

CHAPTER 29
THE LAW OF MARRIAGE ACT
[PRINCIPAL LEGISLATION]
ARRANGEMENT OF SECTIONS

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SCHEDULES

CHAPTER 29

THE LAW OF MARRIAGE ACT

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

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

Acts Nos.	15 of 1980	GN. No.
5 of 1971	9 of 1996	109 of 1971
23 of 1973	21 of 2009	

PART I

PRELIMINARY PROVISIONS

(a) *General*

Short title 1. This Act may be cited as the Law of Marriage Act.

Interpretation
Act No.
21 of 2009 s. 162
Cap. 13

2.-(1) In this Act, unless the context requires otherwise-
“adopted child” means a child adopted in accordance with the provisions of the Law of the Child Act, and references in this Act to adoption shall be construed accordingly;
“Board” means a Marriage Conciliation Board established under section 102;
“child” means a person under the age of eighteen;
“court” means a court having jurisdiction under section 76;
“decree” includes a decree of a foreign court which is recognised as effective under section 91;
“dowry” means payment of stock, goods, money or other property made or promised in consideration of an intended marriage;
“kadhi” means a Muslim priest or preacher or a leader of a Muslim community who has been licensed under this Act to celebrate marriages in Islamic form;

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

“matrimonial home” means the building or part of a building in which the husband and wife ordinarily reside together and includes, where a building-

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

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a proceeding instituted under Parts II and VI of this Act or any comparable proceeding brought under any written law repealed by this Act, in any court;

“minimum age” in relation to marriage, has the meaning attributed to it under section 13;

“Minister” means the Minister responsible for legal affairs;

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

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

“prohibited relationship” has the meaning attributed to it under section 14;

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

“specified religion” means Christianity or a religion specified in an order made by the Minister under section 25;

Cap. 287

Cap. 288

“ward” means a ward established under the Local Government (District Authorities) Act or the Local Government (Urban Authorities) Act.

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

(b) Appointments

Appointment
of Registrar-
General, Deputy
and Assistant
Registrars-
General
GN. No.
109 of 1971

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

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

Appointment of
registration areas

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

Appointment of
district registrars

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

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

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

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

Appointment of registrars

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

Appointment of registration officers

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

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

Appointment of registrars for foreign countries

8.—(1) The Minister may, by notice in the *Gazette*, appoint any member of the diplomatic staff of the United Republic in any country to which this section applies either individually by name or as the holder of a public office, to be the registrar for the purposes of this Act, in respect of that country.

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

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

PART II MARRIAGE

(a) *The Nature of Marriage*

Meaning of marriage

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

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

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

Kinds of marriage **10.**—(1) Marriages shall be of two kinds, that is to say, those that are—

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

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

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

Conversion of marriages

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

- (a) from monogamous to potentially polygamous; or
- (b) where the husband has one wife only, from potentially polygamous to monogamous,

by a declaration made by the husband and the wife, that they each, of their own free will, agree to the conversion.

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

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

(4) A marriage shall not be converted from monogamous to potentially polygamous or from potentially polygamous to monogamous otherwise than by a declaration made under this section.

(5) A marriage between two Christians which was celebrated in a church in Christian form may, for so long as both the parties continue to profess the Christian faith not to be converted from monogamous to polygamous and the provisions of this section shall apply to that marriage notwithstanding that, the marriage was preceded or succeeded

by a ceremony of marriage between the same parties in civil form or any other form.

Duration of marriage

12. A marriage, whether contracted in Mainland Tanzania or elsewhere, shall for the purposes of the law of Mainland Tanzania subsist until determined by-

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

(b) Restrictions on Marriage

Minimum age

13.-(1) A person shall not marry who, being male, has not attained the apparent age of eighteen years or, being female, has not attained the apparent age of fifteen years.

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

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

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

Prohibited relationships

14.-(1) A person shall not marry his or her grandparent, parent, child or grandchild, sister or brother, great-aunt or great-uncle, aunt or uncle, niece or nephew, as the case may be.

(2) A person shall not marry the grandparent or parent, child or grandchild of his or her spouse or former spouse.

(3) A person shall not marry the former spouse of his or her grandparent or parent, child or grandchild.

(4) A person shall not marry a person whom he or she has adopted or by whom he or she was adopted.

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

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

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

Subsisting
marriage

15.—(1) A man, while married by a monogamous marriage, shall not contract another marriage.

(2) A man, while married by a polygamous or potentially polygamous marriage shall not contract a marriage in any monogamous form with any other person.

(3) A woman who is married shall not contract another marriage while that marriage subsists.

(4) This section shall not be construed as preventing the parties to a marriage to go through another ceremony of marriage:

Provided that, where parties who are already married go through another ceremony of marriage, the subsequent ceremony shall not, subject to the provisions of subsection (5) of section 11, affect the status or the legal consequences of their first marriage.

