

The Management of Cohabitation of Separated Spouses under Rwandan Law

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ABSTRACT

This paper examines effects of cohabitation of judicially separated spouses who, by the court's decision that granted them legal separation, are exempted from the duty of cohabitation but retain all other duties arising from marriage. Such cohabitation made during the period of judicial separation can have multiple consequences and greatly affects the woman and the child born from it. Under Rwandan law, the legal nature of cohabitation between judicially separated spouses is not clear. In addition, in case a child is born from such cohabitation, his or her status is not clearly determined, and he or she can be an illegitimate or legitimate child. Moreover, the wife who got pregnant during legal separation finds herself in precarious conditions and it is up to her to prove instant cohabitation she had with her legally separated husband. In order to fix these issues, this paper recommends that the proved cohabitation be considered as reconciliation of judicially separated spouses which entails resumption of life together and termination of divorce proceedings that could result from legal separation. It is also recommended that the resumption of cohabitation be formalized by a reconciliation agreement enforceable erga omnes. Finally, the paper recommends revisions of the Rwandan family law to include legal provisions that can assist to solve issues resulting from cohabitation of spouses undertaken during judicial separation.

Key words: cohabitation, legal separation, separated spouses, reconciliation, reconciliation agreement.

1. INTRODUCTION

Despite the community of life created by marriage, some causes can lead to its dissolution, such as death and divorce, as stipulated in Article 214 of the law no 32/2016 of 28/08/2016 governing persons and family. Alongside these two causes which lead to the total dissolution of the marriage, there is legal separation, which is the condition of two spouses who get a judicial exemption from the obligation of cohabitation¹ while remaining with all other marital obligations.

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Legal separation is preferred by spouses who might have causes for divorce but who have not yet matured their decision to divorce.

Legal separation suspends only the obligation of cohabitation and allows the marriage to remain with its all other obligations between spouses. Therefore, the separated spouses remain married and continue to be subject to the duty of mutual assistance and fidelity as prescribed by Article 250, paragraph 2 of the same law. However, the causes that triggered the legal separation do not leave the spouses under the same roof; hence legal separation leading to separation of residences and reduction of affection they had during the marriage.

The Rwandan family law provides for grounds of legal separation, its procedure, and its effects. Nevertheless, it seems silent about management of effects that may result from the breach of the judicial obligation of not cohabiting between judicially separated spouses. In fact, the latter should not entertain any intimate relationships apart from discharging their obligation of mutual support and all the duties vis-à-vis children's education and other needs. If for one reason or another the legally separated spouses manage to meet for sexual intercourse, which are naturally implied under the duty of cohabitation for the spouses, this raises an issue then to legally qualify such cohabitation made when the judge has made a decision suspending it. It would be qualified as adultery as spouses are prevented to live together and accomplish their duty of cohabitation, an assumption seeming absurd in consideration of the definition of this supposedly adultery as the involved partners are still legally married. Besides, some analysts consider this informal cohabitation as free union even if it is voluntarily carried out by spouses legally married while, for others, it is just taken as a gesture of reconciliation, voiding the judicial decision in the sense that the conciliation of spouses entails termination of divorce proceedings. Nonetheless, this informal reconciliation differs from the divorce proceedings which results from spouses' declaration before the judge indicating their intention to restore their living together or resume cohabitation for a period of more than three (3) months.²

Another issue is raised in cases where the wife becomes pregnant during legal separation. There is a concern about the fate of a child born or conceived from such cohabitation. Indeed, the passion between a man and a woman can lead

¹ Art.250, para. 1 Law n°32/2016 of 28/08/2016 governing persons and family, O.G N°37 of 12/09/2016

² Art. 237, para 1, Law n°32/2016 of 28/08/2016 governing persons and family, O.G N°37 of 12/09/2016.

them to live together even if they are legally separated and, if a child is conceived, the evidence that the woman will be able to exhibit to force the husband to recognize the child is not easily established especially as the presumption “*pater est quem nuptiae demonstrant*” cannot legally operate in such circumstances, given that they are supposed to be officially separated. This article studies these issues and clarifies the legal nature of that kind of cohabitation and how its effects can be managed.

The present paper generally aims to examine issues arising from cohabitation between spouses during the legal separation. It specifically examines the legal nature of cohabitation, to assess its impacts and issues arising from it; and suggests solutions that can assist in addressing loopholes and weaknesses still identified in Rwandan family legislation related to consequences of such an irregular cohabitation.

In order to attain the research objectives, different techniques and methods were used. The documentary technique has been used in collecting data from different written documents relevant to the topic including law texts, books, journal articles, annual reports, newspapers, etc. The exegetic method was helpful to interpret the various law materials. The analytic method was used to examine different elements of data collected for the purposes of explanation and interpretation. Finally, the synthetic method helped in regrouping the collected data in a coherent manner. The present research does not pretend to be exhaustive; instead, it is limited in space and domain. It is limited to Rwanda and to family law.

In addition to an introduction, this paper has two parts. The first part studies issues arising from cohabitation of judicially separated spouses. The second part focuses on the legal mechanisms proposed to address challenges raised by cohabitation of judicially separated spouses. The paper is ended by a conclusion.

2. ISSUES ARISING FROM COHABITATION OF SEPARATED SPOUSES

Before discussing different issues raised by cohabitation of judicially separated spouses, a general overview on legal separation under Rwandan family law is necessary.

2.1. RWANDAN RULES GOVERNING LEGAL SEPARATION

In Rwandan law, legal separation is regulated by provisions of the Law n^o32/2016 of 28/08/2016 governing persons and family which provides for its forms, procedure and its consequences.

2.1.1 Forms and procedure of legal separation

According to Article 248 of the law governing persons and family, in its first paragraph, legal separation has the following forms: legal separation for any cause provided by the law and legal separation by mutual consent. The second paragraph of this article provides that the petition for legal separation may be filed by spouses under the same conditions and on the same grounds as divorce. The same article also adds that the petition for legal separation is filed, heard, and decided in accordance with provisions of the law relating to divorce.³ According to this article, legal separation for causes provided by the law is filed in case there is one or many grounds as those provided for divorce in article 218 of the law governing persons and family.⁴ For legal separation by mutual consent, it can be applied in the same conditions as those of a divorce by mutual consent, which is provided in article 229 of the same law.⁵ It is important to note that while divorce for legal grounds can be applied anytime if one of the spouses can invoke one of the grounds provided by the law, divorce by mutual consent can be applied for after, at least, two years of marriage.⁶ This means that legal separation for grounds provided by the law can be applied for anytime, while application for legal separation by mutual consent can only be admissible if the applying spouses have been married for at least two years.

