

**THE LEGALITY OF STATUTORY MARRIAGES CONDUCTED AT
FEDERAL MARRIAGE REGISTRIES IN NIGERIA**

LEGAL OPINION



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Disclaimer Statement

Alabukun Law Chambers (hereinafter referred to as ALC) hereby acknowledges that certain facts in the public domain about a judgement of a Federal High Court in Suit No.: FHC/L/CS/816/18 in December 2021 or thereabouts, regarding the legality of marriages conducted at federal marriage registries, may remain unclear at the time of this opinion, however if the judgement is as represented, in light of the unquantifiable impact attendant to said judgement on Nigeria and the welfare of the people, ALC, in limited manner, opines as outlined below.

Background

A Federal High Court sitting in Lagos, allegedly and purportedly held that:

- The conduct of marriages and issue of certificates is statutorily the job of the local government as provided by the law;
- The acts of the Federal Ministry of Interior, operating marriage registries was beyond their powers;
- All marriages conducted by federal marriage registries or through their agents are illegal and invalid; and
- Ordered the closure of all federal registries including that of Ikoyi marriage registry with immediate effect.

The Federal Government of Nigeria allegedly and purportedly issued a statement in response to the judgement and:

- Described the reports concerning the judgement as false, misleading and a deliberate distortion of the decision of the Court in the said case; and
- Clarified that the Court only ruled that the Federal Government through the Ministry of Interior is constitutionally empowered to conduct marriages in Nigeria and the Local Governments were only delegated by the Federal Government to conduct marriages by virtue of Legal Notices pursuant to the Marriage Act.

In light of these recent developments, this opinion of Alabukun Law Chambers on the legality of marriages performed at the federal marriage registries will commence with definitions and continues as follows thereafter:

Definitions

“Certificate” is defined as a written document that is the official verification that a condition or requirement has, or has not been met. Legal Dictionary, “*Certificate*”, <https://legal-dictionary.thefreedictionary.com/Certificate>)

“Registration” is defined as enrollment; the process of recording entries in an official book. Legal Dictionary, “*Registration*”, <https://legal-dictionary.thefreedictionary.com/Registration>)

Types of Marriages in Nigeria

- **Statutory Marriage** governed by the Marriage Act includes:
 - The Ordinary Marriage which is a marriage between a Nigerian and a Nigerian; and The Special Marriage which is between a Nigerian and a Non-Nigerian or two Non-Nigerians in Nigeria.
-Source - Ministry of Interior, Marriage Overview:
<https://ecitibiz.interior.gov.ng/marriage/overview>
- **Customary Marriage**
- **Islamic Marriage**

Laws Governing Statutory Marriage in Nigeria

- The 1999 Constitution of the Federal Republic of Nigeria As Amended (hereinafter referred to as the Constitution)
- Marriage Act CAP M6 Laws of the Federation of Nigeria 2004 (sometimes hereinafter referred to as the Act).

The Constitutional Framework And Statutory Marriages

The Constitution is the supreme law of the land, section 1(1), whereby any other law that is inconsistent with the Constitution, that law, to the extent of that inconsistency shall be void and the Constitution shall prevail. Section 1(3) of the Constitution.

The Constitution confers legislative powers on the National Assembly and State Houses of Assembly. The National Assembly, to the exclusion of the State Houses of Assembly, is conferred with the power to exclusively legislate matters on the Exclusive Legislative List (ELL). Item 61 on the ELL pertains to the formation, annulment and dissolution of marriages other than marriages under Islamic law and Customary law, including matrimonial causes relating thereto.

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The Local Government Councils (LGCs) are not granted legislative powers by the Constitution. To the contrary, the Constitution identifies functions that the LGCs are conferred with. In the Constitutional scheme, functions derived from the law cannot supersede the supreme law of the land conferring such functions. Any exercise of powers exceeding the Constitution is illegal.

