

## CHAPTER 5:13

### MATRIMONIAL CAUSES ACT

*Acts 33/1985, 11/1987, 18/1989 (s. 38), 2/1990, 6/2000 (s. 151).*

#### ARRANGEMENT OF SECTIONS

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**AN ACT to amend the law relating to marriage, judicial separation and nullity of marriages; and to provide for matters incidental thereto or connected therewith.**

[Date of commencement: 17th February, 1986.]

#### **1 Short title**

This Act may be cited as the Matrimonial Causes Act [*Chapter 5:13*].

#### **2 Interpretation**

(1) In this Act—

“action for divorce, judicial separation or nullity of marriage” means an action by which a decree of divorce, judicial separation or nullity of marriage or other relief in connection therewith is applied for, and includes—

- (a) an application *pendente lite* for an interdict or for the interim custody of, or access to, a child of the marriage or for the payment of maintenance; or
- (b) an application for a contribution towards the costs of such action, or to institute such action, or make such action or such application;

“appropriate court” means—

- (a) the High Court, in relation to any marriage;
- (b) a magistrates court, in relation to any marriage entered into in accordance with customary law; “marriage” includes a marriage solemnized in term of the Customary Marriages Act [*Chapter 5:07*].

(2) For the purposes of this Act, an action shall be deemed to have been commenced on the date on which any process in relation to such action is filed or lodged in terms of the rules of the court.

#### **3 Additional jurisdiction**

(1) Without prejudice to any other basis of jurisdiction which the High Court has, the High Court shall have jurisdiction to entertain an action for divorce, judicial separation or nullity of marriage, where the wife is the plaintiff or applicant—

- (a) if the wife has been deserted by her husband and, immediately before the desertion, the husband was domiciled in Zimbabwe, notwithstanding that the husband has changed his domicile since the desertion; or
- (b) if the marriage was celebrated in Zimbabwe and the wife has resided in Zimbabwe for a period of at least two years immediately before the date of commencement of the action and is still so residing, notwithstanding that the husband has never been domiciled in Zimbabwe; or
- (c) if at the date of commencement of the action the wife is a citizen of Zimbabwe and, immediately before that date, she has been ordinarily resident in Zimbabwe for a period of not less than two years and is still so residing.

(2) The High Court shall, in an action referred to in subsection (1), have jurisdiction to entertain any counterclaim made by the husband which arises out of the marriage.

(3) In any proceedings in which the High Court has jurisdiction by virtue of this section the issue shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in Zimbabwe at the time of the proceedings.

#### **4 Grounds for divorce**

A marriage may be dissolved by a decree of divorce by an appropriate court only on the grounds of— (a) irretrievable break-down of the marriage as contemplated by section *five*; or

(b) incurable mental illness or continuous unconsciousness of one of the parties to the marriage as contemplated by section *six*.

#### **5 Irretrievable break-down**

(1) An appropriate court may grant a decree of divorce on the grounds of irretrievable break-down of the marriage if it is satisfied that the marriage relationship between the parties has broken down to such an extent that there is no reasonable prospect of the restoration of a normal marriage relationship between them.

(2) Subject to subsection (1), and without prejudice to any other facts or circumstances which may show the irretrievable break-down of a marriage, an appropriate court may have regard to the fact that—

(a) the parties have not lived together as husband and wife for a continuous period of at least twelve months immediately before the date of commencement of the divorce action; or

(b) the defendant has committed adultery which the plaintiff regards as incompatible with the continuation of a normal marriage relationship; or

(c) the defendant has been sentenced by a competent court to imprisonment for a period of at least fifteen years or has, in terms of the law relating to criminal procedure, been declared to be a habitual criminal or has been sentenced to extended imprisonment and has, in accordance with such declaration or sentence, been detained in prison for a continuous period of, or for interrupted periods which in the aggregate amount to, at least five years, within the ten years immediately before the date of commencement of the divorce action; or (d) the defendant has, during the subsistence of the marriage— (i) treated the plaintiff with such cruelty, mental or otherwise; or

(ii) habitually subjected himself or herself, as the case may be, to the influence of intoxicating liquor or drugs to such an extent;

as is incompatible with the continuation of a normal marriage relationship; as proof of irretrievable break-down of the marriage.

(3) If it appears to an appropriate court that there is a reasonable possibility that the parties may become reconciled through marriage counsel, treatment or reflection, the court may postpone the proceedings to enable the parties to attempt a reconciliation.