With regard to the procedure, legal separation is applied for in the same procedure as that of the application for divorce, as article 248 mentioned above stipulates. If

³ Art. 248, para. 3, Law n^o32/2016 of 28/08/2016 governing persons and family.

⁴ Grounds for divorce are adultery, desertion for a period of at least twelve (12) consecutive months, conviction for an offense severely tainting the honour, refusal to provide for the household needs, excess, abuse or serious insults by one towards another, gender based violence, de facto separation for a period of at least two (2) years, and non-cohabitation for more than twelve consecutive (12) months from the day of celebration of marriage on unjustifiable grounds.

⁵ Divorce by mutual consent is the one jointly applied for by both spouses after they agree on ending their marriage and its effects while submitting to the judge a written agreement settling the effects of divorce on spouses and their property as well as their children.

⁶ Art. 232, para. 1, law governing persons and family.

it is legal separation for legal grounds, it is instituted by one of the spouses, tried, and decided by a competent court according to ordinary proceedings. This kind of action expires after (5) years from the date the cause of divorce was discovered.⁷ In case of legal separation by mutual consent, it is applied in the same conditions as those of divorce by mutual consent. It is jointly applied for by both spouses (who have been legally married for at least two years) before a competent court. It is crucial to mention that during the procedure for legal separation, the judge has to first attempt reconciling the spouses intending to be legally separated, as required by article 236. During the first hearing held in camera, the judge hears both spouses separately and together, tries to conciliate them, gives them advice he or she considers necessary and makes observations to them with respect to the effects of their action. If conciliation fails, the proceedings for legal separation continue as provided in article 238. Articles 236 and 238 refer to conciliation during divorce proceedings, but as article 248 paragraph 3 states that an action for legal separation is filed, heard and decided in accordance with provisions of this Law relating to divorce, it means that conciliation procedure used in divorce procedure also applies in legal separation procedure. Article 249 of the same law deals with the connection between the application for legal separation and that for divorce. It provides that when the petitions for legal separation and for divorce are concurrently filed, the court first decides on legal separation.

2.1.2. Effects of legal separation

The separation of spouses impacts spouses themselves, children (if any), property, and even on third parties.

For spouses, legal separation relieves them of the duty of cohabitation but does not entail the severance of a marriage bond or the dissolution of matrimonial regime. In fact, the suppression of the duty of cohabitation is the essential effect of the legal separation. However, after ruling on legal separation, the duty of support and fidelity remains.⁸ The judgment of legal separation loosens the bonds of marriage but it does not remove them. For this reason, the duty of faithfulness or fidelity of the spouses survives the legal separation and its breach leads to adultery. The duty of mutual assistance also survives the legal separation. In fact, the abolition

⁷Art. 220, Law governing persons and family.

⁸Arti. 250, paras. 1 & 2, Law governing persons and family.

of the duty of cohabitation automatically leads to the duty of assistance. This duty is reciprocal, and it is not necessary to distinguish whether it is the plaintiff or the defendant who is the creditor.⁹ The legal separation judgment determines alimony for the spouse in need irrespective of the spouse with whom the fault rests.¹⁰ Additionally, the legal separation results in the separation of residences for the spouses which is also pronounced by the judge on the very day of the legal separation.¹¹ In fact, the persistence of marriage between separated spouses is shown in the fact that they can come together without having a new union celebrated. Such a union is tantamount to reconciliation.

Regarding children born from parents involved in legal separation, they are protected in accordance with provisions of Articles 243, 244, 245 and 246 of this Law.¹² According to the provisions of these articles, legal separation cannot deprive children of any benefits accorded to them by law or matrimonial regime of their parents. However, because legal separation results in separate residences for the spouses, the court will also have to determine the fate of the children. The family law first states that “Custody of children is awarded to the spouse who obtains divorce (or legal separation).” The other spouse has the rights to visit them, to talk to them or to be visited by them. The judge, while rendering the judgment, determines appropriate modalities for the respect for such rights. However, the court may, on its own motion or upon application by either spouse requesting for divorce (or legal separation) or any other interested person, order that child custody be granted to the spouse who lost the case or any other third party, taking into account the children’s best interests. The court may also order that custody of children be shared between both spouses if it is in the children’s best interests. It is important to mention that measures ordered by the court with regard to children are always provisional and may be revoked upon application by any interested party by way of unilateral petition.¹³

⁹ Arts. 204 and 251, Law governing persons and family; Sobal, J., & Rauschenbach, B. S. (2003). Gender, marital status, and body weight in older U.S. adults. *Gender Issues*, 21, 75–94. <http://dx.doi.org/10.1007/s12147-003-0007-y> Socio-Economic Panel (SOEP), data for years 1984-2014, version 31, SOEP, 2015, doi: 10.5684/soep.v 31.

¹⁰ Arts. 250 and 251, Law governing persons and family.

¹¹ Article 251, Law governing persons and family.

¹² Art. 250, para. 3, Law governing persons and family.

¹³ art.18 law n° 001/2020 of 02/02/2020 amending law n° 32/2016 of 28/08/2016 governing persons and family, O. G. n° 06 of 17/02/2020.

Concerning the property, in cases where legal separation has been decided, the management of the property is done in accordance with legal provisions governing the management of property of the spouses involved in divorce proceedings.¹⁴ In addition, the legal separation judgment determines alimony for the spouse in need irrespective of the spouse with whom the fault rests.¹⁵

Legal separation can have an effect on third parties, for example, if the spouses incurred debts before their separation. The spouses then determine terms of payment of these debts before their separation. These terms must in principle be accepted by the judge to facilitate the repayment of the debts incurred by the spouses. In order to protect third parties, the change of the matrimonial regime of the spouses following their separation must be known by the civil registry officer in order to publish it. It is in this context that the Law on matrimonial regimes, donations and succession states that “the change in the matrimonial regime is pronounced by the court, once that decision is no longer subject to appeal, it is sent to the civil status registrar of the place where civil marriage was celebrated to be transcribed into the marriage certificate of the spouses.”¹⁶ This procedure is done to protect third parties who wish to create or extinguish the relationship obligations with separated spouses.¹⁷

2.1.3. End of legal separation

Generally, the legal separation ends with the death of one of the spouses, the voluntary resumption of life together, or with divorce.¹⁸

1° Death of one of the spouses

When the husband or wife dies, the marriage, which had not been dissolved by the legal separation, becomes dissolved by death. Article 214 of the law governing persons and family provides death as one of the causes of marriage

¹⁴Article 250, para. 4, Law no 32/2016 of 28/08/2016 governing persons and family.

