

**LEGAL MEASURES FOR POST-DIVORCE SETTLEMENT OF PROPERTIES AND
MAINTENANCE IN NIGERIA***

Abstract

The dissolution of marriage frequently gives rise to complex legal disputes relating to the settlement of matrimonial property and the maintenance of former spouses and children. The resolution of these post-divorce issues remains a significant challenge due to statutory limitations, judicial inconsistencies, socio-economic realities, and the absence of a comprehensive regime for equitable distribution of matrimonial assets in Nigeria. This study analyses the legal measures governing post-divorce settlement of properties and maintenance under Nigerian law, with particular emphasis on the Matrimonial Causes Act and judicial precedents. The study investigates the extent to which existing legal frameworks protect the proprietary and maintenance rights of parties following the dissolution of marriage. It also evaluates the effectiveness of judicial discretion in achieving fairness and justice. In carrying out this study, doctrinal research methodology spiced with analytical approach is ready to hand, relying on primary sources such as statutes and case law, as well as secondary sources like textbooks, journal articles, scholarly commentaries and internet materials. The study reveals that while Nigerian courts possess considerable powers to make orders relating to maintenance and property settlement, the absence of clear statutory guidelines on the distribution of matrimonial assets often results in uncertainty and inconsistent outcomes. It also finds that economic disparities between spouses, difficulties in the enforcement of maintenance orders, and evolving family structures continue to affect adversely the effectiveness of existing legal measures. The study concludes on the note that the current legal framework requires substantial reforms to ensure greater certainty, equity, and protection of vulnerable parties. It therefore recommends legislative amendments, recognition of non-financial contributions in property distribution, strengthened enforcement mechanisms, and periodic review of maintenance awards to enhance post-divorce justice in Nigeria.

Keywords: Divorce, Matrimonial Property, Maintenance, Post-Divorce Settlement, Matrimonial Causes Act, Nigeria.

1. Introduction

Marriage is universally recognized as one of the most fundamental social institutions, serving as the legal and moral foundation upon which family life and societal stability are built.¹ In Nigeria, marriage creates a legally enforceable relationship that imposes reciprocal rights and obligations on spouses, including duties relating to cohabitation, support, companionship, and the acquisition and management of property.² However, despite the importance attached to the preservation of marriage, not all marriages endure. Where marital relationships become irretrievably broken down, the law provides mechanisms for the dissolution of marriage through divorce.³ The termination of a marriage does not merely sever the legal bond between spouses; it also gives rise to consequential issues concerning the redistribution of matrimonial assets, financial support, maintenance obligations, and the welfare of dependent children.⁴ Hence, the resolution of post-divorce property and maintenance disputes has become one of the most significant and contentious aspects of family law adjudication in contemporary Nigeria.

***By Ikenga K. E. ORAEBGUNAM, PhD (Law), PhD (Philosophy of Law), PhD (Religion and Society), PhD (Edu Mgt), BL,** Professor of Law and Applied Jurisprudence; Formerly Head, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University Awka, Nigeria, Email: ikengaken@gmail.com; ik.oraebgunam@unizik.edu.ng. Tel: +2348034711211

¹ A Metaj-Stojanova, 'The Fundamental Human Right to Marry and to Family Life and their Protection in the Legal Framework of the Republic of Macedonia' *ILIRIA International Review* (2017) 7(1), 179-193.

² K Nkume, 'The Legal Rights of Spouses in Marriage under Nigerian Law.' < <https://www.mondaq.com/nigeria/family-law/1330852/the-legal-rights-of-spouses-in-marriage-under-nigerian-law> > Accessed 3rd June, 2026.

³ A Osuagwu and others, 'A Contemporary Review of Divorce Laws in Nigeria' *International Review of Law and Jurisprudence* (2023) 5(2), 101-106.

⁴ P Ikoza, 'Examination of Matrimonial Remedies/Relief under the Matrimonial Causes Act' *Global Journal of Politics and Law Research* (2025) 13(5), 62-125.

