the concept of domicile, its history and challenges. The problem of adopting domicile as a basis for jurisdiction is also critiqued accordingly. As found, the determination of the intention of the petitioner is important in determining domicile of choice but this intention is subjective and left to a lot of speculation and indiscretion by the courts. Other challenges such as the efficacy of the use of the doctrine of revival, the fairness in attaching domicile in Matrimonial Causes to the Petitioner and the impact on the other aspects of personal law are discussed in this paper. The paper proposes reliance on habitual residence or the terms of written marriage contract as necessary considerations when determining the filing of marital claims in Nigeria.

Keywords: Domicile, Matrimonial Causes, Jurisdiction, Origin, Choice, Animus manendi.

1.0 Introduction

Marital disputes are resolved by the Courts subsequent to Matrimonial Causes filed by the petitioner. In entertaining these cases, the courts must be clear that it has jurisdiction to entertain the matrimonial cause. Although the basis for the jurisdiction of courts in matrimonial causes varies across countries, domicile remains a major determinant of jurisdiction in Matrimonial Causes. The choice of law to be adopted for the purpose of determining a matrimonial cause also continues to remain a subject of vigorous arguments amongst scholars. While it is true that the parties to a marriage will have expectations of rights, responsibilities and benefits of the marriage, the marriage laws of different jurisdictions strive to set the guiding rules for engagements in different aspects of marriages including matrimonial causes. A key challenge that affects people's lives is where their expectations and beliefs begin to differ from the

contemplation of the law or where the interpretation of the law differs from the contemplation of the parties.

The determination of the domicile of the petitioner is very vital in Matrimonial Causes.[1] In fact, issues pertaining to the validity of marriages or wills and/or the legitimacy of children are constantly determined by courts after considering and resolving issues of domicile.[2] This is because the law has attached the jurisdiction of the court to entertain such matters to domicile.[3] This domicile is however not static which means the eyes of the law will expect the parties to be mindful of the impact of their everyday family decisions on their domicile since domicile is such a fundamental concept that impacts their access to the courts for the enforcement of marital rights and by extension determines the applicable law to be considered in determining the marital rights. The challenge with this view is that even though it is the implication of the law, it is not certain that most couples in marriages are mindful of this huge responsibility which the law has placed squarely on their shoulders.

It is widely said that ignorance of the law is no excuse but this postulation can be tested when the application of the law begins to consistently bring about results that are at variant from the expectations of the society. It is therefore important that the law, must be in touch with changing realities, cultures and ways of life accepted as the norms in the society it seeks to regulate.

There are various aspects of matrimonial causes but this paper is focused on the impact of domicile on the assessment of rights of parties to a marriage and the determination of jurisdiction of courts to entertain same. The first section of this paper is the introduction, the second section discusses the concept of domicile and how it is derived. The third section reviews the impact of domicile on the jurisdiction of courts in matrimonial causes, while the fourth section considers the challenges

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[1] Matrimonial Causes Act 2004, Cap M.7 LFN s. 2(3)
[2] A. V Dicey, John Morris and Lawrence Collins: The Conflict of Laws (London, Sweet & Maxwell,15th edn, 2014) part 1, ch 6; J Fawcett and J Carruthers, Cheshire, North & Fawcett: Private International Law (Oxford University Press, 14th edn, 2008), 159
[3] Ibid

posed by the adoption of domicile as the basis for determination of jurisdiction of courts in Nigeria. The fifth section is the conclusion and recommendation.

2.0 The Concept of Domicile

The idea of domicile originates from Ancient Greece and Roman laws[4]. The concept is therefore Greco Roman.[5] In Ancient Greece, every person was subject to the law of that person's origin i.e. *lex originis*.[6] Generally, the '*Origo*' i.e. origin, was the yardstick for establishing the connection between a person and a place. Every child took the birthplace of the father or adopted father's *Origo*.[7] The Roman empire also had its own notion of internal domicile known as the Roman *Domicilium*. The Roman *Domicilium* was a bond that binds a person and a specific city.[8] The resident entity of a city was referred to as an '*Incola*' which shows that he is a domiciliary of that particular city.[9] Unfortunately, a resident who has not displayed the intention to settle in a city indefinitely was not identified as having the Roman *Domicilium.* The loss of domicile may then occur where a person relocates with no *animus revertendi* i.e. intention to return.[10] Under the Roman law, *Origio* was used for personal law matters whilst the *domicilium* was used to address issues of civil law.[11] The *Origio* was later downgraded as a type of domicile after the glossators discovered the Roman laws.