¹⁵ Art.250&251 of the same law

¹⁶Article 23 of the Law no 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions, O.G. no 31 of 01/08/2016.

¹⁷ See generally Barbara Glesner Fines, Joinder of Tort Claims in Divorce Actions, 12 J. AM. ACAD. MATRIM. LAW. 285, 287-89 (1994)

¹⁸ Ibidem

dissolution, and article 215 of the same law specifically states that “death of one of the spouses dissolves marriage.” If it is the custodial parent of the children is predeceased, there is, in principle, automatic devolution of parental authority to the other spouse.¹⁹

2° Reconciliation of separated spouses

It is always possible for the spouses to end the legal separation by reconciling themselves, more precisely by a voluntary resumption of the common life.²⁰ This situation is very likely when the legal separation was pronounced because of adultery, but also and above all under the emotional effect that followed the fact of adultery. It may be that, on reflection, at the end of the emotions, the spouses will resume the common life.²¹ The resumption of common life erases the effects of separation on children and on spouses. If, on their free will, they resume common life, there is no separation of residences, the custody of children comes back under both parents, and there is no alimony that is provided by one spouse to another. Most importantly, spouses resume their cohabitation obligation which was suspended by the court’s decision of legal separation.²²

3° Conversion of legal separation into divorce

After two (2) years of legal separation, the court, upon joint application by both spouses and either of them, converts the legal separation judgment into a divorce judgment. The application for the conversion of legal separation into divorce is filed in accordance with the ordinary rules relating to the application for divorce.²³ This means that if it is divorce for grounds provided for by the law, the conversion of legal separation into divorce will respect its rules, and if it is divorce by mutual consent, the spouses will respect its rules.

If before the 2-year period ends the woman has become pregnant, the husband

¹⁹Brinig, Margaret; Douglas W. Allen (2000). “These Boots Are Made for Walking: Why Most Divorce Filers are Women”. *American Law and Economics Review*. 2 (1): 126–129.

²⁰Wagner, G. G., Frick, J. R., &Schupp, J. (2007). The German Socio-Economic Panel Study (SOEP): Evolution, scope and enhancements. *SSRN Electronic Journal*. <http://dx.doi.org/10.2139/ssrn>

²¹Doherty, William J.; Willoughby, Brian J.; Peterson, Bruce (April 2011). “Interest in Martial Reconciliation Among Divorcing Parents”. *Family Court Review*. 49 (2): 313–321.

²²Blackstone, *Commentaries on the Laws of England*, p. 435 (Legal Classics Library spec. ed. 1984).

²³ Art. 252, Law governing persons and family.

will be able to say that the pregnancy of the woman in separation is a sign of her infidelity, probably the very cause of adultery. Pregnancy and the birth of a child are evidence of a woman's sexual relationship with a man. It might not be known whether it is her husband or not, but what is known is that the wife is separated from her husband and they no longer live together; hence this pregnancy leads to a presumption of her infidelity and adultery. There is, therefore, the presence of a material element of such an infidelity and adultery which is the sexual union with another person.²⁴ In these circumstances, divorce, which appears to be a sanction imposed against the offending spouse,²⁵ should be used against the spouse who is going to be responsible for marriage dissolution. It has been instituted to this effect that the guilty spouse should lose the benefits of the support that the other spouse was paying during legal separation, including the allocation of custody of the children, and priority should be given to the innocent spouse.²⁶ However, for the custody of children, it will all depend on what is in the best interests of the children. This has been the position of the Primary Court of MUKAMIRA in a judgment decided on 01 August 2008 in a marriage between a wife, U. and husband, ND. In that case, U. was separated from ND. and became pregnant. The Court held that U. failed in her duty of fidelity that a woman owes her husband. Even if the spouses were separated for eight months, they were still married and each owed the other the duty of fidelity. Although U. said that it is her husband who was the author of her pregnancy, the court did not take it as true because she failed to prove resumption of cohabitation. The court ordered that ND. is divorced with U. because of adultery; it ordered that children over 7 years of age would be kept and educated by ND. and suspended alimony that ND. was paying to U. during the separation period.

Besides, it is noteworthy to mention that apart from adultery, the family law in its article 218 provides other causes of divorce: notably, desertion for a period of at least twelve (12) consecutive months (except if desertion is caused by mistreatment of one of the spouses which has been notified to and recorded by administrative authorities); conviction for an offense severely tainting the honour; refusal to provide for the household needs; excess, abuse or serious

²⁴ MUTONI M, *Des problèmes juridiques des femmes divorcées*, Mémoire, Butare, U.N.R., 2000, p. 23.

²⁵ Ibid.

²⁶ RUDACOGORA J., *Les causes de divorce en droit écrit et coutumier au Rwanda*, Mémoire, Butare, U.N.R., 1977, p. 32.

insults by one towards another; gender based violence; de facto separation for a period of at least two (2) years; and non-cohabitation for more than twelve consecutive (12) months from the day of celebration of marriage on unjustifiable grounds. Spouses who have been legally separated for at least two years can ask conversion of legal separation into divorce. Once the divorce has been decided, there is no longer legal separation. After discussing the form, procedure, effects of legal separation and how it can be ended, the following part explores issues that result from cohabitation of spouses who have been judicially separated.

2.2. ISSUES RESULTING FROM COHABITATION OF JUDICIALLY SEPARATED SPOUSES

When it is proved that an estranged husband and wife have executed a separation decision and subsequently engaged in sexual intercourse or resumed cohabitation; the issues raised in Rwandan family law include determining whether the enforceable portions of that judicial separation should be void or remain irrevocable as a matter of law, and the legal nature of such cohabitation and the management of its effects. These issues are not regulated under Rwandan family law and are hereunder discussed.

2.2.1. Legal nature of cohabitation between judicially separated spouses

As defined, cohabitation is an obligation to have sexual relations with one's spouse. The problem is what nature the cohabitation of the spouses in legal separation will have. Some people believe that the cohabitation of spouses in legal separation is adultery,²⁷ others consider it as a free union between separated spouses, and others consider it as a resumption of common life between legally separated spouses.