(4) Where proceedings have been postponed in terms of subsection (3), they may be resumed, with leave of the court, before any other presiding officer or judge of the court.

#### **6 Mental illness or continuous unconsciousness**

(1) In this section—

“psychiatrist” means a medical practitioner who is registered in Zimbabwe or possesses qualifications which make him eligible for registration in Zimbabwe and—

(a) possesses a diploma or degree in psychiatric medicine which has been granted by a university or other body and whose ordinary qualifications are registrable with the Medical and Dental Practitioners Council of Zimbabwe established by the Health Professions Act [*Chapter 27:19*]; or

(b) has at least five years’ experience in the treatment of mental disorders in an institution which is exclusively devoted to such treatment.

(2) Subject to subsection (3), an appropriate court may grant a decree of divorce on the grounds of mental illness or continuous unconsciousness of the defendant if satisfied, as the case may be, that—

(a) the defendant is suffering from a mental disease or defect and has been under care and treatment for a continuous period of, or for interrupted periods which in the aggregate amount to, at least five years, within the ten years immediately before the date of commencement of the divorce action; or

(b) the defendant is by reason of a physical disorder in a state of continuous unconsciousness which has lasted for a period of at least six months immediately before the date of commencement of the divorce action; and that there is no reasonable prospect that he will be cured or will regain consciousness, as the case may be.

(3) An appropriate court shall not grant a decree of divorce on any ground referred to in subsection (2) unless it is satisfied by the evidence of at least three medical practitioners, of whom two shall be psychiatrists appointed by the court, as to the matters referred to in paragraph (a) or (b), as the case may be, of that subsection.

(4) For the purposes of this section, a person shall be deemed to be under care and treatment—

(a) while he is detained in pursuance of any order or warrant issued under the law of Zimbabwe or of any other country which relates to mental disorder; or

- (b) while he is receiving treatment as a voluntary patient under any such law; and in no other case.

## **7 Division of assets and maintenance orders**

(1) Subject to this section, in granting a decree of divorce, judicial separation or nullity of marriage, or at any time thereafter, an appropriate court may make an order with regard to—

- (a) the division, apportionment or distribution of the assets of the spouses, including an order that any asset be transferred from one spouse to the other;
- (b) the payment of maintenance, whether by way of a lump sum or by way of periodical payments, in favour of one or other of the spouses or of any child of the marriage.

(2) An order made in terms of subsection (1) may contain such consequential and supplementary provisions as the appropriate court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between the spouses and may in particular, but without prejudice to the generality of this subsection—

- (a) order any person who holds any property which forms part of the property of one or other of the spouses to make such payment or transfer of such property as may be specified in the order;
- (b) confer on any trustees of any property which is the subject of the order such powers as appear to the appropriate court to be necessary or expedient.

(3) The power of an appropriate court to make an order in terms of paragraph (a) of subsection (1) shall not extend to any assets which are proved, to the satisfaction of the court, to have been acquired by a spouse, whether before or during the marriage— (a) by way of an inheritance; or

- (b) in terms of any custom and which, in accordance with such custom, are intended to be held by the spouse personally; or
- (c) in any manner and which have particular sentimental value to the spouse concerned.

(4) In making an order in terms of subsection (1) an appropriate court shall have regard to all the circumstances of the case, including the following—

- (a) the income-earning capacity, assets and other financial resources which each spouse and child has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each spouse and child has or is likely to have in the foreseeable future;
- (c) the standard of living of the family, including the manner in which any child was being educated or trained or expected to be educated or trained;
- (d) the age and physical and mental condition of each spouse and child;
- (e) the direct or indirect contribution made by each spouse to the family, including contributions made by looking after the home and caring for the family and any other domestic duties;
- (f) the value to either of the spouses or to any child of any benefit, including a pension or gratuity, which such spouse or child will lose as a result of the dissolution of the marriage;
- (g) the duration of the marriage; and in so doing the court shall endeavour as far as is reasonable and practicable and, having regard to their conduct, is just to do so, to place the spouses and children in the position they would have been in had a normal marriage relationship continued between the spouses.

(5) In granting a decree of divorce, judicial separation or nullity of marriage an appropriate court may, in accordance with a written agreement between the parties, make an order with regard to the matters referred to in paragraphs (a) and (b) of subsection (1).