No marriage save
of free will

16.—(1) A marriage shall not be contracted except with the consent, freely and voluntarily given by each of the parties thereto.

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

(a) was influenced by coercion or fraud;

(b) was mistaken as to the nature of the ceremony; or

(c) was suffering from any mental disorder or mental defect, whether permanent or temporary, or was intoxicated, so as not fully to appreciate the nature of the ceremony, and references in this Act to “consent” or “consent freely given” in relation to a party to a marriage or an intended marriage shall be construed as meaning consent freely given and voluntarily.

Requirement of
consent
Act No.
21 of 2009 s. 163

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

- (a) of her father;
- (b) if her father is dead, of her mother; or
- (c) if both her father and mother are dead, of the person who is her guardian.

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

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

Provided that, this subsection shall not be construed as empowering the *kadhi*, minister of religion or registrar to dispense with any requirement of subsection (1).

(c) Preliminaries to Marriage

Notice of
intention to
marry

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

- (2) A notice given under this section shall contain-
- (a) the names and ages of the parties and places where they reside;
 - (b) the names of the parents of the parties and places where they reside;
 - (c) a statement that, the parties are not within the prohibited relationships;
 - (d) where the intended wife is below the apparent age of eighteen years, the name of the person, if any, giving consent to the marriage or the reason why the consent is not being given;
 - (e) a statement in relation to each party that, he or she is a bachelor or spinster, married, a widower or widow or divorced, as the case may be and where either party is divorced, the particulars of the divorce;
 - (f) a statement that, the marriage is intended to be of monogamous or polygamous or potentially polygamous character, as the case may be;
 - (g) where the marriage is to be polygamous, the names of the wives of the husband;
 - (h) the date when and the place where the parties desire to marry; and
 - (i) where both parties are Christians and it is intended to celebrate the marriage in a church in Christian form, a declaration by the intended husband that he is not already married to another woman,

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

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

Notice of
objection
Act No.
21 of 2009 s. 162

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

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

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

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

Procedure
on notice of
objection

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

- (a) subsection (1) of section 20, to the court; and
- (b) subsection (2) of section 20, to the Board.

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

Determination of
objection

22.—(1) On receipt of a notice of objection and notice of intention transmitted to it under section 21, the court or the Board, as the case may be, shall require the attendance of the

parties to the intended marriage and the objector, and hear them and their witnesses, if any, and any other persons the court or the Board may think necessary to hear for a just determination of the objection, and make findings on the facts alleged in the notice of objection and either, by order, direct that, the intended marriage is not to be contracted or dismiss the objection.

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

Power of
Registrar-General
to dispense with
requirement of
notice

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

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

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

Lodging of
objections with
Registrar-General

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

(d) Contracting of Marriage

Manner of
contracting
marriage

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

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

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

(3) For the purposes of this Act—

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

Time for
contracting
marriage

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

Witnesses

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

(2) A person shall not be competent to act as a witness to a marriage who is below the age of eighteen years or unable to

understand the nature of the ceremony by reason of mental illness, intoxication or who does not understand the language in which the ceremony is conducted, unless the whole of the ceremony is interpreted into a language which he or she can understand.

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

Marriage to be public

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

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

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

Procedure for marriages in civil form

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

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

“I (giving his name) take you (giving her name) to be my wife”

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

“I (giving her name) take you (giving his name) to be my husband”;

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

(c) the parties may, if they wish, request the district registrar to make an entry in the register whether the marriage

shall be monogamous or polygamous, and upon the request being made and satisfying himself that, both the parties have freely and voluntarily made the request, the district registrar shall comply therewith.

Marriages according to religious rites and licensing of ministers

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

Provided that, a minister of religion shall not be compelled to celebrate any marriage.

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

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

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

(5) A licence granted under section 7 of the Marriage Ordinance and not cancelled, shall be deemed to be a licence granted under this section.

Ord. No.
30 of 1923

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

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

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

Duty of *kadhis*
and registration
officers to attend
marriages

32. It shall be the duty of a-

- (a) *kadhi* or registration officer to whom notice has been given that, a marriage is intended to be contracted in Islamic form; and
- (b) registration officer to whom notice has been given that, a marriage is intended to be contracted according to rites recognised by customary law, so far as is reasonably practicable, to attend that marriage.

Issue of marriage
Certificate or
transmission
of statement of
particulars

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

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

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

Marriages in
Tanzanian
Embassies, etc
abroad

34.—(1) A marriage may be contracted in the presence of the registrar in an Embassy, High Commission or consulate of the United Republic in any country which has been designated by the Minister in accordance with subsection (2) of section 8,

subject to the following conditions that, the registrar shall be satisfied that-

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

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

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

Issue of
certificates of no
impediment

35.-(1) Where a citizen of the United Republic domiciled in Tanzania desires to contract marriage in any foreign country in accordance with the law of that country and the law of that

country requires him or her to produce a certificate that, no legal impediment to the intended marriage is known to the responsible authority in Tanzania, he or she may apply to the Registrar-General for the issue of a certificate.