2.2.1.1. Cohabitation described as adultery

1°. Definition of adultery

Adultery is a violation of the duty of fidelity arising from the intimate and

²⁷See W. Kent Davis, Answering Justice Ginsburg's Charge That the Constitution is "Skimpy" in Comparison to Our International Neighbors: A Comparison of Fundamental Rights in American and Foreign Law, 39 S Tex L Rev 951, 954-55 (1998)

monogamous nature of marriage; it is an absolute cause of legal separation.²⁸ Adultery must have a material element that involves a sexual union with a person other than one's spouse, as prescribed by article 136 of the law n° 68/2018 of 30/08/2018 determining offences and penalties in general.²⁹ For the intentional element, consent must be free. In other words, the parties must have wanted this sexual intercourse independently of any pressure or violence. If this consent is tainted, adultery will not be considered as a cause of divorce or legal separation.³⁰

According to article 136 of the law n°68/2018 governing offences and penalties in general, any spouse who has sexual intercourse with a person other than his/her spouse, commits an offence. Upon conviction, he or she is liable to imprisonment for a term of not less than six (6) months and not more than one (1) year. The prosecution of adultery is initiated only upon complaint of the offended spouse, and in that case, the prosecution is initiated against the accused spouse and the co-offender.

2°. Conditions for the qualification of a crime of adultery

For adultery to be found, first the accused must be legally married and be unfaithful to his or her spouse. Second, the spouse must have had a sexual relationship with someone other than his or her spouse. This is what is referred to in criminal cases as a material element of the offence of adultery. As long as sexual union is not consumed, there is no adultery. Mere attempts and licentious behavior do not constitute adultery.

The analysis of the concept of adultery allows us to affirm that spouses in legal separation that meet sexually for various reasons, i.e. during a baptism party of a child or a birthday, do not commit adultery for following reasons:

First, spouses who have cohabited, even though the duty of cohabitation has been suspended by the judge, remain married. The first element constituting adultery is the fact of being unfaithful to one's spouse, and both have the status of the wife and husband between themselves. There is therefore no breach of the duty of fidelity. The offence of adultery involves the prior existence of the

²⁸ Ibid.

²⁹ Law N°68/2018 of 30/08/2018 determining offences and penalties in general, O. G. n° Special of 27/09/2018.

³⁰ Maura I. Strassberg, *The Challenge of Post-Modern Polygamy: Considering Polyamory*, 31 Cap U L Rev 439, 445 (2003) (noting the rise in these types of flexible relationships).

marriage contract with another person and sexual intercourses with a person to whom one is not legally married. As discussed earlier in this paper, the legal separation does not dissolve the marriage. The legally separated spouses do not therefore commit infidelity; their cohabitation is between themselves, not with other persons. Even if they did not respect the decision of the judge who pronounced legal separation, they did not violate the duty of fidelity. It would therefore be faulty reasoning to think that they committed an offence of adultery while they are still married.

Second, the offence of adultery requires a free intention of the spouse who intended to act voluntarily and freely with a person other than his spouse. Considering cohabitation of the spouses in legal separation as adultery would be impossible because the two spouses did not have the guilty intention of violating their duty of fidelity. We therefore say that the cohabitation of spouses in legal separation is not adultery.

2.2.1.2. Cohabitation described as a free union

The cohabitation of spouses in legal separation can also be considered as a free union. There is free union when a man and a woman live together without being united by the bonds of marriage. They therefore make a community of beds, tables, and roofs. Free union is distinguished from marriage by the fact that marriage implies an officially celebrated marriage according to the forms prescribed by the law and in accordance with the conditions it imposes. Such cohabitation may be considered as free union due to the fact that both spouses are judicially prohibited to cohabit; in that situation they informally resolve to reunite without resorting to courts to formalize their reconciliation.

It is deemed opportune to clarify the phenomenon of free union by its typologies. The first category of free unions contains purely casual or transient relationships that do not in principle have legal consequences for partners, but which often create an unfortunate situation with respect to children who are often left to their single mothers. Rwanda is experiencing several cases of this situation of single-parent families which have resulted from free unions of this first category.³¹

The second category of free unions is one marked by a stable relationship which

³¹Legros, Dominique (2013). *Mainstream Polygamy: The Non-Marital Child Paradox In The West*. Springer Science & Business Media.

is limited to the bed community, and so are some cases of creation of families commonly referred to as “second or third office” which are frequent mainly in urban centers.³²

The third category of free unions is characterized by a true community of life, as close to marriage as the real institution. However, despite the characteristic of this third category of free unions of having true community of life close to marriage, there are still differences with legal marriage that unites judicially separated spouses. First, the free union is a union of fact, while the separated spouses have a union of law, their conjugal union has been officially celebrated.³³ Second, people living in this type of free union are more or less stable and continuous even if their union is not recognized by law. On the other hand, the cohabitation of spouses in separation has no stability or continuity. Their cohabitation was mainly caused by a transient situation of a night or a single day (and sometimes a small moment). Their cohabitation does not have a character of stability and continuity that free unions of the second and third category possess.

Cohabitation of legally separated spouses is very close to the first category of the free union which leads to casual or transient relations. However, for this category, relationships are casual or transient but are repeated. The two partners do not reside together but they are dating, whereas the cohabitation of the spouses in legal separation might take place in few occasions so that it will be difficult for a third person to prove it.³⁴

In addition to differentiating cohabitation of legally separated spouses from free unions based on their categories, it is important to differentiate them based on the obligations of the persons involved in these different relationships. Persons living in free union relationships are not subject to the obligation of care and assistance, and are not bound by the duty of fidelity because there is no marital relationship between them. For judicially separated spouses, they are exempted from the duty of cohabitation but remain bound to respect all other duties and obligations arising from marriage.

³²Jennifer Wriggins, *Kinship and Marriage in Massachusetts Public Employee Retirement Law: An Analysis of the Beneficiary Provisions, and Proposals for Change*, 28 *New Eng L Rev* 991, 991 (1994).