The legal framework governing post-divorce settlement of properties and maintenance in Nigeria is principally regulated by the Matrimonial Causes Act,⁵ the Matrimonial Causes Rules,⁶ and judicial precedents. These legal measures empower courts to make ancillary orders relating to property settlement, spousal maintenance, and child support in order to mitigate the economic consequences of divorce and ensure fairness between the parties.⁷ Nevertheless, the application of these laws has generated considerable debate due to challenges such as the absence of a comprehensive matrimonial property regime, inconsistent judicial decisions, enforcement difficulties, gender-related inequalities, and evolving socio-economic realities.⁸ As divorce rates and property-related disputes continue to increase, questions regarding the adequacy and effectiveness of existing legal measures have become increasingly important. This paper therefore examines the legal measures for the resolution of post-divorce settlement of properties and maintenance in Nigeria, evaluates the effectiveness of the existing legal framework, identifies its shortcomings, and proposes reforms aimed at promoting equity, certainty, and justice in post-divorce proceedings.

2. Conceptual Clarifications

Marriage

Marriage is generally understood as a legally and socially sanctioned union between two persons, established in accordance with the applicable law, custom, or religious practice, for the purpose of creating a family relationship accompanied by mutual rights and obligations.⁹ The institution serves as the foundation of family life and provides a framework for companionship, procreation, support, and the regulation of proprietary and personal relations between spouses. From a legal perspective, marriage has been defined as the voluntary union of a man and a woman to the exclusion of all others during the continuance of the marriage.¹⁰ This classical definition was authoritatively stated by Lord Penzance in *Hyde v Hyde and Woodmansee*,¹¹ where marriage was described as “the voluntary union for life of one man and one woman to the exclusion of all others.

Divorce

Divorce refers to the legal dissolution or termination of a valid marriage by a competent court or other legally recognized authority, thereby bringing the marital relationship between spouses to an end and relieving them of the rights and obligations arising from the marriage.¹² It constitutes the formal and judicial severance of the matrimonial bond, restoring the parties to the status of unmarried persons and enabling them, subject to applicable legal requirements, to remarry.¹³ Unlike separation, which merely suspends certain marital obligations while preserving the marital status, divorce completely extinguishes the legal relationship created by marriage.

⁵ Matrimonial Causes Act 1970.

⁶ Matrimonial Causes Rules 1983.

⁷ BK Akinyemi, ‘Spousal Maintenance: A Comparative Analysis of Spousal Maintenance in Nigeria and the United Kingdom’ < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4946330 > Accessed 3rd June, 2026.

⁸ DC Elekwa, ‘A Critical Analysis of the Viability of Property Sharing in Divorce Cases’ < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.nigerianjournalonline.org/index.php/FUNAILAWPROJECTS/article/download/2057/1927/3660&ved=2ahUKEwjJjd2WYyOVAXVjQ0EAHbN4K38QFnoECCIAQ&usg=AOvVaw12NilyhMMmk0Bonio_xquN > Accessed 3rd June, 2026.

⁹ OD Fiade, ‘Divorce, Maintenance and Child Custody under the Customary Law’ < <https://nji.gov.ng/assets/publication/Divorce-Maintenance-and-Child-Custody-under-the-Customary-Law-2.pdf> > Accessed 3rd June, 2026.

¹⁰ MO Izzi, ‘The Injustice of Customary Law Marriages in Nigeria: Emerging Issues’ *Ife Juris Review* (2019) 1(1), 86-100.

¹¹ (1866) LR 1 P & D 130.

¹² OJ Jegede, ‘Divorce Law in Nigeria – A Brief Overview’ < <https://www.mondaq.com/nigeria/divorce/1794018/divorce-law-in-nigeria-a-brief-overview> > Accessed 3rd June, 2026.

¹³ MO Izunwa, ‘Divorce in Nigerian statutory and customary marriages: a comparative critique of grounds, procedures and reliefs attaching thereto’ *Peak Journal of Social Sciences and Humanities* (2015) 3(6), 77-83.