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

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

Recognition
of marriages
contracted
abroad

36. A marriage contracted outside Tanzania other than a marriage contracted under section 34 shall be recognised as valid for purposes of the law of Tanzania, where-

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

Recognition
of marriages
contracted in
Embassies *etc* in
Tanzania

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

- (a) it was contracted in a form required or permitted by the law of the country whose Embassy, High Commission or consulate it is or in a form permitted under this Act;

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

(e) Void Ceremonies, Voidable Marriages and Legitimacy

Void
ceremonies

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

- (a) save for a leave which has been granted under subsection (2) of section 13, where either party thereto is below the minimum age for marriage;
- (b) if the parties thereto are within the prohibited relationships;
- (c) if either party is incompetent to marry by reason of an existing marriage;
- (d) if the court or a Board, in the exercise of the power conferred by section 22, has directed that the intended marriage is not to be contracted;
- (e) the consent of either party was not freely and voluntarily given thereto;
- (f) unless both parties are present in person at the ceremony;
- (g) if both parties knowingly and wilfully acquiesce in a person officiating thereat who is not lawfully entitled to do so;
- (h) unless two competent witnesses are present thereat;
- (i) if the intended marriage is expressed to be of a temporary nature or for a limited period; or
- (j) if the wife was a widow or a divorced woman prior to the marriage, and her previous marriage having been

contracted in Islamic form, she contracts the other marriage during the customary period of *iddat*.

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

Voidable
marriages
Act No.
21 of 2009 s. 164

39. Subject to the provisions of sections 97 and 98, a marriage shall be voidable where-

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

Voidable
marriage valid
until annulled

40. A voidable marriage is a valid marriage until it is annulled by a decree of the court.

Matters not
affecting validity

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

- (a) any non-compliance with any custom relating to dowry or the giving or exchanging of gifts before or after marriage;
- (b) failure to give notice of intention to marry as required by this Act;
- (c) notice of objection to the intended marriage having been given and not discharged;

- (d) the fact that any person officiating thereat was not lawfully entitled to do so, unless that fact was known to both parties at the time of the ceremony;
- (e) any procedural irregularity; or
- (f) failure to register the marriage.

PART III

REGISTRATION OF MARRIAGES, ANNULMENTS AND DIVORCES AND EVIDENCE OF MARRIAGE

Maintenance of
marriage registers

42.—(1) A registrar shall maintain a register of marriages in the prescribed form:

Provided that, it shall be permissible for two or more ministers of religion who are licensed under section 30 to maintain one register, if that register is kept in a place of worship or other place as may be approved by the Registrar-General.

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

Duty to register
marriages and
procedure to be
followed

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

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

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

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

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

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

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

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

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

Registration
of subsisting
unregistered
marriages

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

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

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

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

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

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

(a) denies that, there was marriage; or

(b) cannot be found and the marriage is disputed by any member of his or her immediate family,

the District Registrar or a *kadhi* shall not register the alleged marriage unless there is produced to him a declaratory decree of the court that, the alleged marriage was validly contracted.

Registration
of marriages
contracted abroad

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

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

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

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

Returns to be
sent to Registrar-
General

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

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

Completed registers to be sent to Registrar-General
Ord. No. 30 of 1923

47.—(1) Where a register of marriages maintained under this Act has been completed, the registrar shall forthwith send it to the Registrar-General.

(2) A person who, immediately before the coming into force of this Act, was a registrar of marriages under the Marriage Ordinance shall, as soon as practicable thereafter, send a register of marriages and divorces in his possession to the Registrar-General:

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

Maintenance of index, searches, inspection and copies

48.—(1) The Registrar-General shall maintain an index indicating the names of parties to registered marriages.

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

(a) the entry in the marriage register relating to any marriage, if that register has been sent to the Registrar-General under section 47; or

(b) in any other case, the certified copy of that entry sent to the Registrar-General under section 46,

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

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

Maintenance of register of annulments and divorces

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

Copies of decrees of annulment and divorce to be sent to Registrar-General

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

Registration of foreign annulments and divorces

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

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

Endorsement of marriage registers

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

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

Correction of errors

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

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

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

Power of Minister to restrict provisions relating to registration

54. The Minister shall, by notice published in the *Gazette*, have power to suspend the provisions of this Act relating to registration of marriages contracted according to rites recognised by customary law in relation to any registration area, to be specified in a notice, where he considers that, adequate facilities for registration do not exist.