The concept of domicile was introduced into the English common law in the seventeenth century.[12] Under the common law, domicile was described as a person's permanent home,[13] this embraced the roman features of residence (known as the

[4] Georgios Maridakis & Idiotikon Diethnes Dikaion, Private International Law (2d Ed., 1967)
[5] Davrados, Nikolaos, Louisiana My Home Sweet Home: Decodifying Domicile (October 26, 2018). 64 Loy. L. Rev. 287 (2018), Loyola University New Orleans College of Law Research Paper No. 2018-16, 288-365
[6] Ibid.
[7] Michael William Jacobs, A Treatise on The Law of Domicile, National, Quasi-National, And Municipal, 3 (1887),
[8] Ibid
[9] Sheldon Amos, The History and Principles of The Civil Law Of Rome 117 (1883, Book on Demand Ltd, Reprint 2013)
[10] Davrados, Nikolaos, Louisiana My Home Sweet Home: Decodifying Domicile (October 26, 2018). 64 Loy. L. Rev. 287 (2018), Loyola University New Orleans College of Law Research Paper No. 2018-16, 288-365
[11] Ibid
[12] Ibid
[13] *Whicker v. Hume* (1858) 7 H.L.C. 124, 160 (U.K.) Albert Venn Dicey, John H. Morris & Lawrence Collins, The Conflict of Laws No. 6–007 (Adrian Briggs Et Al. Eds., 15th Ed. Supp. 2017)

corpus) and the *animus manendi et revertendi* (intention of remaining or returning).[14] The theory of domicile under English Law has three principles namely the principle of necessary domicile[15] the principle of unity of domicile[16], and the domicile determined in accordance with law of the forum. The principle of necessary domicile is hinged on the fact that the law attaches a domicile to everyone and that no one can be without a domicile. According to the principle of unity of domicile, everyone has one and only one domicile and that determines the personal status of the person. The third principle seeks to apply English Law to determine whether or not a person is domiciled in England.[17]*Domicile* is the permanent abode of the petitioner as opposed to the petitioner's residence.[18]

There are two main types of domicile: the domicile of origin and the domicile of choice. The domicile of origin is determined with reference to the legal parents/legal guardian of a petitioner. This domicile is based on the principle that a child will take the domicile of the parent. The domicile of origin is therefore the domicile acquired by the petitioner by virtue of birth or adoption. Where the child is born out of wedlock, the child would take the domicile of the mother because, the latter is recognised as the natural *tutrix* of the child unless the court decides otherwise owing to a custody order.

Domicile is based on the notion that every person has a link to a particular location whether in terms of the person's municipality, State of origin or nationality. Where a person has a permanent home within his locality/municipality, State or country of origin to which such person intends to return at any time; such a person is said to have a domicile of origin linking him to the municipality, State or country of origin. This domicile goes with the petitioner everywhere as it is never destroyed.[19] The domicile of origin may however remain in abeyance if the petitioner picks up a new type of domicile. The domicile of origin is revived each time the newly acquired domicile is withdrawn or lost. The law places the burden of proving that the petitioner has taken up another domicile on the person who asserts same.[20]

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[14] Geoffrey C. Cheshire, Peter M. North & James J. Fawcett, Private International Law 147 (Paul Torremans Ed., 15th Ed. 2017), at 148–61.
[15] Ibid at 147.
[16] Ibid
[17] Ronald H. Graveson, The Comparative Evolution of Principles of the Conflict of Laws in England and the USA, in (Academy of International Law 1960)
[18] *Bhojwani v Bhojwani* (1995) 7NWLR (Pt. 407) 349 CA, *Koku v Koku* (1999) 8NWLR (Pt. 616) 672, *Sodipo v. Sodipo* (1990)5 WBRN 98, *Osibamowo v Osibamowo* (1991) 3NWLR Pt. 177b 85
[19] Tijani Dirisu, Matrimonial Causes in Nigeria – Law and Practice, Law Breed, p. 25
[20] *Bhojwani v Bhojwani (add citation)*