Matrimonial Property

Matrimonial property entails the assets, properties, and financial resources acquired, owned, or accumulated by either or both spouses during the subsistence of a marriage and which are subject to consideration by a court upon the dissolution of that marriage.¹⁴ It encompasses both movable and immovable property, including land, houses, businesses, investments, savings, vehicles, household effects, and other assets in which the spouses possess legal or equitable interests.¹⁵ The concept is founded on the recognition that marriage is not merely a personal relationship but also an economic partnership in which spouses may contribute, directly or indirectly, to the acquisition, preservation, and improvement of family assets.

Maintenance

Maintenance, in family law, refers to the legal obligation imposed on one person to provide financial support for another who is unable to adequately provide for his or her reasonable needs.¹⁶ Within the context of marriage and divorce, maintenance denotes the monetary or material provision made by a spouse, former spouse, or parent for the sustenance, welfare, and upkeep of a dependent spouse or child.¹⁷ It includes the provision of necessities of life such as food, shelter, clothing, healthcare, education, and other expenses reasonably required to maintain an acceptable standard of living.

Post-Divorce Settlement

Post-divorce settlement means the legal, financial, and proprietary arrangements that arise following the dissolution of a marriage and are intended to regulate the rights and obligations of the former spouses after divorce.¹⁸ It covers the processes through which issues relating to the distribution or settlement of matrimonial property, spousal maintenance, child maintenance, custody, and other ancillary matters are determined either by agreement between the parties or through judicial intervention.¹⁹ The primary objective of post-divorce settlement is to ensure a fair and equitable resolution of the economic and welfare consequences of divorce, particularly where the parties have acquired assets during the subsistence of the marriage or where one party remains financially dependent on the other.

Legal Regime for Post-Divorce Settlement of Properties and Maintenance in Nigeria

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution²⁰ is the supreme law of the land and serves as the foundational legal framework for the regulation and enforcement of rights and obligations arising from marital relationships, including disputes relating to post-divorce settlement of properties and maintenance. The Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of

¹⁴ Tope Adebayo LP, 'The 50/50 Myth: Unpacking Settlement of Properties in Nigerian Matrimonial Causes' <https://topeadebayolp.com/wp-content/uploads/2025/07/approved-THE-50_50-MYTH-UNPACKING-SETTLEMENT-OF-PROPERTIES-IN-NIGERIAN-MATRIMONIAL-CAUSES_compressed.pdf> Accessed 4th June, 2026. See also *Akinbuwa v. Akinbuwa* (1998) 7 NWLR (Pt. 559) 661; *Akinbuwa v. Akinbuwa* (1998) 7 NWLR (Pt. 559) 661.

¹⁵ AE Anekwe, 'Division of Matrimonial Property under Nigerian Law: Principles, Judicial Discretion, and Emerging Trends in Property Settlement' <<https://omaplex.com.ng/division-of-matrimonial-property-under-nigerian-law-principles-judicial-discretion-and-emerging-trends-in-property-settlement/>> Accessed 4th June, 2026

¹⁶ E Ehigiator and O Ucheagwu-Okoye, 'The Maintenance of Spouses after Divorce: A Sine Qua Non' *MUNFLJ* (2021) 7(1), 67-72.

¹⁷ Eko Solicitors, 'Navigating the Types of Maintenance under Nigerian Family Law: Ultimate' <<https://ekosolicitors.com/navigating-the-types-of-maintenance-under-nigerian-family-law-ultimate/>> Accessed 4th June, 2026

¹⁸ E Omoregie, 'Financial Settlement in Divorce or Dissolution: Definitions, Processes, Tips, and FAQs' <<https://anthonygold.co.uk/insight/financial-settlement-in-divorce-guide/>> Accessed 4th June, 2026.