³³Statsky, William P. (2012). *Family law* (Sixth ed.). Cengage Learning. p. 254-260

³⁴ *ibidem*

Further, the effects of free unions are different from the effects of cohabitation of spouses in legal separation. When there is a breakdown of such a union, the court determines the fate of the estate of the partners and children.³⁵ In a judgment rendered by BUSASAMANA Primary Court on 20/05/2008, a woman alleged that her husband sold the fields and went to look for another woman. The husband left with all the belongings, leaving the wife with eight children.³⁶ The court ruled that the husband must bring these goods back to support the children. In the event of a legal separation; the court cannot determine the patrimony of the child born in the legal period of suspension, because his mother cannot prove that it is her husband who is the father of the child, for lack of continuous cohabitation.

The break-up between the separated spouses is the result of a decision of the judge based on a case defined by law, whereas the break-up of persons united freely can happen resulting from the decision of one or the two partners and it does not in itself constitute a fault. However, compensation may be awarded by a court decision, where the breach is the cause of a fault.³⁷

2.2.1.3. Cohabitation described as a resumption of common life

After a long or short period of time, spouses in legal separation may decide to resume their life together. The causes that led to the loosening of the marital bond may disappear. Also, the conduct of one of the spouses, who caused the separation, can positively change so that the offended spouse decides to relive with his or her spouse and both resume their pre-separation state.³⁸

The characteristic of the resumption of common life is the continuous cohabitation of the spouses as it was before the separation. The separation of residences resulting from the legal separation no longer exists, and the children entrusted to one or the other spouse are returned to the same family environment.³⁹

If the legal separation has resulted in the payment of support, on the day of the

³⁵ Jean-Didier, Vincent (2010). Reclus, geographer, anarchist, environmentalist. Robert Laffont Prix Femina.

³⁶ Primary Court of Busasamana, 20/05/2008, R.C. R.C.0500/06/TB/BSSMNA, unpublished

³⁷ Legros, Dominique (2013). Mainstream Polygamy: The Non-Marital Child Paradox In The West. Springer Science & Business Media.

³⁸ Wineberg, Howard; McCarthy, James (7 March 1994). "Separation and Reconciliation in American Marriages". *Journal of Divorce & Remarriage*. 20 (1–2): 21–42.

³⁹ Ibid.

resumption of the common life, this pension ends. Only the separation of property that is the consequence of the legal separation requires a further modification: either adoption of limited common property, universal community of property, or maintenance of the separation of property already granted by the court. What is challenging with the resumption of common life is the official modalities to be followed to confirm the end of the separation and mark the resumption of the common life.

As for the evidence, the resumption of common life is easy to prove because it is continuous. For instance, persons surrounding the family find that the separated spouses have resumed the common life as before the legal separation. However, in a case of one-off cohabitation of the spouses in legal separation, the resumption of common life is well known by the two spouses only. Additionally, in such a case it is difficult for a third party to say that the spouses in legal separation had sexual intercourse, which is always done in a hidden and intimate way.⁴⁰

In concluding, we can say that the cohabitation of spouses during separation cannot be equated with a resumption of common life, especially if it is a once-off or hidden cohabitation. From an intentional point of view, the spouses wanted for reason beyond their will, to make instant cohabitation, while the resumption of common life requires a period of reflection and the full conviction to resume the domestic union.⁴¹ Once cohabitation of spouses judicially separated has taken place, it might result into different effects, which are examined below.

2.2.2. Consequences of cohabitation of spouses who are in legal separation

During cohabitation of legally separated spouses, they can give birth to children whose legitimate status may be difficult to establish.

2.2.2.1. In case of a child's conception: legal status of a child conceived in times of legal separation

It is noteworthy to hereby discuss the status of children born during the cohabitation of spouses who are judicially separated. The child may be considered

⁴⁰ See Robert Kirkman Collins, *The Theory of Marital Residuals: Applying an Income Adjustment Calculus to the Enigma of Alimony*, 24 HARV. WOMEN'S L.J. 23, 28 (2001)

⁴¹ Doherty, William J.; Willoughby, Brian J.; Peterson, Bruce (April 2011). "Interest in Marital Reconciliation among Divorcing Parents". *Family Court Review*. 49 (2): 313–321

illegitimate or legitimate.

1° Illegitimate child

The bond of motherhood is established with ease, but this is not the case with regard to fatherhood, as it is presumed and sometimes skepticism may arise with the consequence of demonstrating by any means that a particular child is not the fruit of his or her presumptive father. The paternity claim exercised by the alleged father leads to illegitimate parentage in the child's mind. Under this point, it is important to first recall that the legal separation is a decision of the judge which suspends the spouses' duty of cohabitation. However, as mentioned above, there are some circumstances in which separated spouses may meet, and it can be difficult for a third party to prove that the spouses once cohabited after their separation. It is of course that, in the absence of the husband's good will to admit paternity, the wife will have difficulties in demonstrating by civil means that her husband is the author of her conception. With this in hand, the husband can challenge the paternity that the law grants him and, in this case, the child remains illegitimate.

The disagreement between the spouses was the cause of the separation, and on the basis of one of the statutory causes or their consent, the judge granted them separation. He suspended the duty of cohabitation between them but did not dissolve the marriage. Therefore, the duty of fidelity remains and is binding to the spouses. Normally, no cohabitation is tolerated as long as the spouses have not resumed life together. The instantaneous and transient cohabitation of the separated spouses is contrary to the judge's decision because the effect of separation is the non-cohabitation of the spouses. This makes it difficult for the mother to prove that the child conceived during legal separation is her husband's child, since they were not supposed to cohabit.

The wife can be at ease in case the husband admits paternity of the child. However, such admission only results from his good will, especially since he is protected by a judgment of legal separation, which exempts him from cohabitation. In fact, in case of cohabitation of legally separated spouses, many women become victims. This issue is very similar to that of women in de facto separation, meaning when two spouses agree to cease living together, or when one of the spouses leaves the family home. There, husbands may completely deny their part in the

birth of children conceived in such periods. For example, the District Court of GIKONDO (currently KAGARAMA Primary Court) refused to establish paternity of a child to NYANDWI due to lack of evidence of cohabitation of the mother and the presumed father, given that they were under legal separation. The court indicated that “there is no evidence establishing the resumption of life together with the spouse.”⁴²

However, by experience, it was found out that reasons of disavowals of fatherhood are numerous, the main causes being the refusal of taking care of the newborn in terms of financial means and the determination not to resume life together with the separated woman.