Evidence of marriage

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

- (a) a marriage certificate issued under this Act or any law in force before the commencement of this Act;
- (b) a copy of marriage certificate purporting to be certified as a true copy by the registrar having custody of the original;
- (c) an entry in any register of marriages kept under this Act or any written law heretofore in force;
- (d) a copy of an entry in any register purporting to be a true copy certified by the Registrar-General or the registrar having custody of the register;

- (e) a copy of an entry in a return sent to the Registrar-General in accordance with section 46, certified by the Registrar-General to be a true copy of the entry;
- (f) an entry made, prior to the coming into force of this Act, in any register of marriages maintained by the proper authority of the “Baraza Kuu la Waislamu wa Tanzania” (BAKWATA), the Shia Ith’nasheri, the Shia Imami Ismaili, the Bohora or any other community or a copy of any entry certified by a proper officer of that authority to be a true copy; and
- (g) in relation to a marriage celebrated in a place of worship at a time when the official registration of marriages was not required, an entry in any register of marriages kept by the proper authority of the religion concerned or a copy of any entry sealed with the seal, if any, of that authority and certified under the hand of the registrar or other proper officer of that authority to be a true copy.

PART IV

PROPERTY, RIGHTS, LIABILITIES AND STATUS

Rights and
liabilities of
married woman

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

Equality between
wives

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

Separate property
of husband and
wife

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

either the husband or the wife from acquiring, holding and disposing of any property.

Special provisions
relating to
matrimonial
home

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

(2) Where a person alienates his or her estate or interest in the matrimonial home in contravention of subsection (1), the estate or interest transferred or created shall be subject to the right of the other spouse to continue to reside in the matrimonial home until—

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

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

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

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

(4) This section shall not be construed as affecting any of the provisions of any law relating to rent, conferring upon a party

to a marriage, the right of continuing to reside in any premises of which her or his spouse or former spouse is or was a tenant.

Presumptions
as to property
acquired during
marriage

60. Where during the subsistence of a marriage, any property is acquired-

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

Gifts between
husband and wife

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

Liability for
antecedent debts
of spouse
Cap. 25

62. Subject to the provisions of the Bankruptcy Act, a person shall not be liable for any debt contracted by his or her spouse prior to their marriage.

Duty to maintain
spouse

63. Except where the parties are separated by agreement or decree of the court and subject to any subsisting order of the court, it shall be the duty of a-

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

Presumption of
wife's authority
to pledge her
husband's credit
Act No.
21 of 2009 s. 165

64.-(1) Subject to the provisions of subsections (2) and (3), a wife is presumed, unless the contrary is proved, to have authority to pledge her husband's credit or borrow money in his name, or use any of his money which is in her possession or

under her control, or convert his movable property into money and use the same, so far as the credit or money is required for the purchase of necessities for herself and the children of the marriage appropriate to the husband's means and way of life.

(2) The authority under subsection (1) shall be presumed where-

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

(3) Notwithstanding anything in subsections (1) and (2), the authority shall not be presumed where it is proved that, the wife is living openly in an adulterous association.

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

- (a) the wife was already receiving a sufficient allowance or sufficient maintenance or had sufficient means;
- (b) the wife already had a sufficiency of the goods so purchased; or
- (c) the goods purchased were excessive in quantity or extravagant having regard to the husband's means, and it is immaterial that, the person giving credit or lending money may have been unaware of the fact.

Husband and wife
and law of tort

65. As from the commencement of this Act-

- (a) a husband shall not be liable for the torts of his wife by reason of his being her husband;
- (b) a husband and wife shall have the same liability in tort towards each other as if they were unmarried;
- (c) neither a husband nor a wife shall be entitled to claim damages in an action arising out of any negligent act or breach of duty in respect of the loss or impairment of consortium.

Right of spouse
to inflict corporal
punishment

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

Agreements to
live apart
Act No.
21 of 2009 s. 166

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

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

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

Status of widows

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

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

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

PART V

MISCELLANEOUS RIGHTS OF ACTION

Right to damages
for breach of
promise of
marriage

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

Provided that-

- (a) a suit shall not be brought against a party who, at the time of the promise, was below the age of eighteen years;
- (b) damages shall not be awarded in any action in excess of loss actually suffered as a result of expenditure incurred as a direct result of the promise.

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

(3) A suit shall not be brought for specific performance of a promise of marriage.

Limitation of
actions for breach
of promise

70. Notwithstanding the provisions of any law regulating limitation of actions for the time being in force, a suit shall not be brought for damages for the breach of a promise of marriage more than one year after the date of the breach.

Right to return
of gifts

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

Right to damages
for adultery

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

Provided that, the proceeding shall not lie where-

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

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

Right to damages for enticement **73.**—(1) A husband or wife may bring a suit for damages against any person who has, for any reason, enticed or induced his or her spouse to desert him or her.

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

Assessment of damages for adultery or enticement **74.**—(1) Damages for adultery or enticement shall be in the discretion of the court but shall not include any exemplary or punitive element.

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

- (a) to any relevant custom of the community to which the parties belong; and
- (b) in cases of adultery, to the question whether husband and wife were living together or apart.