The domicile of choice is acquired by virtue of residence and exhibiting the intention to reside permanently in the chosen jurisdiction indefinitely.[21] The two basic elements in a domicile of choice are residence (i.e. the *corpus*) and the intention to permanently remain (i.e. *animus manendi et revertendi*). [22]Davrados explained not only must the corpus exist, but must it must be real for the domicile of choice to be established. This must further be accompanied with the *animus manendi*.[23] He further posits "there is no durational requirement attached to the domicile of choice."[24] Also, it is not necessary for residence to be continuous as the temporary absence of the petitioner does not remove the residence and *animus manendi*. Likewise, the fact that the petitioner has had a transient presence does not confer domicile.[25] The analogy is better illustrated by examining the case of *Bhojwani v. Bhojwani*[26] in comparism to the case of *Albert Lefevre v. Mary Lefevre.*[27] In *Bhojwani*'s case, the petitioner whose domicile of origin was Singaporean attempted to claim Nigeria as his domicile in a petition for dissolution of marriage. In the particulars supplied by the petitioner, he stated that he had been working as a director in Nigeria from 1979 (when he arrived in Nigeria) up to 1995 when the petition was filed. The petitioner also added that he had been resident in Nigeria continuously from 1979 to 1995 and that he married an Indian woman in Nigeria. He further stated that both himself and the Indian woman made Nigeria their permanent residence. Facts emerged that the petitioner had sent his wife and children back to Singapore in 1994 due to the then political crisis in Nigeria but the wife left Singapore to settle in England. This fact was exhibited in an affidavit filed by the husband in a child custody suit in England. Whilst the trial court held that the petitioner had the required residence and *animus manendi* to permanently reside in Nigeria, the Appeal court reversed the decision. The Court of Appeal held that the petitioner has not shown that he has acquired the Nigerian domicile of choice.

In *Albert Lefevre's* case, the petitioner who has a French origin married an English woman under Nigerian law in Ibadan sometimes in 1948. In a petition, the petitioner provided particulars to show that he arrived in Nigeria in 1939 and lived in Ibadan for thirty five years. The petitioner was now sixty five years of age, and he deposed that

[21] Matrimonial Causes in Nigeria – Law and Practice p. 25-26, *Albert Lefvre v Mary Lefvre* (1974) 4UILR 48
[22] Geoffrey C. Cheshire, Peter M. North & James J. Fawcett, Private International Law 147 (Paul Torremans Ed., 15th Ed. 2017), at 148–61.
[23] Davrados, Nikolaos, Louisiana My Home Sweet Home: Decodifying Domicile (October 26, 2018). 64 Loy. L. Rev. 287 (2018), Loyola University New Orleans College of Law Research Paper No. 2018-16, 288-365
[24] Ibid
[25] Ibid
[26] (1995) 7NWLR (Pt. 407) 349 CA
[27] (1974) 4UILR 48

he had no reason to return to France because his parents were dead and he had instituted his marital home in Nigeria for twenty six years. The court held that the petitioner had exhibited the required residence and the *animus manendi* to permanently reside in Nigeria.

The 'intent' to permanently reside is an important factor in determining the domicile of choice. The fact that a petitioner is compelled to reside in a place without an intention to settle there robs the petitioner of the domicile of choice. These categories of persons may include students, members of armed forces, displaced refugees, seafarers etc.[28] Also, proof of intent can be shown by circumstances such as the place of establishment of household and/or exercise of right to vote.

3.0 Jurisdiction of Court in Matrimonial Causes

Jurisdiction is the power which a court has to hear and determine a cause.[29] It is a threshold issue and any proceeding taken without jurisdiction is an exercise in futility and therefore a nullity.[30] Jurisdiction is conferred on a court by statute.[31] Jurisdiction can also be territorial, hence the possibility of two courts with concurrent jurisdiction having different powers under separate statute. Across different territorial jurisdictions, statutes designate the courts that have powers to determine Matrimonial Causes. Statutes also state the basis for which the courts would have powers to entertain Matrimonial Causes. Courts therefore derive their jurisdiction from the statute creating the courts and the statutes regulating the matters or causes that the courts have been called on to entertain.[32]

In Nigeria, the jurisdiction in respect of any Matrimonial Cause filed by a petitioner is emplaced on the High Court of any State within the federation and that of the Federal Capital Territory.[33] The Matrimonial Causes to which the Matrimonial Causes Act relate include the dissolution of marriage, nullity of marriage, the decree of judicial separation, the restitution of conjugal rights and jactitation of marriage by virtue of Section 114(1) of the Matrimonial Causes Act and other proceedings resulting therefrom or emanating from marital disputes such as issues of custody, maintenance,

[28] Davrados, Nikolaos, Louisiana My Home Sweet Home: Decodifying Domicile (October 26, 2018). 64 Loy. L. Rev. 287 (2018), Loyola University New Orleans College of Law Research Paper No. 2018-16, 288-365

[29] *Ikine v Edjerode* (2001) (1988) 92 LRCN 3288 at 3316, Adeyemi V. Opeyori (1976) 9-10 SC 31