Since it is not easy for the woman in separation to prove that she exclusively had sex with her former husband occasioning her pregnancy, there is nothing to prevent anyone from thinking that the woman cheated on her husband especially since they no longer live together. Thus, on the basis of this pregnancy, the husband can file for divorce by charging his wife with adultery, which constitutes a serious violation of the duty of fidelity.

According to Article 259 of the law governing persons and family, a husband can deny paternity of a child if the child was born after three hundred (300) days following the judgment granting separation of residence of spouses involved in divorce proceedings or legal separation, or if the child was born before one hundred eighty (180) days since the final judgment rejecting the application for divorce or since the conciliation of spouses who lived separately.⁴³ According to the interpretation of this article, the husband has the right to disavow the child by demonstrating that the legal separation from his wife lasted more than three hundred days before birth. As a result, children conceived during this period of separate residences are subject to disavowal.

In addition, in case their paternity has not been established, they can face difficulties in paternity claims. For example, in a paternity claim judgment issued by the Primary Court of NGOMA dated 27/06/2008, the court refused to grant paternity to H.C. because his alleged father showed the court a judgment pronouncing the legal separation from his wife of more than 300 days prior to

⁴² Primary Court of GIKONDO, 17 August 2005, M.C/K., judgment n° R.C. 512/05/TD/KRO, non-published.

⁴³ Law N° 32/2016 of 28/08/2016 Governing Persons and Family, O. G. n°37 of 12/09/2016.

birth. Indeed, the same court, in its judgment dated 03/03/2002, granted legal separation to the husband with his wife. Therefore, the child H.C. born on 26/08/2005 was not considered the product of the husband who said he was in the period of suspension of the duty of cohabitation. The court held that the child was born after more than three hundred days following legal separation and that Mrs. M.G., who represented her son, gave the court no evidence of the cohabitation that existed with her husband during the separation period.⁴⁴

As a matter of fact, the *de facto* union between the husband and wife that took place during the legal period of the suspension of cohabitation does not protect the woman, as long as she cannot tangibly demonstrate the existence of such union. The only reliable evidence is to use DNA testing, which can only be used to establish the biological link between the father and the child born during legal separation.

Reading article 256 of law governing persons and family, it provides that the child's father is her mother's husband. However, the legal separation makes rebuttable this presumption and weakens its probative force. Indeed, this provision appears to be fragile in its application because the separation has suspended cohabitation for the spouses. Therefore, a child conceived during the legal separation, where cohabitation was suspended by the judge, cannot be considered to be the husband's child and as such that child is subject to disavowal.

2°. Legitimate child

A child conceived or born during marriage is legitimate. Also a child conceived in wedlock, but born after termination of the marriage status, is legitimate. The presumption of the legitimacy of a child born (or conceived) while the mother is married is one of the strongest rebuttable presumptions known to the law, and although legitimacy under such a condition may be challenged by the husband, and the wife (mother) may question the identity of the child, she cannot challenge its legitimacy.⁴⁵ However, it is very likely that the child conceived or born during

⁴⁴ Primary Court of NGOMA, Judgment R.C 0370/07/TB/NGOMA of 27/06/2008, (not published).

⁴⁵Fitzpatrick, David (February 1987). "Divorce and Separation in Modern Irish History". *Past & Present* (114): 172–196. [JSTOR 650964](https://www.jstor.org/stable/650964)

the legal period of suspension of the duty of cohabitation may be legitimate, depending on the attitude of the mother's husband.

a) No challenge to paternity of the child

A husband who has not challenged the parentage relationship that results from the presumption of paternity that the law assigns to him is always presumed to be the father of the child, regardless of the period in which the child was born. Article 260 of the law governing persons and family provides that no one can claim a status contrary to that given to him by his birth certificate and possession in accordance with that title. It appears from this provision that if the child has been registered under the names of the mother and the father, the husband has taken care of the child as his child and he has not claimed against the status of the child, the latter remains legitimate. The husband's inaction must be interpreted as an acceptance of the child who was born in marriage despite judicial suspension of the duty of cohabitation. In this line, in litigation where the relatives of the *de cuius* were denying a child born when the latter was still alive, the Court of first instance of Gikongoro based its decision on the father's pre-death silence as proof of paternity of a child conceived during legal separation. The judgment stipulates: "... N. cannot reasonably deny the child born during legal separation from M. given that he has lived with the child for 5 years and during this period he did not reject his fatherhood till his death."¹

The law does not depart from the case law: article 282 provides that claim for paternity may be admitted when the defendant has contributed to the maintenance, education and establishment of the child as a father. It should be noted that the separated spouse may, during this period of separation, continue to provide support to his wife who has even given birth to another child. This continuation of the provision of child's support implies the maintenance of the newborn if the separated husband does not deny paternity. It is in this context that the Kigali Court of First Instance, in its judgment of 09 July 1997, ruled that "the child NY remains among the successors of K. because, throughout his life, K. has not instituted a petition to deny paternity against NY. even if the latter was born during their legal separation."²

b) Resuming life together and paternity of the child

The resumption of life together despite the woman's conception of a child during legal separation is a sign of reconciliation of legally separated spouses. In this situation it is best for the husband to accept the legitimacy of the child. Once the spouses manage to forget the causes of their separation and resume cohabitation and common life, this gesture is a sign that the child born may have legitimate parentage. Reconciliation of the separated spouses goes with the resumption of the common life or the resumption of the duty of cohabitation, which had previously been suspended by the legal separation. It is very likely that separated spouses, who may have lived together on their own will, may also be able to reconcile. Their feelings of love, which reappear and lead to cohabitation, can also lead to their reconciliation. As a result, the child born in the legal period of suspension of the duty of cohabitation is automatically legitimate.

After discussing the issues or challenges raised by cohabitation of judicially separated spouses, especially those related to the status of a child conceived during legal separation and the difficulties of a woman to prove paternity of a child born in such conditions, the following part of the paper provides solutions to address such challenges.

3. PROPOSED MECHANISMS TO HANDLE EFFECTS OF COHABITATION OF JUDICIALLY SEPARATED SPOUSES

To address issues arising from the cohabitation of judicially separated spouses, the alternatives below are proposed *de lege ferenda*.