Jurisdiction of primary courts Act No. 15 of 1980 Sch. **75.** A primary court shall have jurisdiction to entertain a suit under this Part where, the parties were married in accordance with customary law or in Islamic form or, in the case of a suit under section 69 or 71, where the court is satisfied that, had the parties proceeded to marry, they would have married in accordance with customary law or in Islamic form.

PART VI MATRIMONIAL PROCEEDINGS

(a) Jurisdiction, Procedure and General Provisions

Jurisdiction of courts **76.** Original jurisdiction in matrimonial proceedings shall be vested concurrently in the High Court, a court of a resident magistrate, a district court and a primary court.

Right to invoke jurisdiction Act No. 21 of 2009 s. 162 **77.**—(1) A person may petition the court for a declaratory decree where—

- (a) he or she is domiciled in Tanzania;
- (b) he or she is resident in Tanzania;

(c) the decree sought is as to the validity of a ceremony which took place in Tanzania and purported to be a marriage.

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

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

(a) is domiciled in Tanzania;

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

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

(4) A person may apply to the court for maintenance or custody of children or any other matrimonial relief where-

(a) he or she is domiciled in Tanzania;

(b) he or she is resident in Tanzania at the time of the application; or

(c) both parties to the marriage are present in Tanzania at the time of the application.

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

Transfer of
proceedings

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

Power of
magistrate to
state case

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

Appeals
Act No.
23 of 1973

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

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

Cap. 33

(3) Save to the extent provided in any rules made under this Act, the provisions of the Civil Procedure Code relating to appeals shall not apply to appeals under this Act.

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

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

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

Form of
proceedings

81. Subject to the provisions of section 93—

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

Alternative reliefs **82.** It shall be lawful to include in any petition for matrimonial relief a prayer in the alternative for any other matrimonial relief.

Cross-prayers for relief **83.** The respondent to any petition for matrimonial relief may include in his or her answer to the petition, a cross-prayer for the same or any other form of matrimonial relief and the court shall have power to grant any relief on the cross-prayer that it might have granted on a petition for the relief sought.

Petitions to be heard in open court **84.** The petitions in matrimonial proceedings shall be heard in open court:

Act No.
21 of 2009 s. 162

Provided that-

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

Connivance **85.** Evidence of misconduct by a husband or a wife shall not be inadmissible in any matrimonial proceeding on the ground of connivance by the aggrieved spouse but a person shall not be entitled to any relief by reason only of misconduct at which he or she has connived.

Condonation **86.** Evidence of misconduct by a husband or a wife shall not be inadmissible in any matrimonial proceeding on the ground that, the misconduct was condoned by the aggrieved spouse.

Power of court to dismiss proceedings on account of non-disclosure **87.** The court shall have power to dismiss any petition or application or make other order as it may think fit, including an order as to costs in any case where it is satisfied that, the petitioner or applicant has attempted to deceive the court in any material respect or has wilfully failed to make a full disclosure of relevant facts.

Mutual decrees
not to be granted

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

Abolition of
decree *nisi*

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

Costs in
Matrimonial
proceedings

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

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

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

Recognition of
decrees of foreign
courts

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

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

Recognition of
extra-territorial
divorces

92. Where a person has obtained a divorce, otherwise than by decree of a court in Tanzania, in any foreign country, the divorce shall be recognised as effective for purposes of the law of Tanzania, where-

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

Special provisions
Regulating
proceedings in
primary courts

Cap. 11

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

(b) Declaratory Decrees

Power of court to
grant declaratory
decrees

94.-(1) In any proceedings under this Part, the court may, on the petition of any interested person, grant a declaratory decree, with or without consequential relief, and proceedings shall not be open to objection on the ground that, it is a declaratory decree that is sought or no consequential relief is claimed.

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

- (a) on the petition of a person who was a party to a ceremony purporting to be a marriage, whether the ceremony took place in Tanzania or any other country, grant a decree declaring the ceremony to have been or not to have been a valid marriage for the purposes of the law of Tanzania;

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

Effect of
declaratory
decrees

95.—(1) A decree declaring that, one of the parties to a marriage is presumed to be dead shall, where that party is not in fact dead, operate to determine the marriage as from ninety days from the date of the decree, where an appeal or notice of appeal, as the case may be, has not been filed within that time, or in any other case on the final determination of the appeal or, where a second appeal lies, on the final determination of that appeal or on the expiration of the time for giving notice of appeal.

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

(c) Annulment

Power of court to annul voidable marriage

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

Provided that-

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

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

Parties to petition for annulment

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

where the petition is founded on the wilful refusal of one party to consummate the marriage, may only be brought by the other party.

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

Effect of decree of annulment

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

Provided that, a decree of annulment shall not-

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

(2) A decree of annulment shall be effective as from thirty days from the date of the decree if an appeal or notice of appeal, as the case may be, has not been filed within that time and in any other case on the final determination of the appeal or, where a second appeal lies, on the final determination of that appeal or on the expiration of the time for giving notice of appeal.