[30] *Timipre Sylva v INEC & 2 Ors* [2017] NACLR Pt. 24 Pg. 23 at Pg. 45 para C

[31] *Galadima v Tambai* (2000)6 SC (pt 1)196 (2000)11 NWLR (pt 677) 1; African Newspapers of Nigeria v. Federal Republic of Nigeria (1985)2 NWLR (pt 6) 137

[32] Ibid

[33] Matrimonial Causes Act 2004 LFN, s. 2(1)

guardianship etc. In some cases, proceedings for maintenance or custody may be filed at the Magistrate Court in Nigeria.[34]

For the court in Nigeria to be conferred with jurisdiction to entertain a Matrimonial Cause, the domicile of the petitioner must be established. This is owing to Section 2(3) of the Matrimonial Causes Act, which states that "*a person domiciled in any State of the Federation in Nigeria for the purpose of the Act may institute proceedings under the Act in the High Court of any State whether or not he is domiciled in that particular State*."[35] Clearly, the State High Court or High Court of the Federal Capital Territory would exercise jurisdiction in Matrimonial Causes where the petitioner has established the domicile as that of Nigeria. The establishment of domicile by the petitioner would mean that the petitioner has established not only the fact of residence but the existence of the *animus manendi* to reside permanently in Nigeria.[36]

It therefore suffices to say that any person seeking to approach Nigerian courts regarding Matrimonial Causes must satisfy the court that such person is domiciled in Nigeria as without same the court will lack the jurisdiction to entertain such matter. Such is the gravity of this point as without jurisdiction any cause dealt can be ascribed as a nullity.[37]The core issue here is where both parties to the Matrimonial Cause dispute the domicile or principle of domicile that should be operative at the time of filing the matter. It is a settled matter in law that he who asserts must prove as such the initial burden of providing preliminary matters to support the claim of domicile naturally falls on the petitioner. Such preliminary evidence may be in form of affidavit evidence but clearly things can quickly get complicated where the domicile of the petitioner is disputed. In such cases, the party disputing the domicile of another is bound to prove that which he/she alleges. In the end, Matrimonial Causes are also civil matters and the resulting domicile that will be adopted will be on a balance of probabilities after considering the various intervening factors in the case.

[34] Ibid, s. 114(1)
[35] Ibid, S. 2(3)
[36] Tijani Dirisu, Matrimonial Causes in Nigeria – Law and Practice, Law Breed, p. 22.
[37] Madukolu v Nkemdilim (1962) SCNLR 31; West Minister Bank Ltd v Edwards (1942) AC 529, 533; Dangote v CSC Plateau State (2001) 4 SCNJ 131; Galadima v Tambai (2000) 6 SC (Pt. 1) 196; Alao v ACB Ltd (2000) 6 SC (Pt. 1) 27; Bronik Motors Ltd and Anor v Wema Bank Ltd (1983) 1 SCNLR 296; Obi v INEC (2007) 11 NWLR (Pt. 1046) 565., Olubumi Oladipo Oni V. Cadbury Nigeria Plc (2016) LPELR - 26061 (SC)

4.0 Domicile crisis: Challenges in Adopting Domicile as Basis for Jurisdiction

Jurisdiction of courts in Matrimonial Causes in Nigeria is based on the domicile of the petitioner. According to Agbede,[38] the notion of adopting domicile as the yardstick for determining any personal law is premised on the freedom of the petitioner to determine the specific legal system that constitutes the personal law of such petitioner.

Agbede however contends that the concept of domicile has gradually become unrealistic and somewhat unpredictable owing to its multi-formity.[39] Some of the challenges with the adoption of domicile as a basis for jurisdiction in Matrimonial Causes in Nigeria are (i) the problem of the revival doctrine (ii) challenges of proving domicile by choice (iii) conflicts of interpretation across jurisdictions (iv) impact of domicile on other aspects of personal law (v) unfairness of the use of domicile of petitioner as basis for court jurisdiction (vi) domicile and technicality of justice. Details of which are discussed below.

4.1 The Problem of the Revival Doctrine

The revival doctrine emanates from the English law principle that a person cannot be without a domicile.[40] It rests on the basis that a person's domicile starts with the domicile of origin which is acquired at birth. Whilst a person may change his domicile to a different jurisdiction, the domicile of origin is held although same is in abeyance. If for whatever reason, the person in question should abandon his domicile of choice without acquiring a new domicile, the principle that a person cannot be without domicile will demand a "revival" of the domicile of origin which was previously held in abeyance.