The Marriage Act, CAP M6 Laws of the Federation of Nigeria as federal legislation is not inconsistent with the Constitution, rather pursuant to the exclusive legislative powers relating to item 61 of the ELL, the formation of marriages and related matters thereto in the Act are properly legislated upon by the Federal Government. To the extent that nothing in the Act is inconsistent with the Constitution, all matters in the Act are legal including the implementation of the Act and any exercise of authority thereto regarding marriages conducted at federal marriage registries. Therefore, the Federal Government through the Ministry of Internal Affairs in exercising such powers, did not exceed its powers.

Functions of Local Government Councils

The Fourth Schedule to the Constitution lists the main functions of LGCs. However, the Constitution neither lists the functions as exclusive nor does it confer exclusivity of performance of those functions on the LGCs. Whereas, the clear intent of the Constitution to grant exclusive powers to the National Assembly is expressly reflected in the Constitution. This is not the case with the LGCs regarding any exclusive performance of any function conferred, including the registration of marriages. Therefore, although the LGCs are directed to perform certain functions, the performance of those same functions by federal and state governments is not expressly prohibited by the Constitution. Moreover, section 30 of the Marriage Act mandates, '*inter alia*' that every registrar of marriages register every certificate of marriage in a marriage register book. This underscores the fact that registration of marriages is not even the exclusive province of the LGCs.

Section 7(5) of the Constitution states that the functions to be conferred upon LGCs shall include those set out in the Fourth Schedule to the Constitution. However, the word "include" in section 7(5) infers a broader universe than those functions specifically conferred on the LGCs by the Constitution. In that regard, two types of functions are described in the section namely (i) the functions in the Fourth Schedule that are expressly conferred upon the LGCs by the Constitution and (ii) functions not included in the Fourth Schedule but otherwise delegated. Functions not expressly conferred by the Constitution cannot be attributable to the Constitution as granting such phantom

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functions. The other category of functions may be conferred through delegation by the Federal Government on matters it is empowered to legislate upon, including functions under the Marriage Act. Therefore, it is illogical to conclude that the LGCs delegated functions by the Federal Government shall perform those functions to the exclusion of the Federal Government, unless the Federal Government expressly states so.

Regarding the conferred functions, section 1(i) of the Fourth Schedule to the Constitution lists the registration of all births, deaths and marriages as some of the main functions of the LGCs. The function is to perform the registration of the events, not perform the events or preside over the performance of such events. Registration of and performance of an event are not the same. The registration of the events listed in the Fourth Schedule to the Constitution is a condition subsequent to the incidents to be registered. It is illogical to conceive that the said provisions of the Fourth Schedule confer upon the LGCs functions of performing the acts of birth and deaths. To the contrary, the births and deaths are conditions precedent to their registration by the LGCs.

Similarly, as it pertains to marriage, the formation of the marriage is not the same as its registration. The celebrated marriage is a condition precedent to the registration of the marriage. Consequently, as unambiguously set out in the Constitution, the functions of the LGCs do not include the formation of marriage contemplated under the Marriage Act, rather their functions are limited to the registration of marriages, specifically to record the existence of the marriage after the marriage has been celebrated. Therefore, LGCs are not empowered by the Constitution to conduct marriages, save delegated such functions by the Federal Government.

Statutory Interpretation Considerations

Considering the plain language interpretation of the Constitution, with respect to section 1(i) of the Fourth Schedule to the Constitution, the function of registering births, deaths and marriages ordinarily presumes that there is an event that will be registered, specifically the birth, death or marriage. The plain language of the Constitution does not expressly confer the LGCs with functions to conduct marriages, rather the LGCs are to register the marriage that has occurred, typically with the certificate of marriage, being evidence of that marriage.

Furthermore, considering the Constitution as a whole, the plain language of the Constitution expressly grants exclusive powers to the National Assembly only. If exclusive powers for conducting marriages and issuing certificates of marriage were to be the exclusive jurisdiction of the LGCs, the Constitution would have so stated.