(d) Separation and Divorce

Right to petition for separation or divorce

99. Subject to the provisions of sections 77, 100 and 101, a married person may petition to the court for a decree of separation or divorce on the ground that, his or her marriage has broken down but a decree of divorce shall not be granted unless the court is satisfied that, the breakdown is irreparable.

Restriction on petition for divorce during first two years of marriage

100.—(1) A person shall not petition for divorce before the expiry of two years from the date of the marriage which it is sought to dissolve without the prior leave of the court.

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

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

Requirement of prior reference to Board

101. A person shall not petition for divorce unless he or she has first referred the matrimonial dispute or matter to the Board and the Board has certified that, it has failed to reconcile the parties:

Provided that, this requirement shall not apply in any case where—

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

(e) Marriage Conciliation Boards

Conciliation
Boards
Act No.
9 of 1996 Sch.

102.—(1) The ward tribunal established under the Ward Tribunal Act shall be the marriage conciliation board for that ward for the purposes of this Act and any reference therefore in this Act to “the Board” unless the context requires otherwise, shall be deemed to be reference to the ward tribunal.

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

Composition and
jurisdiction of
Boards
Act No.
9 of 1996 Sch.

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

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

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

Proceedings of
Boards
Act No.
9 of 1996 Sch.

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

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

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

(4) A summons issued under subsection (3) shall be in the same form and have the same effect as a summons issued by a court requiring the attendance of a witness in any suit, and non-compliance with the summons shall constitute a contempt of court and be punishable accordingly.

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

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

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

(8) An advocate shall not appear or act for any party in any proceeding before the Board and a party shall not be represented by any person other than a member of his or her family, without leave of the Board.

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

(f) Petitions and Determination

Parties to
petitions

105.—(1) A person shall not be made a co-respondent to a petition for a decree of separation.

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

Contents of
petitions

106.—(1) A petition for a decree of separation or divorce shall contain-

- (a) particulars of the marriage between the parties and the names, ages and sex of the children, if any, of the marriage;
- (b) particulars of the facts giving the court jurisdiction;
- (c) particulars of any previous matrimonial proceedings between the parties;
- (d) a statement of the principal allegations which it will be sought to prove as evidence of the breakdown of the marriage;
- (e) where the petitioner has been guilty of any marital misconduct, an admission of the misconduct;
- (f) the terms of any agreement regarding maintenance or the division of any assets acquired through the joint efforts of the parties or, where an agreement has been reached, the petitioner's proposals; and
- (g) particulars of the relief sought.

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

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

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

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

Evidence that
marriage has
broken down

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

- (a) unless the court for any special reason otherwise directs, refuse to grant a decree where a petition is founded exclusively on the petitioner's own wrongdoing; and
- (b) have regard to the custom of the community to which the parties belong.

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

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

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

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

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

Duties of court
on petition for
separation or
divorce
Act No.
21 of 2009 s. 162

108. It shall be the duty of a court hearing a petition for a decree of separation or divorce-

- (a) to inquire, so far as it reasonably can, into the facts alleged and consider whether those facts are proved to show that, the marriage has broken down;
- (b) to inquire into the arrangements made or proposed as regards maintenance and the division of any matrimonial property and satisfy itself that, the arrangements are reasonable;
- (c) to inquire into the arrangements made or proposed as regards the maintenance and custody of the children, if any, of the marriage and satisfy itself that, the arrangements are in the best interests of the children; and
- (d) in the case of a petition for divorce, where the court is satisfied that, the marriage has broken down, to consider whether the breakdown of the marriage is irreparable.

Power of court on
claim to damages
for adultery
Act No.
21 of 2009 s. 162

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

- (a) after the close of the evidence for the petitioner, the court is of the opinion that, there is no sufficient evidence against the co-respondent to justify requiring him or

her to reply, the co-respondent shall be discharged from the proceedings; or

- (b) at the conclusion of the hearing, the court is satisfied that, adultery between the respondent and the co-respondent has been proved, the court may award the petitioner damages against the co-respondent.

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

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

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

Power of court
to grant decree
of separation or
divorce
Act No.
21 of 2009 s.162

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

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

(2) Where the petition or the cross-petition or cross-prayer, if any, is for a decree of divorce, the court may adjourn the proceedings for a period not exceeding six months as the court may think fit, for further inquiries or further attempts at

reconciliation to be made and direct that, inquiries or attempts be made by the Board.

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

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

Effect of decree of separation

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

Effect of decree of divorce

112.—(1) Subject to subsection (3), a decree of divorce shall dissolve the marital status of the parties as from thirty days from the date of the decree, where an appeal or notice of appeal, as the case may be, has not been filed within that time, or in any other case, on the final determination of the appeal or, where a second or subsequent appeal lies, on the final determination of the appeal or on the expiration of the time for giving notice of appeal.

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

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

Power of court to set aside or vary decrees of separation

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

(2) The court may set aside a decree of separation on the application of either party where it is satisfied that, the decree

was obtained as the result of misrepresentation or mistake of fact.