¹⁹ JN Egemonu, 'Critical Analysis of Laws Relating to Maintenance and Settlement of Property Upon Breakdown of Marriage' *Crescent University Law Journal* (2017) 2(1), 83-101.

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended).

Nigeria.²¹ Consequently, every law, judicial decision, and governmental action relating to divorce, property settlement, and maintenance must conform to constitutional standards.²²

The Constitution guarantees the right of every citizen of Nigeria to acquire and own immovable property anywhere in Nigeria.²³ This provision is important in matrimonial property disputes because it recognizes and protects the proprietary interests of spouses in assets acquired before, during, or after marriage. Nigerian courts frequently rely on principles of ownership, contribution, and equitable interest in determining claims to matrimonial property upon the dissolution of marriage. The constitutional protection of property rights ensures that a spouse cannot be arbitrarily deprived of a legally recognizable interest in matrimonial assets.

The Constitution also provides that no movable or immovable property shall be compulsorily taken possession of except in the manner prescribed by law and upon payment of compensation where necessary.²⁴ In the context of post-divorce settlements, this provision reinforces the principle that courts must act within the limits of the law when making property adjustment or settlement orders. It also emphasises the necessity of ensuring that any judicial redistribution of property is founded upon established legal principles and evidence of entitlement.

Furthermore, the Constitution provides that every citizen shall have equality of rights, obligations, and opportunities before the law.²⁵ Although the provisions of Chapter II are generally non-justiciable,²⁶ they remain important guiding principles for legislative and judicial action. The principle of equality is particularly relevant in contemporary matrimonial disputes where courts are increasingly confronted with questions relating to the economic contributions of spouses, especially women whose contributions may not always be monetary. The constitutional commitment to equality encourages a more equitable approach to the determination of post-divorce property rights and maintenance obligations.

Moreso, section 17(3)(f) of the Constitution directs the State to protect children, young persons, and the aged against exploitation and neglect.²⁷ While this provision is also non-justiciable, it provides a constitutional policy basis for maintenance orders made in favour of children following the dissolution of marriage. The welfare and financial security of children constitute a primary consideration in many post-divorce proceedings, and courts often exercise their powers in a manner consistent with the constitutional objective of protecting vulnerable members of society.

The right to human dignity guaranteed under the Constitution also has implications for post-divorce maintenance.²⁸ It provides that every individual is entitled to respect for the dignity of his person and shall not be subjected to inhuman or degrading treatment.²⁹ Maintenance orders serve not merely as financial remedies but also as mechanisms for preserving the dignity and welfare of economically disadvantaged spouses and children after divorce. Where a spouse is left destitute or unable to meet basic needs following the dissolution of marriage, the constitutional value of human dignity supports judicial intervention aimed at preventing undue hardship.

²¹ *Ibid*, s1 (3).

²² *Ibiowotisi v. Agbaje* (2026) 1 NWLR (Pt. 2024) 115; *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72; *NPF v. PSC* (2024) 2 NWLR (Pt. 1922) 231; *Madumere v. Okwara* (2013) 12 NWLR (Pt. 1368) 303; *First Bank v. T.S.A. Industries Ltd* (2010) 15 NWLR (Pt. 1216) 247; *Olafisoye v. FRN* (2004) 4 NWLR (Pt. 864) 580.

²³ Constitution of the Federal Republic of Nigeria 1999 (as amended), s43.

²⁴ *Ibid*, s44 (1).

²⁵ *Ibid*, s17 (2) (a).

²⁶ *Ibid*, s6 (6) (c). See also *Centre for Oil Pollution Watch v. N.N.P.C.* (2019) 5 NWLR (Pt. 1666) 518; *A.-G., Lagos State v. A.-G., Federation* (2003) 12 NWLR (Pt. 833) 1; *F.R.N. v. Anache* (2004) 14 WRN 1.

²⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), s17 (3) (f).

²⁸ *Ibid*, s34 (1).

²⁹ *Ibid*.

