



# Marriage Laws and Divorce in Sierra Leone

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# MARRIAGE LAWS AND DIVORCE IN SIERRA LEONE.

## 1. Introduction.

The law of marriage and divorce in Sierra Leone has become increasingly important to those seeking refuge in the United States in the light of the instability and aftermath of the civil war in this country. The following discussion is an effort to facilitate the understanding of the regime of applicable law affording certainty to recipient agencies in the United States, frequently called upon to decide cases of those from Sierra Leone for admittance to the United States.

## 2. Applicable Law.

The *Laws of Sierra Leone*, 1960 as amended lists the following statutes as applicable to marriage other than customary law marriage:- The Christian Marriage Act, 1907 as amended by the Christian Marriage (Amendment), 1965<sup>1</sup> ; the Civil Marriage Act, 1910 as amended by the Civil Marriage (Amendment) Act of 1965<sup>2</sup>; the Foreign Marriage Act, 1913 as amended<sup>3</sup>; the Marriage of British Subjects (Facilities) Act, 1916 as amended<sup>4</sup> and the Mohammedan Marriage Act 1905 as amended.<sup>5</sup>

### A. Statutory Marriages.

Joko Smart<sup>6</sup> perhaps captures the essence of statutory marriages in Sierra Leone when he states:-

“It will therefore suffice to mention that the general family law governs monogamous marriages under the various statutes in force in Sierra Leone, namely the Christian Marriage Act... [and] the Civil Marriage Act... The Christian Marriage Act provides for marriage services conducted in church and the Civil Marriage Act for marriages which take place before a Registrar... Any discussion of family law under the general law would concern mainly marriages taking place under the Christian Marriage Act and the Civil Marriage Act, as it is marriages under these Acts and their legal effects on their parties thereto and their children that constitute the main body of Sierra Leone non-customary law.”<sup>7</sup>

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<sup>1</sup> 2 *The Laws of Sierra Leone*, Ch. 95 (1960). See also, 1965 *Supplement to the Laws of Sierra Leone with an Index of Legislation in Force*, A89-A90.

<sup>2</sup> *Id.*, Ch. 97. See also 1965 *Supplement to the Laws of Sierra Leone with an Index of Legislation in Force*, A55-A56.

<sup>3</sup> *Id.*, Ch. 98

<sup>4</sup> *Id.*, Ch.99

<sup>5</sup> *Id.*, Ch. 96

<sup>6</sup> H.M. Joko-Smart, *Sierra Leone Customary Family Law* (1983).

<sup>7</sup> *Id.* At 19-20. See also, B.E. Harriel-Bond & U. Rijinsdorp, *Family Law in Sierra Leone* 1-22 & 56-58 (1975).

Marriages performed under the Christian and Civil Marriages Acts are dissolved as required by the Matrimonial Causes Act, 1950 as amended.<sup>8</sup> Other relief decreed by the Supreme Court under this Act includes, nullity, judicial separation and restitution of conjugal rights. Evidence of statutory marriages is a certificate issued under both the Christian and Civil Marriages Acts.

The Foreign Marriage Act gives effect in Sierra Leone of marriages of Sierra Leonians as British subjects within the Commonwealth of Nations performed in other countries. A notice must be given of such a marriage to the Registrar General in Sierra Leone. The Marriage of British Subjects (Facilities) Act recognizes as valid marriages in Sierra Leone, performed between British subjects resident in Sierra Leone and in the United Kingdom.

**(B) Customary Marriages.**

The following constitute essential requirements for a valid customary law marriage in Sierra Leone:-

- (a) Parties to the marriage should have the requisite capacity to marry;
- (b) Consents of the man and the woman together with those of their respective families. However, it is possible for the man to contract a valid first customary marriage without the consent of his family;
- (c) The man or his family should give a marriage consideration to the family of the woman, unless its payment has been previously waived by the family of the woman;
- (d) Other marriage formalities which vary from place to place in Sierra Leone, such as registration and/or consummation of the customary marriage should be complied with.<sup>9</sup>

Consent of the parties and their families should be obtained. As above-noted, however, a man can contract a valid first customary marriage without the consent of the parents. For a second customary marriage, he must secure the consent of his first wife:-

“In the case of a woman, however, the absence of the prerequisite family consent is fatal to the marriage. If the father and the mother of the woman are alive, both must give their consent, but if there is a conflict between them, the wishes of the father prevail.”<sup>10</sup>

In the absence of a surviving parent, family head or guardian, any other member of the woman's family such as a brother or cousin should give consent to the marriage.<sup>11</sup> Furthermore, the marriage consideration or the lump sum in money or in kind is paid by the prospective husband to the bride's family. The marriage consideration “... gives legal effect to the marriage”.<sup>12</sup> Finally,

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<sup>8</sup> *Supra* note 1, Ch.102.

<sup>9</sup> *Supra* note 6, 1-89, at 61.

<sup>10</sup> *Id.* at 74.

<sup>11</sup> *Id.* at 75.