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

*(g) Division of Assets and Maintenance as
between Husband and Wife*

Power of court
to order division
of matrimonial
assets
Act No.
21 of 2009 s.162

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

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

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

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

Power of
court to order
maintenance for
spouse

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

- (a) if he has refused or neglected to provide for her as required by section 63;

- (b) if he has deserted her for so long as the desertion continues;
- (c) during the course of any matrimonial proceedings;
- (d) when granting or subsequent to the grant of a decree of separation;
- (e) when granting or subsequent to the grant of a decree of divorce;
- (f) where the parties were married in Islamic form, for the customary period of *iddat* following the date on which the divorce takes, or is deemed to have taken effect;
- (g) if, after a decree declaring her presumed to be dead, she is found to be alive:

Provided that, where the marriage has been dissolved, the wife shall not, unless the court for special reason directs, be entitled to maintenance for herself for any period following the date when the dissolution takes effect.

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

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

Assessment of
maintenance

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

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

Power of court to order security for maintenance

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

Compounding maintenance

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

Duration of orders for maintenance

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

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

Right to maintenance to cease on remarriage

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

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

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

Power of court to vary orders for maintenance

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

Power of court to vary agreements for maintenance

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

Maintenance payable under order of court to be inalienable

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

Recovery of arrears of maintenance and enforcement of maintenance orders

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

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

(3) An amount owing as maintenance payable under an agreement shall not be recoverable in any suit where it accrued more than three years before the institution of the suit.

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

(h) Custody and Maintenance of Children

Power of court to
make order for
custody
Act No.
21 of 2009 s. 162

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

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

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

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

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

Orders subject to
conditions
Act No.
21 of 2009 s. 162

126.—(1) An order for custody may be made subject to conditions as the court may think fit to impose, and subject to conditions, if any, as may apply, shall entitle the person given custody to decide questions relating to the upbringing and education of the child.

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

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

Declaratory order
as to unfitness
of parent to have
custody
Act No.
21 of 2009 s. 162

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

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

Custody of
children deemed
legitimate
Act No.
21 of 2009 s. 162

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

Duty to maintain
children
Act No.
21 of 2009 s. 162

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

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

Power of
court to order
maintenance for
children
Act No.
21 of 2009 s. 162

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

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

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

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

Power of court to
order security for
maintenance
Act No.
21 of 2009 s. 162

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

Duration of
orders for custody
and maintenance
Act No.
21 of 2009 s. 162

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

Power of court
to vary orders
for custody or
maintenance
Act No.
21 of 2009 s. 162

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

Power of court to
vary agreement
for custody or
maintenance
Act No.
21 of 2009 s. 162

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

Recovery of
arrears of
maintenance
Act No.
21 of 2009 s. 162

135. The provisions of section 124 shall apply, *mutatis mutandis*, to orders for the payment of maintenance for the benefit of a child.

Court to have
regard to advice
of welfare officers
Act No.
21 of 2009 s. 162

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

(2) A proceeding shall not be invalid by reason only of non-compliance with subsection (1).

Power of court to
restrain taking
of child out of
Tanzania
Act No.
21 of 2009 s. 162

137.—(1) The court may, on the application of the father or the mother of a child where-

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

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

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

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

(i) Other Reliefs

Power of court
to set aside
and prevent
dispositions
intended to
defeat claims to
maintenance
Act No.
21 of 2009 s. 162

138.—(1) Where-

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

the court shall have power on application to-

- (i) set aside a disposition where it is satisfied that, any disposition of property has been made by the spouse, former spouse or parent of the person by or on whose behalf the application is made, within the preceding three years, with the object on the part of the person making the disposition of reducing his or her means to pay maintenance or depriving

his or her spouse of any rights in relation to that property; and

- (ii) grant an injunction preventing that disposition if it is satisfied that, the disposition of property is intended to be made with any object.

(2) For the purposes of this section-

- (a) “disposition” includes a sale, gift, lease, mortgage or any other transaction whereby ownership or possession of the property is transferred or encumbered but does not include a disposition made for money or money’s worth to or in favour of a person acting in good faith and in ignorance of the object with which the disposition is made; and
- (b) “property” means property of any nature, movable or immovable, and includes money and choses in action.

Injunctions
against
molestation

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

No proceedings
to compel
cohabitation

140. A proceeding may not be brought to compel a wife to live with her husband or a husband with his wife, but it shall be competent for a spouse who has been deserted to refer the matter to a Board.

(j) *Reciprocal Arrangements for Enforcement of Maintenance Orders*

Reciprocal
arrangements
with other
countries for
enforcement of
maintenance
orders

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

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

Registration of
orders made in
other countries

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

(2) The court in which an order is to be registered shall, where the court in which the order was made was a court of superior jurisdiction, be the High Court, and in any other case, be a court of a resident magistrate.