Equally the Constitution, guarantees the right to fair hearing in the determination of civil rights and obligations.³⁰ Since post-divorce property and maintenance disputes involve the determination of proprietary and financial rights, parties are constitutionally entitled to have their claims heard and determined by a court or tribunal constituted in such manner as to secure its independence and impartiality. This provision ensures procedural fairness in matrimonial proceedings and safeguards litigants against arbitrary judicial action.

The Constitution further establishes the judicial machinery necessary for the adjudication of matrimonial causes.³¹ Judicial powers are vested in the courts,³² while jurisdiction over matrimonial causes is conferred on the High Court's³³ pursuant to applicable legislation, particularly the Matrimonial Causes Act.³⁴ Through these provisions, the Constitution provides the institutional framework within which courts exercise powers relating to divorce, maintenance, custody, and settlement of matrimonial property.

Matrimonial Causes Act 1970

The Matrimonial Causes Act³⁵ is the principal legislation governing matrimonial proceedings in Nigeria. It vests jurisdiction in matrimonial causes exclusively in the High Court of a State.³⁶ Therefore matters relating to the dissolution of marriage, judicial separation, nullity of marriage, restitution of conjugal rights, maintenance, custody of children, and settlement of matrimonial property fall within the exclusive competence of the State High Court.

The Act establishes the principle that a marriage may only be dissolved where it has broken down irretrievably.³⁷ Although this provision primarily governs the dissolution of marriage, it serves as the foundation upon which post-divorce reliefs become available. Once a court is satisfied that a marriage has broken down irretrievably and grants a decree of dissolution, it acquires jurisdiction to determine consequential issues relating to maintenance, property settlement, and the welfare of children.³⁸

The Act empowers the court, in proceedings concerning a marriage, to make such orders as it considers just and equitable with respect to the settlement of property for the benefit of the parties to the marriage or the children of the marriage.³⁹ Specifically, the section authorizes the court to order the transfer, settlement, or distribution of property where circumstances demand such intervention.⁴⁰ The essence of the provision is to prevent injustice and economic hardship that may result from the dissolution of marriage. In exercising this power, courts are expected to consider the contributions of the parties, the interests of justice, and the overall circumstances of the case. Therefore, it provides the statutory basis for judicial intervention in disputes concerning matrimonial assets after divorce.

Notably, the Act which deals with maintenance orders.⁴¹ It empowers the court in matrimonial proceedings, to order either party to make such periodic or lump-sum payments as the court considers proper for the maintenance of the other spouse⁴². In determining whether maintenance should be awarded and the amount to be paid, the court is required to take into account the means, earning capacity, conduct, and other relevant

³⁰ *Ibid*, s36 (1).

³¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s6.

³² *Ibid*.

³³ *Ibid*, s272 (1).

³⁴ Matrimonial Causes Act 1970.

³⁵ *Ibid*, s2.

³⁶ *Ibid*.

³⁷ *Ibid*, s15.

³⁸ *Ekrebe v. Ekrebe* (1999) 3 NWLR (Pt. 596) 514; *Ibrahim v. Ibrahim* (2007) 1 NWLR (Pt. 1015) 383; *Nanna v. Nanna* (2006) 3 NWLR (Pt. 966) 1.

³⁹ Matrimonial Causes Act 1970, s72.

⁴⁰ *Ibid*.

⁴¹ *Ibid*, s70.

⁴² *Ibid*.

circumstances of the parties.⁴³ The provision recognizes the principle that divorce should not leave a financially dependent spouse destitute and that the economic consequences of marital breakdown should be fairly addressed through judicial intervention.

Also, the Act authorizes the court to make orders securing maintenance payments.⁴⁴ Under this provision, where necessary, the court may require that maintenance obligations be secured by a charge on property or through other means considered appropriate by the court. This provision enhances the effectiveness of maintenance orders by providing mechanisms to guarantee compliance and protect the interests of the beneficiary spouse.