The problem of the revival doctrine as implemented under English law are multifaceted. First, there is the challenge of which principle of domicile should govern the underlying or default domicile of a person to which the law will devolve to automatically if a current domicile was held to be abandoned. While the English law, holds that the domicile of origin should be the base domicile to which a person's domicile reverts once he changes the domicile of choice, the American law seems to

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[38] Oluwole Agbede, 'Lex Domicili in Contemporary Nigeria: A functional Analysis' <https: //commission-on-legal-pluralism.com/system/commission-on-legal-pluralism/volumes/09/agbede-art.pdf> accessed 2 July 2022 pg. 63.
[39] Oluwole Agbede, 'Lex Domicili in Contemporary Nigeria: A functional Analysis' <https://commission-on-legal-pluralism.com/system/commission-on-legal-pluralism/volumes/09/agbede-art.pdf> accessed 2 July 2022 pg. 63
[40] *Udny v Udny* (1869) L.R. 1 Sc. & Div. 441

be founded on a different principle that the current domicile of choice remains until the person acquires a new one.[41]

In *Re Jones' Estate,*[42] Jones an English man of English domicile of origin moved to the United States in 1883 in a bid to escape the realities of being responsible for an illegitimate daughter. He got married in the United States, became rich and became an American citizen. When his wife died in 1914, Jones decided to return to Wales to live with his sister. In May 1915, Jones sailed in the Lusitania from New York, which ship was sunk by the German sub-marines on the high sea. Under the IOWA laws, his illegitimate daughter ought to succeed his estate but under English law; his siblings ought to be the actual beneficiary of the estate. The IOWA Supreme Court held that Jones's domicile of choice was active until his death since he had not reached England.

In contrast with the case of *Bell v. Kennedy,*[43] Bell was born in Jamaica to Scottish parents domiciled in Jamaica. At 35 years, he migrated from Jamaica to Scotland without the intention to return. Between the period of 1837 and 1839, he lived with his mother in-law after relocating to Scotland but was yet indecisive whether to remain in Scotland or go to England. Bell did not like the Scottish weather. When his wife died, the House of Lord was faced with determining his domicile and held that despite the relocation, Bell had not lost his Jamaican domicile of origin.

Another challenge is that the principle introduces challenges with determining when the domicile of choice is deemed abandoned. Does a person change domicile of choice simply by changing residence, by length of residence in the new location, by country of taxation or by declaration of intention to relocate. A case in point is for someone in process of changing locations but dies in transit, in this scenario, how will change of domicile be triggered and interpreted? This clarification is important in today's world of frequent relocations as it is now very possible for a Nigerian couple, married in Nigeria to relocate to a different country and acquire a permanent residency of the new country. Where this happens, will one of the persons in the marriage be able to return to Nigeria and sue for dissolution of the marriage on the ground that he/she has returned to Nigeria or will the domicile be held to be that of the new country? There appears to be flurry of contradicting decisions even under

[41] I.O Omoruyi, Domicile as A Determinant of Personal Law: A Case For The Abandonment Of The Revival Doctrine In Nigeria<http://www.nigerianlawguru.com/articles/family%20law/DOMICILE%20AS%20A%20DETERMINANT%20OF%20PERSONAL%20LAW,A%20CASE%20FOR%20THE%20ABANDONMENT%20OF%20THE%20REVIVAL%20DOCTRINE%20IN%20NIGERIA.pdf > accessed 2 July 2022

[42] 192 Iowa 78

[43] (1868) L.R Sc. & Div 307.

English law on this point[44]. It appears the principle of change of domicile is whether the person shows continued attachment or vested interest in the old or new country for which domicile is being decided but clearly this breeds further uncertainty as it becomes increasingly difficult to pre-determine how the courts will decide under various circumstances.

An even bigger challenge is that the application of revival doctrine can result in cases where the country holds that a person retains a domicile that is very different from the likely intention of the person involved. For instance, a person by domicile of origin principle, acquires the domicile of his parents even though he was born and resides in a different country. If he acquires a domicile of choice but has cause to leave the country of choice, then based on the revival principle, the law will input the domicile of his parents as his domicile regardless of whether he has ever lived in the parent's country or if he even has any ties with such country.

Thus, the application of this principle can lead to instances where the courts will record domiciles for people that can be very different from their intentions. One can even stretch this argument that this principle impedes on the fundamental freedom of choice. Now extending these challenges to the question of determining the jurisdiction of the courts to adjudicate on a matter, one can see that the revival doctrine can serve as a hurdle deterring people's access to justice. This is so as the jurisdiction of the court is then shrouded in uncertainties simply based on supposedly everyday decisions the person or couple had made earlier and for fear of how the courts would interpret same.