3.1. CONSIDERATION OF RESUMPTION OF COHABITATION AS PROOF OF RECONCILIATION AND END OF LEGAL SEPARATION

For a long time, most family laws have stated that the "resumption of marital relations" will void a separation of spouses to the extent that such an agreement remains executory.⁴⁶ However, the definition of resumption of marital relations has remained uncertain. It was judicially held that resumed cohabitation,

⁴⁶Weiss, Robert S. (January 1976). "The Emotional Impact of Marital Separation". *Journal of Social Issues*. 32 (1): 135–145.

irrespective of sexual activity, is a resumption of marital relations as a matter of law. In this regard, it was previously addressed that cohabitation that was manifestly continuous voids a judgment of separation as reflected by judicial decisions from other jurisdictions summarized below.

1° The North Carolina Supreme Court has held that a husband and wife resuming cohabitation and holding themselves out as living together as man and wife had resumed the marital relationship even without engaging in sexual intercourse.⁴⁷ However, in *Murphy v. Murphy*, the North Carolina Supreme Court rejected the Court of Appeal's requirement of intent, and held that "sexual intercourse between a husband and wife after the execution of a separation agreement avoids the debts contracted."⁴⁸

2° The North Carolina Supreme Court again held that "when separated spouses who have executed a separation agreement resume living together in the home which they occupied before the separation, they hold themselves out as man and wife 'in the ordinary acceptance of the descriptive phrase "...in contemplation of law", their action amounts to a resumption of marital cohabitation which rescinded their separation agreement. After reviewing the evidence before the superior court, the Adamee court found that "no issue arose for either judge or jury to decide as to their resumption of marital relations. As a matter of law, they had done so."⁴⁹

3° The Supreme Court, by Chief Justice Sharp, ruled that "the heart of a separation agreement is the parties' intention and agreement to live separate and apart forever, and they void the separation agreement if they re-establish a matrimonial home."⁵⁰

4° In *State v. Gossett*, the husband separated from his wife pursuant to a separation agreement providing for the support of the wife. When the husband failed to provide this support, he was charged with non-support under the criminal statutes. The husband pleaded the separation agreement as a defense.

⁴⁷In re Estate of Adamee, 291 N.C. 386, 230 S.E.2d 541 (1976).

⁴⁸*Murphy v. Murphy*, 295 N.C. 390, 245 S.E.2d 693 (1978)

⁴⁹In re Estate of Adamee, 291 N.C. 386, 230 S.E.2d 541 (1976).

⁵⁰*Cooke v. Cooke*, 34 N.C. App. 124, 237 S.E.2d 323, cert. denied, 293 N.C. 740, 241 S.E.2d 513 (1977); *Newton v. Williams*, 25 N.C. App. 527, 214 S.E.2d 285 (1975).

The wife testified that she and her husband engaged in sexual intercourse during the interval between the execution of the separation agreement and the issuance of the warrant. The trial judge instructed the jury to regard the agreement as void if they found the wife's testimony to be true. The North Carolina Supreme Court upheld the conviction on appeal. Although no intent to reconcile existed, at least one author felt that *Gossett* was limited to its facts since it arose in a criminal context.⁵¹

The above discussed foreign judgments shows that some courts have held that cohabitation of judicially separated spouses means that they have reconciled and ended their legal separation. In case it is considered in this way, there will not be any challenge related to the status of a child who is born from that cohabitation.

3.2. FORMALIZATION OF SPOUSES' RELATIONSHIPS WITH A RECONCILIATION AGREEMENT

When separated spouses decide to informally restore marital relationships, there is a set of legal risks, especially for the wife, in cases of unexpected pregnancy while the cheating husband is not seriously engaged in the relations latently initiated, as illustrated in the section above. To address such an issue in Rwandan family law, it is hereby proposed *de lege ferenda* to require a reconciliation agreement, which involves that, despite the previous procedure before the court whereby the couple resolved to cut off relationships and recourse to legal separation, they finally realize that they still need to live together taking into account various material and immaterial interests, and therefore decide to put their reconciliation into a formal agreement.

Romantic relationships do not move in a straight line. Most married couples understand that even the strongest relationships are sometimes challenged and pushed to the breaking point before spouses are ready to give their marriage another chance. If spouses have already requested legal separation and have later reconciled, they can submit what is known as a "reconciliation agreement" to the court.⁵²

⁵¹ 1 R. LEE, NORTH CAROLINA FAMILY LAW § 35 at 153, n. 105 (3d ed. 1963).

⁵² See Pamela Paul, *How Divorce Lost its Groove*, N.Y. Times (June 17, 2011), available at <http://www.nytimes.com/2011/06/19/fashion/how-divorce-lost-its-cachet.html?pagewanted=all>

A reconciliation agreement is an official agreement between spouses indicating that they no longer wish to seek a divorce or dissolution of marriage. While many reconciliation agreements come in the form of formal legal filings, including filing for divorce or filing for separation, this is not always the case. Some couples have merely discussed divorce or perhaps a spouse has outright stated that they intend to file for divorce. Within the context of these agreements, terms may be included that address financial and other practical considerations if the couple should eventually divorce.⁵³ Regardless of where spouses are in the legal process, reconciliation agreements are a way to address the issues that led to the desire to divorce or legally separate. It is important that reconciliation agreements state any and all significant marital disputes and lay out concrete and actionable solutions to those problems.⁵⁴ For fault divorces, these issues can include adultery, GBV, desertion from the household, failure to provide alimony, and more. More commonly, no-fault divorces cite irreconcilable differences or separation.⁵⁵ A reconciliation agreement can therefore include how these issues are addressed and how they are going to move forward with reconciling each other and continuing with their marital relationships.

3.3. IMPORTANT CONSIDERATIONS

Whether considering cohabitation as a proof of resumption of common life of judicially separated spouses or requiring the use of a formalized reconciliation agreement, there are certain important things to be considered. The first is checking the content of a reconciliation agreement, and the second is requiring cancellation of the decision that granted legal separation.