The welfare of children is also addressed under the Act it empowers the court to make such orders as it deems proper with respect to the maintenance, advancement, and education of children of the marriage.⁴⁵ This provision recognizes that the dissolution of marriage should not adversely affect the well-being of children and imposes a continuing responsibility on parents to provide financial support notwithstanding the termination of their marital relationship. The section therefore serves as a vital legal basis for child maintenance orders in post-divorce proceedings.

Furthermore, the Act authorizes the court to vary, suspend, revive, or discharge orders relating to maintenance and settlement of property where circumstances subsequently change.⁴⁶ This acknowledges the dynamic nature of human relationships and economic conditions. It enables courts to review earlier orders in order to ensure that they remain fair, reasonable, and responsive to the changing financial circumstances of the parties.

In addition, section the Act empowers the court to enforce compliance with orders made under the Act.⁴⁷ The effectiveness of maintenance and property settlement orders depends largely on their enforceability, and this provision equips the courts with the necessary authority to ensure obedience to their judgments. Through enforcement mechanisms, beneficiaries of maintenance and settlement orders are afforded legal protection against defaulting parties.

Matrimonial Causes Rules 1983

The Matrimonial Causes Rules ⁴⁸ constitute an important procedural framework for the resolution of matrimonial disputes in Nigeria. While the Matrimonial Causes Act 1970 provides the substantive law governing divorce, maintenance, and settlement of property, the Rules prescribe the procedures through which these rights and remedies are enforced.

The Rule in Order XIV, governs proceedings for ancillary relief.⁴⁹ Specifically, it permits applications relating to maintenance and settlement of property to be brought and determined alongside the principal divorce proceedings.⁵⁰ This promotes efficiency and enables courts to address the financial consequences of divorce without requiring separate actions. Furthermore, the Rules requires an applicant seeking maintenance to disclose relevant information concerning income, assets, liabilities, financial commitments, and the financial position of the other spouse. Such disclosure assists the court in making fair and equitable orders.⁵¹

⁴³ *Ibid.*

⁴⁴ Matrimonial Causes Act 1970, s70.

⁴⁵ *Ibid.*, s71.

⁴⁶ *Ibid.*, s73.

⁴⁷ *Ibid.*, s74.

⁴⁸ Matrimonial Causes Rules 1983.

⁴⁹ *Ibid.*, Order XIV.

⁵⁰ *Ibid.*, Order XIV Rules 1 and 3.

⁵¹ *Ibid.*, Order XIV Rule 4.

The Rules also provide for maintenance pending suit, thereby enabling a financially dependent spouse to obtain temporary support during the pendency of matrimonial proceedings.⁵² In addition, it provide for certificates of means, which assist the court in assessing the financial capacity of the parties.⁵³ To ensure flexibility and fairness, the Rules empowers the court to vary, suspend, or discharge maintenance orders where there is a material change in circumstances.⁵⁴

Furthermore, the Rules facilitate the determination of property disputes through provisions on discovery and inspection of documents, which enable parties to obtain relevant information regarding matrimonial assets.⁵⁵ The Rules also strengthen the effectiveness of maintenance orders through enforcement procedures provided under Order XVII, , which regulate the registration and enforcement of maintenance orders.⁵⁶ In addition, it requires claims relating to maintenance, settlement of property, and other ancillary reliefs to be specifically pleaded in matrimonial petitions.⁵⁷

Child's Rights Act 2003

The Act⁵⁸ provide for and protect the rights of a Nigerian child. It is grounded on the principle that the best interest of the child shall be the primary consideration in all actions affecting the child, whether undertaken by courts, administrative authorities, or parents.⁵⁹ In the context of divorce, this principle ensures that disputes relating to custody, support, and upbringing are resolved in a manner that prioritizes the child's welfare over the competing interests of the parents.

The Act provides that every child has a right to parental care and protection and shall not be separated from his or her parents except where such separation is necessary for the child's education or welfare or as determined by a competent court in the best interest of the child.⁶⁰ More importantly, it expressly provides that every child has the right to maintenance by his parents or guardians according to their means, and this right is enforceable in a competent Family Court.⁶¹ This provision establishes a direct statutory obligation on both parents to continue providing financial support after divorce, thereby forming a central basis for post-divorce maintenance claims.