4.2 Challenges of proving domicile by choice

It is settled law that he who asserts must prove.[45] Accordingly there is an onus on a person who claims to have acquired a new domicile to prove his domicile of origin and how that domicile had changed to the domicile of choice. Under English law which is also currently adopted in Nigeria, for a person to prove the acquisition of domicile by choice, he must show the change of residence as well as the intention to permanently reside in the new country.[46]

The principle of domicile by choice appears to align with two cardinal points that a person can only have one domicile at a time and that basic freedom dictates that a

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[44] Ibid

[45] Evidence Act 2011, s. 131, Ramonu Rufai Apena & Anor v. Oba Fatai Aileru & Anor (2014) 6 – 7 MJSC (Pt.11)184, Napoleon s. Orianziv. The Attorney - General, Rivers State &Ors. (2017) LPELR - 417 37 (SC)

[46] Geoffrey C. Cheshire, Peter M. North & James J. Fawcett, Private International Law 147 (Paul Torremans Ed., 15th Ed. 2017), at 148–61.

person should be able to severe ties with one jurisdiction with a view to establishing ties with a new jurisdiction. The question here is when the court will be satisfied that such new attachment to the new jurisdiction has been formed. The current rules require the person involved to show "an intention to permanently reside" in the new country as an indication of the acquisition of new domicile. [47]

To interpret 'intention', English courts have adopted considerations such as the habits, taste, conducts, projects, ambitions, hopes and health of the person, which considerations allow for a wide room of latitude and discretion of the judges.[48] Besides the model creating unclear criteria for interpreting 'intention', the model also breeds so much uncertainty such that the domicile of a petitioner may in fact be uncertain throughout his life time.[49] To exhibit the uncertainty and subjectivity in interpreting the 'intention to permanently reside' the court held in the case of *Bheekhun v Williams*[50] that a Mauritian who has acquired an United Kingdom(UK) passport had displayed his intention to make the UK his permanent home, while in *F's Personal Representatives v IRC*,[51]a person who had acquired a UK passport was held not to have made the UK his permanent home because according to the court the passport obtained was initially for the convenience of travelling.

The challenge with the requirement of 'intention' is further exacerbated when the current realities of increased mobility of people for various reasons including economic reasons, fear of insecurity, displacement due to wars, new employment etc. is considered. With the ease of movement and the constantly changing incentives for movement, it is difficult for a lot of people to state categorically that they intend to stay permanently in any given region regardless of the circumstances. For example, Nigerians who are currently in Nigeria hold the domicile of Nigeria but who is to say they intend to permanently reside in Nigeria and would not move to other countries on guise of permanent residency if better opportunities present themselves. There is also the case of Nigerians who have procured permanent residency of another country but who continue to pay close attention and make commitments to events in Nigeria. Can they truly be said to have acquired new domicile simply on grounds of the permanent residency document particularly when such people can easily relocate to yet another country in search of greener pastures?

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[47] Bhojwani v. Bhojwani (1995) 7NWLR (Pt. 407) 349 CA, Osibamowo v. Osibamowo (1991) 3NWLR Pt. 177b 85

[48] Oluwole Agbede, 'Lex Domicili in Contemporary Nigeria: A functional Analysis' <https://commission-on-legal-pluralism.com/system/commission-on-legal-pluralism/volumes/09/agbede-art.pdf> accessed 2 July 2022 pg.75, Cadagli v. Casdagli (1919) A.C 145 at 178

[49] Ibid

[50] [1999] 2 FLR 229, 239.

[51] [2000] STC (SCD) 1.

Some arguments have arisen that probably a way to side-step the need to prove intention to permanently reside in a place is to substitute that requirement with a requirement to merely prove that the residency is intended to be indefinite. A challenge with this proposal is that it begs the question-how will the indefinite horizon be determined or interpreted by the courts? Furthermore, how to ensure that the application of the rule is not subject to unscrupulous manipulation since justice is required for both parties in any suit.

4.3 Conflicts of interpretation across jurisdictions

Every marriage is a summation of roles, rights and responsibilities and these are governed and regulated by the laws of the land. It is the protection offered by the law that endears couples to subject their marriages to be celebrated under the law so that they have access to defend such rights in the courts of the land.[52]Accordingly, such couples should rightly feel short-changed if the court fails to protect the said rights in a manner that will be considered justiciable.