Specific Marriage Act Considerations

The Marriage Act and Validity of Marriages

The Marriage Act specifically addresses validity of statutory marriages formed pursuant to its provisions as follows:

- Section 33(3) of the Act provides that no marriage shall, after celebration, be deemed invalid by reason that any provision of the Act has not been complied with.
- The exceptions to section 33(3) are where the parties knowingly and wilfully acquiesce to the celebration of the marriage illegally and fraudulently as stated in section 33(2) of the Act.

Assuming arguendo, that the judgement at issue is correct to the effect that marriages cannot be performed legally at the federal marriage registries, nonetheless, said marriages cannot be deemed invalid by virtue of section 33(3) of the Act where the parties did not wilfully and knowingly engage in any conduct listed in section 33(2) of the Act, but rather innocently relied on the representations of the Federal Government regarding the legal venue for the formation of the marriage.

- In addition, section 34 of the Act states that all marriages celebrated under the Act shall be good and valid in law to all intents and purposes.

Therefore, all marriages performed at the federal marriage registries under the Act are valid except the parties engaged in conduct described in section 33(2) of the Act.

Issuing Certificates of Marriage

Section 1(i) of the Fourth Schedule to the Constitution does not contain the word *certificate* or the words *issue a certificate of marriage*. Therefore, again LGCs are not empowered by the Constitution to perform the function of issuing certificates of marriage. That responsibility falls within the purview of the registrar of marriages and other officials listed in the Marriage Act pursuant to, amongst other sections, section 24 of the Act which provides that the Principal Registrar shall cause to be printed and delivered to the several registrars, books of marriage certificates to be used for the issuance of the certificates of marriage. The responsibility of issuing the certificates of marriage resides with the registrars listed in the Act, not the LGCs, save delegated by the Federal Government through the Ministry of Internal Affairs to the LGCs.

Evidence of Marriage

Evidence of marriage is the certificate filed in the Office of the Registrar of any marriage district under the Marriage Act (section 32 of the Marriage Act) not the registration described as the functions of the LGCs. The LGCs were not conferred with functions to issue certificates of marriage by the Constitution. As it relates to marriages, the sole function conferred to the LGCs is the act of registering the evidence of the marriage which is a certificate of marriage, not creating the evidence through the celebration of the marriage.

Public Interest

Nigeria maintains a vested interest in the institution of marriage because of family and national stability and cohesion. Any judgement that casually invalidates marriage, family life and impacts the welfare of children must be strictly scrutinised with immediate effect. People who diligently rely on the information published and widely broadcasted by the Federal Government through the Ministry of Internal Affairs regarding the formation of statutory marriage should not be penalised for their reliance on the actions, notices, statements and marriage certificates of the said government.

CONCLUSION

In accord with the foregoing, the Marriage Act not being inconsistent with the Constitution, therefore legal, marriage registries and registrars of marriages being statutorily established and appointed pursuant to the Act, marriages conducted thereto at the federal marriage registries pursuant to the Act are legal and do not exceed the powers of the Ministry of Internal Affairs.

Functions conferred on the LGCs by the Constitution are to register marriages already celebrated. Moreover, the Constitution does not expressly confer the LGCs with functions to conduct marriages or issue certificates of marriage. Thus, LGCs cannot arrogate those functions to themselves except delegated to them by the Federal Government through the Ministry of Internal Affairs.

Furthermore, the Act, in its wisdom, forecasting the extreme chaos and disruption that would engulf family life and cause ripple effects through country, should any or throngs of marriages celebrated pursuant to its provisions be invalidated singularly or enmasse, accords the legality of marriages preferred legal status by expressly preserving their legality after celebration.

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Pursuant to the Act, the performance of marriage is the exclusive domain of the Federal Government through the Ministry of Internal Affairs save it delegates the exercise of the function to the Local Government Councils who should limit themselves exclusively to the scope of that delegation.

Dated this 17th day of December 2021

Sgd

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