## **8 Duration of maintenance orders**

(1) An order for the periodic payment of maintenance in respect of a spouse shall cease—

- (a) when the spouse dies or remarries; or
- (b) if the order was made pursuant to a decree of judicial separation, when that decree is set aside or if a decree of divorce is granted.

(2) Subject to subsection (3), an order for the periodic payment of maintenance in respect of a child shall cease—

- (a) when the child dies or marries; or
- (b) when the child is adopted; or
- (c) when the child attains the age of eighteen years; or
- (d) when the child becomes self-supporting; whichever occurs the earlier.

(3) An appropriate court may direct that the maintenance order referred to in subsection (2) shall extend beyond the date when the child attains the age of eighteen years—

- (a) if the child is or will be receiving education or training beyond attaining that age; or (b) if there are special circumstances which justify such direction.

## **9 Variation, etc., of orders**

Without prejudice to the Maintenance Act [*Chapter 5:09*], an appropriate court may, on good cause shown, vary, suspend or rescind an order made in terms of section *seven*, and subsections (2), (3) and (4) of that section shall apply, *mutatis mutandis*, in respect of any such variation, suspension or rescission.

## **10 Inquiry as to custody and maintenance of children**

(1) Where there are any children of the marriage, the appropriate court, before granting any decree of divorce, judicial separation or nullity of marriage, may require evidence to be produced by either party for the purpose of determining whether or not proper provision has been made for the custody and maintenance of such children.

(2) An appropriate court may, after hearing evidence referred to in subsection (1)—

- (a) commit the children into the custody of such of the parties or such other person as the court may think best fitted to have such custody;
- (b) make an order in terms of section *seven* for maintenance of the children.

(3) This section shall have effect without prejudice to the powers conferred upon an appropriate court by any other law in respect of custody and maintenance of children.

## **11 Claim for arrear maintenance for children**

(1) Where a spouse has provided for the maintenance of any children of the marriage or of a former marriage of one or other of the spouses, that spouse shall be entitled to recover in arrear from the other spouse such maintenance or such portion of such maintenance as an appropriate court may consider just or equitable in the circumstances.

(2) An appropriate court may make an order for the payment by a spouse of his or her share of such arrear maintenance in an application by the other spouse for maintenance *pendente lite*, pending an action for divorce, judicial separation or nullity of marriage, or may include such an order in the final order of divorce, judicial separation or nullity of marriage, as the case may be.

## **12 Recognition of certain decrees and orders**

(1) An appropriate court may recognize the validity of any decree or order of divorce, judicial separation or nullity of marriage made in any country in any case in which the husband was not domiciled in that country if—

- (a) it is satisfied that the law of that country contains provisions which correspond substantially to the relevant provisions of section *three*; or
- (b) the President has, by proclamation in a statutory instrument, declared that the laws of that country contain provisions which correspond substantially to the relevant provisions of section *three*.

(2) No proclamation shall be issued in terms of paragraph (b) of subsection (1) unless the President is satisfied that adequate provision is made under the law of the country concerned for the recognition by the courts of that country of the decrees and orders made under section *three* in any case in which the husband is not domiciled in Zimbabwe.

(3) The President may at any time revoke any proclamation issued in terms of paragraph (b) of subsection (1).

## **13 Grounds for decree of nullity**

(1) In addition to any other ground on which a marriage is by law voidable, a marriage shall be voidable on the ground—

- (a) that the marriage has not been consummated owing to the wilful refusal of the defendant to consummate the marriage; or
- (b) that either party to the marriage was at the time of the marriage mentally disordered or defective within the meaning of the Mental Health Act [*Chapter 15:06*]:

Provided that, in the case specified in paragraph (b), an appropriate court shall not grant a decree of nullity unless it is satisfied that—

- (i) the plaintiff was at the time of the marriage ignorant of the facts alleged; and
- (ii) the proceedings were instituted within a year from the date of marriage; and
- (iii) marital intercourse with the consent of the plaintiff has not taken place since the discovery by the plaintiff of the existence of the ground for a decree.

(2) Nothing in subsection (1) shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

## **14 Legitimacy of children of voidable marriages**

Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being annulled, at the date of the decree, shall be deemed to be their legitimate child notwithstanding the annulment.

## **15 Evidence**

(1) Notwithstanding any rule of law, the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) Notwithstanding anything in subsection (1) or any rule of law, a husband or wife shall not be compellable to give evidence of the matters mentioned in that subsection.