As mentioned above, the rules governing determination of domicile varies from one country to another. Even within the same jurisdictions, there have been cases of various interpretations given to set rules based on the different circumstances of the cases considered. In all these, conflicts of interpretation breeds uncertainties and can result in complications that were not envisaged by parties in the marriage. As long as domicile remains the sole factor for determining the jurisdiction of court to entertain a Matrimonial Cause, the sustenance of conflicting interpretation on the rules of domicile is likely to reduce the confidence couples will exhibit in the existing laws to protect their marital rights. This fear is already manifesting in the calls for marriages to be governed by the contract between the parties to which the parties will then be held to be bound.[53]

4.4 Impact of domicile on other aspects of personal law

It is already established that domicile is a fundamental consideration for jurisdiction of courts in Matrimonial Causes. What is also important is to recognise the impact of decisions on domicile on other aspects of human life. For example, this could include

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[52] The Matrimonial Causes Act gives the Petitioner powers to file a petition anywhere in Nigeria. See Matrimonial Causes Act, s. 2. This is however controlled by Section 9 of the same Act which gives the court powers to transfer to any other jurisdiction convenient for the parties if need be.

[53] This stems from the understanding that marriage is a civil contract. As such, parties to the marriage should be allowed to be bound by the terms of their contract and the court as an arbiter ought to be restricted to enforcing the agreement between the parties without importing extraneous factors.

the tax laws that would be applicable to the person, inheritance laws that would become applicable etc. Furthermore, in Nigeria, where a range of activities are linked to state of origin, the discussions on domicile of a person can potentially assume further importance.

A case in point is the issue where a judge in Cross River state, Hon. Justice Akon Ikpeme, who ought to have been confirmed as a substantive Chief Judge was disqualified over her family ties to another State, Akwa Ibom State.[54] The said judge had Akwa Ibom parentage (her original domicile of origin) although she was born in Cross River, Calabar at a time when Akwa Ibom State formed part of Cross River state. Akwa Ibom was created from Cross River state in 1987 by the then military regime. Additionally, the judge was married to a man from Cross River. The argument that the judge's husband was from the State did not prove to be a sufficient consideration. One could argue that the position of the judge was not helped by the earlier decision of the Court of Appeal[55] that essentially abolished the application of the principle of domicile by dependence in Nigeria or the fact that her legal parentage was linked to Cross River before the Akwa Ibom State was created. It also did not matter that the said Akwa Ibom State was then a part of Cross River. While the final decision taken in respect of the appointment of the Chief Judge is not the subject here, the case clearly illustrates that the domicile of origin itself is not all perfect. Given the impact of the concept on other aspects of personal life, it may be worth reconsidering whether the ability of the person to approach the courts for matrimonial causes should be hinged solely on domicile.

4.5 Unfairness in the Use of Domicile of Petitioner (only) as Basis for Court Jurisdiction

Currently under Nigerian law, it is the domicile of the Petitioner that determines the jurisdiction of the court to entertain a Matrimonial Cause.[56] This requires some examination particularly given the evolution of the law that both parties in the marriage hold their domiciles separately. The question that arises on this issue is whether the principle that it is the domicile of the petitioner that matters is fair to all parties. So, a couple can marry in Nigeria and both parties agree to permanently relocate to another country. One of them can move back to Nigeria without the

[54] Cletus Ukpong, 'Judge Disqualified from being Cross River state CJ over non-indigeneship' (Premium Times, 4 March 2020) <https://www.premiumtimesng.com/regional/south-south-regional/380337-judge-disqualified-from-becoming-cross-river-cj-over-non-indigeneship.html> 3 July 2022

[55] In the case of Bhojwani v. Bhojwani (1995) 7NWLR (Pt. 407) 349 CA, domicile was classified into that of origin and choice solely while the earlier inclusion of domicile of dependence in Osibamowo v. Osibamowo was rejected.

[56] Matrimonial Causes Act 2004 LFN, s. 2(3)

consent of the other and choose to file an action to dissolve the marriage in Nigeria. The question can be asked if any consideration is being given to the preservation of the other parties' rights in the marriage or if the choice of jurisdiction for filing of the cause can influence or impede on the ability of the other party to be heard fairly in the matter.

This same issue manifests where the individuals in the marriage are both in Nigeria and the person intending to sue decides to initiate the suit in a State that is clearly inconvenient for the estranged spouse.[57]Section 9 of the Matrimonial Causes Act gives the Court powers to transfer the matrimonial cause to a Court in a State convenient for the parties. This power is not without discretion as Courts could determine the forum of convenience by considering the habitual residence of both parties and not necessarily the domicile of the parties in determining the most convenient State to transfer the matter. It is however noted that while this may work for most times, it can result in challenges when the spouses lived far from each other.