<sup>12</sup> *Id.* at 79.

“The marriage consideration is formally handed over to the bride’s father or the person standing in **loco parentis** to her... though in practice, the consideration is distributed among members of the wife’s family, the person legally entitled to it is the wife’s father or if he is dead, the head of his family who invariably acts as a guardian of the woman’s mother... The marriage consideration, it must be emphasized is essential to the validity of the marriage, but its payment can be waived by the wife’s family.”<sup>13</sup>

Joko-Smart appears to suggest that the role of the father of the bride in the essential requirements of a customary marriage is crucial to its validity. His consent should be obtained and the marriage consideration paid to him. According to Smart, failure to involve him to accomplish these two essential requirements will render the applicable customary marriage invalid.

According to Joko-Smart, customary divorce law of Sierra Leone requires that;-

“Under each tribal system of Sierra Leone, proceedings for customary law divorce may be initiated extrajudicially or judicially through a local court by either spouse of a customary marriage...”<sup>14</sup>

An extrajudicial divorce is effected either by a divorce decree issued by an Arbitration Tribunal or by unilateral repudiation.<sup>15</sup> Divorce in the Arbitration Tribunal appears to be the common method of obtaining an extrajudicial divorce in most chiefdoms of Sierra Leone even in areas where by-laws for a decree of judicial divorce exist. The Arbitration Tribunal terminates the marriage after all the efforts to reconcile the parties have failed.

“At first, the Tribunal consists of representatives of the families of both spouses, usually the parents, who, following the complaint of one spouse, summon the other to a meeting of both families with a view to settling the differences between the spouses each being given the opportunity to air his or her views. If the complainant insists on divorce even after this intervention, then the matter is put before the town chief and/or the elders who themselves endeavor to salvage the marriage by hearing the parties and encouraging them to live together amicably. Upon its failure to effect reconciliation, the tribunal pronounces a decree in favor of the complainant”.<sup>16</sup>

Alternatively, the husband may unilaterally repudiate the wife and divorce her. Repudiation appears to take two steps, i.e., the husband may take his wife back to her parents and declare that he is terminating the marriage. Such divorce will be operative from the final communication of the husband to the wife’s parents of his intention to end the marriage. Divorce by repudiation becomes final on performance of certain ceremonies witnessed by the elders and families of the parties to the marriage.

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<sup>13</sup> *Id.* at 82 & 83.

<sup>14</sup> *Id.* at 141.

<sup>15</sup> *Id.* at 142.

<sup>16</sup> *Id.* at 143.

A judicial divorce is obtainable by applying to the local courts of Sierra Leone which have jurisdiction to adjudicate matters involving customary law according to sections 7 & 8 of the Courts Act, 1965 as amended.<sup>17</sup> Furthermore, under the provisions of the various by-laws<sup>18</sup> applicable to customary divorces, any person married under customary law may apply to a local court for a judicial divorce decree.<sup>19</sup> Such a judicial divorce is registered with the registrar of customary law divorces in the area where it is issued. Evidence of a judicial divorce is a certificate granted by the registrar after the registration of the divorce.

**(C) Islamic Law Marriages.**

Islamic law in Sierra Leone should be perceived and understood in the context of Islamic law as part of the legal system of Sierra Leone. This understanding is provided in the following passage:-

“Family law under Islamic law is governed by the Mohammedan Marriage Act...This Act deals with specific areas of Mohammedan (Islamic) Law, namely, Marriage, Divorce and Intestate Succession. Outside these areas, Sierra Leone statutory law does not recognize Islamic law; if Islamic law applies at all, it is part of customary law...”<sup>20</sup>

Thus, sections 2-6 of the Mohammedan Marriage Act, 1905 as amended<sup>21</sup> deal with the procedural aspect of Islamic law marriages and /or divorces in terms of registration once such a marriage or divorce has been secured under substantive Islamic law in similar manner as customary law. The Act does not constitute a prescription of substantive Islamic law in Sierra Leone. Therefore, section 2 of the Act stipulates that every marriage performed by persons professing Islamic religion is valid for all civil purposes. Such marriages and /or divorces must be registered. Their evidence is a certificate issued by the Registrar under section 6 (3) of the Act.

None of the regimes of law cited above indicate availability of proxy marriages or divorces.

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<sup>17</sup> Act, No. 31, 1965 *Supplement to the Laws of Sierra Leone with an Index of Legislation in Force*, A247.

<sup>18</sup> See for example, The Tribunal Authorities (Sitia Chiefdoms Native Marriage and Divorce By-Laws, 1962) P.N. No. 57 of 1962, in 1962 *Supplement to the Laws of Sierra Leone with an Index of Legislation in Force*, B.93-B96; see also, *supra* note 6 at 1444-164.

<sup>19</sup> Local Courts Act, No. 20 of 1963 as amended, 1963 *Supplement to the Laws of Sierra Leone with an Index of Legislation in Force*, sec. 13.

<sup>20</sup> *Supra* note 6 at 20.

<sup>21</sup> *Supra* note 5.