Enforcement of
registered orders

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

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

Transmission of
orders made in
Tanzania

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

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

PART VII

OFFENCES

False statement
in notice of
intention
to marry or
in notice of
objection

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

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

Failure to attend
before Board

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

Giving false
testimony etc.
before Board

147. A person who in or in relation to any proceeding before a Board-

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

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

Minimum age

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

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

Prohibited
relationship

149.—(1) A person who is a party to a ceremony purporting to be a marriage, where the parties are within the prohibited relationships commits an offence and on conviction shall be liable to imprisonment for a term not exceeding two years:

Provided that, it shall be a good defence to a charge under this section, that the person charged did not know and could not reasonably have discovered the relationship.

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

Prohibited
ceremony

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

(2) A person who participates in a ceremony knowing that, the intended marriage has been prohibited commits an offence and on conviction shall be liable to imprisonment for a term not exceeding two years.

Coercion or fraud

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

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

Polyandry and
similar offences

152.—(1) A married woman who is a party to a ceremony whereby she purports to marry another man, commits an offence.

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

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

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

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

Ceremony
performed by
unauthorised
official

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

Absence of
witness

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

Irregular
marriages

155.—(1) A person who is a party to a ceremony of marriage where—

- (a) the intended wife is below the age of eighteen years and consent to the marriage, as required by section 17, has not been given;

- (b) notice of intention to marry, as required by section 18, has not been given; or
- (c) notice of objection to the intended marriage has been given and has not been dismissed or withdrawn, commits an offence and on conviction shall be liable to imprisonment for a term not exceeding six months:

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

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

Meaning of participation

156. For the purposes of sections 148 to 155, inclusive, “to participate in” a ceremony means:

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

Failing to apply for registration

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

Provided that, a person shall not be charged with an offence under this section where the marriage has been registered under subsection (8) of section 43.

Unlawful attempt to prevent marriage

158.—(1) A person who unlawfully attempts to prevent parties to an intended marriage to get married commits an offence.

(2) A person who with the intention to disturb or delay the celebration of any marriage or with the intention of embarrassing the intended parties or any other person present at the place where a marriage ceremony is being, or is about to

be, or has been, performed, causes a disturbance in, at or near the place, commits an offence.

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

PART VIII

MISCELLANEOUS PROVISIONS

Presumption
of validity
of registered
marriage

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

Presumption of
marriage

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

(2) When a man and a woman have lived together in circumstances which give rise to a presumption provided for in subsection (1) and the presumption is rebutted in any court of competent jurisdiction, the woman shall be entitled to apply for maintenance for herself and a child of the union, on satisfying the court that, she and the man did in fact live together as husband and wife for two years or more, and the court shall have jurisdiction to make an order or orders for maintenance and, upon application made therefor either by the woman or the man, to grant other reliefs, including custody of children, as it has jurisdiction under this Act to make or grant upon or subsequent to the making of an order for the dissolution of a marriage or an order for separation, as the court may think fit, and the provisions of this Act which regulate and apply to proceedings for, and orders of maintenance and other reliefs shall, in so far as they may be applicable, regulate and apply to proceedings for and orders of maintenance and other reliefs under this section.

Presumption of death

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

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

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

Rules and regulations

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

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

- (a) prescribe forms of application for the specification of religions under section 25 and the licensing of ministers under section 30;
- (b) regulate the procedure of the Boards;
- (c) prescribe the manner in which notices of intention to marry are to be made known;
- (d) prescribe the forms to be used for the giving of any notice required by this Act to be given;

- (e) prescribe the forms of licences to be issued by the Registrar-General;
- (f) prescribe the form of marriage certificates;
- (g) prescribe the form of statement of particulars relating to a marriage to be used by registration officers;
- (h) prescribe the forms of the registers to be kept and the returns to be made under this Act; and
- (i) prescribe the fees to be paid for services to be performed under this Act or under any regulations made under this section.

Repeal of certain laws

163. The written laws set out in the First Schedule to this Act are hereby repealed.

Amendment of certain laws

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

Saving

165.—(1) A subsisting union between a man and a woman which under any written or customary law constituted a valid marriage on the coming into force of this Act shall continue notwithstanding any provision of this Act which might have invalidated it.

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

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

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

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

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

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

(5) A marriage performed or purported to have been performed under the Marriage Ordinance shall not be invalid by reason of the fact that, both the parties to the marriage or purported marriage were Muslims, Hindus, Buddhists, pagans or persons professing the same religion or professing no generally recognised form of religion.

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

Ord. No.
30 of 1923

Omitted

166. [Omitted.]

Translation of Act
into Kiswahili

167.—(1) The Minister shall, as soon as may be practicable after the publication of this Act, cause this Act to be translated into Kiswahili and the translation to be published in the *Gazette*.

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

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

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

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

FIRST SCHEDULE

Repeal of various written laws.

[Omitted.]

SECOND SCHEDULE

Consequential amendments of various laws.

[Omitted.]