4.6 Domicile and Technicality of Justice

For the court to retain its position as the last hope of the common man, not only must justice be done, it must be seen to have been substantially done. This justifies the trend of the Supreme Court in Nigeria to ensure that substantive justice is done rather than wool being pulled over the court on the guise of technicality[58]. As discussed above, the discussions on domicile, its rules of application and the various interpretations create sufficient room for uncertainties and technicalities in determination of Matrimonial cases.

The impact has been mirrored in few cases which generated debates on whether the celebration of marriages is a municipal issue or of a federal nature and who has powers to conduct or register statutory marriages in Nigeria. In Prince Haastrup v. Eti Osa Local Government,[59] two Nigerians (Prince Haastrup and Miss Habeebat Akinfemi) resident in England, opted to conduct their marriage in Nigeria. Whilst Prince Haastrup's preference was Eti Osa local government since he is a prince in that municipality, Miss Akinfemi's preference was the Federal Registry Ikoyi. To allow for confirmation of the validity of the marriage by the British Home Office, the intending spouses worked in concert with Eti Osa local government and approached

[57] Section 9 of the Matrimonial Causes Act gives powers to the court to transfer the matrimonial cause to a jurisdiction convenient to the parties. More consideration ought to be given when the other party is no longer resident in Nigeria.

[58] *Kwara State Pilgrims Welfare Board v Alh. Jimoh Baba* (2018) NACLR Pt 116 Pg 75 at 87

[59] Prince L Haastrup v. Eti Osa Local Government & 2 Ors (unreported) suit no. FHC/L/870/2002 delivered 8th June 2004, Federal High Court Lagos coram Honourable Justice R.O Olomojobi

the Federal High Court to determine whether or not the powers of the local government to conduct marriages is not exclusive. The Court's decision was that both the Federal Government through the Ministry of Internal Affairs and the local government has powers to conduct marriages but the later has exclusive powers to register marriages.

Also, in Eti Osa Local Government & 3 Ors v. Minister of Interior,[60] Eti Osa local government and three others instituted an action against the Minister of Interior and the Attorney General of Federation seeking an order restraining the Minister of Interior from conducting marriages within the Eti Osa Local Government. The Court held that the local government has the exclusive jurisdiction to register marriages but the conduct or celebration of marriages is not exclusive to the local government. While the court granted the order sought restraining the conduct of marriages within local government of the plaintiff, the order of court exempted Ikoyi and Abuja upon reason that these Federal Marriage Registries predated the 1999 Constitution.

The above cases are a testament of the intricacies and technicalities that may arise in determining jurisdiction in matrimonial causes. Whilst the domicile of a party may be traced to his municipality and may influence his preference in the conduct, registration or dissolution of marriages, it is clear that the preference of the party may very well be limited by law.

5.0 Conclusion/Recommendations

Domicile is an important factor in determination of Matrimonial Causes since it impacts jurisdiction of courts as well as the applicable law to which a person is deemed to be subjected to. It is therefore imperative that the guiding rules for determination of domicile needs to be quite clear and consistently applied, after all the law must be predictable.

The challenges identified in the use of domicile have led to inconsistent interpretations and decisions by court, which decisions arguably deviate sometimes from the possible intent of the petitioner or the entity whose domicile is being ascertained. The problem spans from the need to interpret the intention of a person, which leaves the courts to latitude of discretion prone to erroneous conclusions. It is a common saying that the devil himself does not know the mind of man. How easy then is it to read the intention of a man correctly? While this is possible, the attempt is also fallible. As a result, the Matrimonial Causes Actin Nigeria needs to evolve to give a clear interpretation to the phrase 'intention to permanently reside'.

[60] Eti Osa Local Government, Lagos & 3Ors v. Minister of Interior &2 Ors (unreported) suit no. FHC/L/CS/816/2018 delivered 8th December 2021 coram Honourable Justice D.E Osiagor, Federal High Court Lagos.

While domicile continues to be the basis for jurisdiction, a good consideration would be the inclusion of habitual residence of a petitioner as the basis for jurisdiction or to allow parties determine the laws which they intend to be applicable to their marriage at the inception of such marriages on the understanding that the spouses would be bound by the marriage contract. That way, the intention of the parties is clear from the outset and not affected by a change of domicile.