3.3.1 *Content of a reconciliation agreement*

In countries where it is practiced especially in US, spouses who finally left out their disputes and intend to resume their cohabitation cannot elaborate the

⁵³ See, e.g., Paul R. Amato & Alan Booth, *A Generation at Risk: Growing Up in an Era of Family Upheaval* (1997); Judith Wallerstein et al., *The Unexpected Legacy of Divorce: A 25 Year Landmark Study* 167 (2000); Alan L. Otten, *The Lasting Impact of Divorce on Children*, *Wall St. J.*, July 20, 1993, at B1

⁵⁴ See Laura Bradford, Note, *The Counterrevolution: A Critique of Recent Proposals to Reform No-Fault Divorce Laws*, 49 *Stan. L. Rev.* 607, 617–20 (1997)

⁵⁵ See HERBIE DIFONZO, *BENEATH THE FAULT LINE: THE POPULAR AND LEGAL CULTURE OF DIVORCE IN TWENTIETH-CENTURY AMERICA* 133–37 (1997)

reconciliation agreement by themselves. They are often assisted by mediators who help them to point out grounds of their conflict and how they agreed to overcome them and the document is signed and approved by the court to officiate its enforcement and de facto void the judicial separation.⁵⁶

In Rwanda where the mediation body is not yet operating, this task may be entrusted to the attorneys who sometimes resort to this alternative in the legal assistance. Therefore, among issues settled, spouses may agree on the children custody applying the best interest of the child; the partition of assets depending on the chosen matrimonial regime and other debts contracted with third parties in case of divorce. However, it is important to remember that reconciliation agreements are made with the intention of staying in the marriage, but are often entered into during a difficult or tumultuous personal time. For this reason, judges will be careful to examine the terms of all reconciliation agreements to ensure that neither party was coerced into agreeing to unfavorable terms in order to make a “sacrifice” or to make up for previous indiscretions.⁵⁷

3.3.2. *Cancellation of the judicial separation*

Since for the decision that granted judicial separation is a judgment in rem, if the parties want to resume cohabitation, it is necessary for them to get the order of judicial separation annulled by the court. Normally, the court cancels the decision upon consent and presentation of both spouses. Not only a legal separation is the physical and actual separation of an otherwise legally married couple, this being often the precursor to a divorce or annulment but also it is a court order that is similar to a divorce. Assets are divided and child custody is decided. A court will also rule on child and spouse support. A legal separation is often a trial divorce where the concerned couple decides to separate for a period of time to see if they can work out the problems in their marriage or to see if they should file a divorce. Once this legal separation has been granted by the court, spouses may still petition the court to have the motion of separation terminated.⁵⁸

⁵⁶ Jacobs Beger, LLC, Reconciliation Agreement, available online at https://divorcingoptions.com/Handouts/Reconciliation_Agreement_PDF_Handout_Version.pdf

⁵⁷ <https://jacobsberger.com/marital-agreements/reconciliation-agreements/> (visited on the 29th August 2021)

⁵⁸ Dawn, Melody, How to Cancel a Legal Separation, available online at <https://legalbeagle.com/6777896-cancel-legal-separation.html>; see also <https://allbanhotec.com.br/reviews/45c663-why-should-i-get-a-legal-separation> (visited on the 29th August 2021)

If this happens, spouses can reverse their legal separation and return to their joint status, provided neither of spouses has initiated a divorce. Inspired from the American law, the following should be adopted to reverse a legal separation: Spouses have to discuss the matter and attain a consensual agreement to reverse their legal separation taking into account their mutual interest to resume their marital relationships. Thereafter, they should write to the court expressing their request for cancellation of the court's decision that granted them legal separation.

With the above proposed mechanisms that are important in addressing issues caused by cohabitation of legally separated spouses; this paper suggests that the following be considered in Rwandan family law.

3.4 AMENDMENT OF LEGAL PROVISIONS APPLICABLE TO LEGAL SEPARATION

Legal provisions that regulate legal separation can either be revised or repealed to remain with divorce only.

3.4.1. Eventual revisions of legal provision governing legal separation under Rwandan law

Given different issues raised by cohabitation of spouses who have been legally separated that have been discussed in this paper, and which are not addressed under the current Rwandan family law, it is recommended that legal provisions related to legal separation be revised in order to include legal provision that can help in resolving those issues. Inclusion of legal provisions that recognize cohabitation of spouses judicially separated as either a resumption of common life or reconciliation of concerned spouses should be considered by the legislator. This will help to prevent difficulties that children born from that kind of cohabitation face while attempting to claim their paternity. However, the revisions have to be clear on how such cohabitation can be proved.

3.4.2. Eventual repeal of legal provisions applicable to legal separation

Another alternative solution to issues caused by cohabitation of judicially separated spouses would be to set aside all legal provisions regulating legal

separation. If they are removed from the law, spouses may mainly petition for divorce. If the conciliation process provided by article 238 of the current law n° 32/2016 of 28/08/2016 governing persons and family as amended to date dealing with attempt to conciliate spouses contemplating divorce fails and spouses persist in their intention to divorce, the court decides to authorize them to continue with divorce proceedings. This means that instead of specific provisions on legal separation, the legislator may maintain just rules on divorce. If Rwandan law remains with legal provisions on divorce only, there will be no challenges related to legal separation as discussed in this paper. There will not be spouses who are exempted from the duty of cohabitation while they are still bound by other marital relationships. It is important to note that this duty of cohabitation, which is suspended during legal separation, is the one that causes issues examined in this paper.

4. CONCLUSION

During legal separation a series of events that include informal resumption of cohabitation may result in the birth of children or other challenges. However, the Rwandan family law is silent on these issues. This article has discussed different issues that result from informal cohabitation of judicially separated spouses and proposes how they can be addressed. In the first part of this paper the Rwandan legal regime of legal separation of spouses is presented by highlighting Rwandan rules governing legal separation in terms of forms and procedure of legal separation, effects of legal separation and causes entailing the end of legal separation. Issues resulting from cohabitation of judicially separated spouses such as the legal nature of such cohabitation and effects that result from it have also been examined. Different considerations given to the nature of cohabitation of legally separated spouses such as consideration as adultery, free union or resumption of life together have been explored. Additionally, consequences of informal cohabitation of judicially separated spouses have been discussed particularly the consequence of eventual birth of the child conceived from such informal cohabitation. The paper examined the legal status of that child who can be considered as either illegitimate or legitimate. It is indicated that establishment of the child's status is difficult since the Rwandan law does not regulate it adequately.

The second part of the article proposes mechanisms that can be adopted to help in handling issues raised by cohabitation of spouses judicially separated such as consideration of resumption of cohabitation as proof of reconciliation and end of legal separation, and formalization of spouses' relationships with a reconciliation agreement. The article summarized important considerations to take into account while applying the proposed mechanisms namely consideration of the content of a reconciliation agreement and cancellation of the decision that granted judicial separation.

This article shows that there is a significant need to fill the loopholes found in Rwandan family law in relation to the fate of the resumption of marital relationships between judicially separated spouses. The proposals above inspire the needed and recommended legal amendments to fix this existing issue.

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