In addition, the Act strengthens judicial authority in post-divorce proceedings through provisions on custody and welfare. It empowers the court to make orders relating to custody and access, having regard to the welfare of the child as the paramount consideration, and to vary or discharge such orders where circumstances require.⁶² Similarly, the Act authorizes the court to make maintenance orders against a parent or guardian where a child is committed to care or where neglect is established, requiring such person to contribute towards the child's maintenance in amounts deemed appropriate by the court.⁶³ These provisions collectively manifest the Act's emphasis on continuous parental responsibility irrespective of marital status.

Furthermore, under the wardship provisions, the court is empowered to order either or both parents to make periodic payments towards the maintenance and education of a child under its supervision, with such payments continuing until the child attains majority.⁶⁴ This embodies the statutory commitment to ensuring that divorce does not terminate parental obligations.

⁵² *Ibid*, Order XIV Rules 7–16.

⁵³ Matrimonial Causes Rules 1983, Order XIV Rules 17–19

⁵⁴ *Ibid*, Order XIV Rule 26

⁵⁵ *Ibid*, Order XI Part 2.

⁵⁶ *Ibid*, Order XVII, particularly Rules 30–34.

⁵⁷ *Ibid*, Order V Rule 8(1).

⁵⁸ Child Rights Act 2003, Explanatory Memorandum.

⁵⁹ *Ibid*, s1.

⁶⁰ *Ibid*, s14 (1).

⁶¹ Child Rights Act 2003, s14 (2).

⁶² *Ibid*, s69.

⁶³ *Ibid*, s52.

⁶⁴ *Ibid*, s95.

4. Judicial Approach to Post-Divorce Property Settlement and Maintenance in Nigeria

The judicial approach to post-divorce property settlement and maintenance in Nigeria is largely anchored on statutory discretion and equitable intervention under the Matrimonial Causes Act,⁶⁵ which empower courts to make orders for settlement of property and maintenance as the justice of each case demands. Nigerian courts, however, have developed a predominantly case-by-case, contribution-based and title-oriented approach to matrimonial property distribution.

A consistent judicial pattern is the adoption of what scholars describe as the strict property title or contribution principle, whereby ownership is largely determined by documentary title or direct financial contribution.⁶⁶ This position is evident in *Nwanya v. Nwanya*⁶⁷ where the wife's claim to interest in property was rejected due to insufficient proof of financial contribution, upholding the principle that marital status alone does not confer proprietary rights. Similarly, in *Akinbuwa v Akinbuwa*,⁶⁸ the court held that property settlement under the Act must be based on contribution and fairness rather than mere assertion of entitlement. The same reasoning was endorsed in *Oghoyone v Oghoyone*,⁶⁹ where the Court of Appeal acknowledged that while courts have wide discretion, such discretion must be exercised judicially and judiciously, taking into account the conduct, circumstances, and contributions of the parties.

However, Nigerian appellate courts have also gradually moved towards a more equitable and partnership-oriented approach, recognising that non-financial contributions, such as homemaking, child-rearing, and emotional support, may justify proprietary interest in matrimonial assets. In *Mueller v. Mueller*,⁷⁰ the court accepted that property acquired during marriage may be treated as joint property where evidence of shared intention or contribution exists, even if legal title is in the name of one spouse. Also, in *Okere v. Akaluka*⁷¹ the Court of Appeal emphasized that courts should consider the realities of modern marriage and infer shared ownership from the conduct of parties where appropriate. The court further held that it would be unconscionable to deprive a woman and her children of the right in a property to which she contributed substantially regarding its acquisition and development. These decisions reflect a gradual judicial shift from rigid title-based reasoning toward a more contextual and equity-driven evaluation of matrimonial property.

Notwithstanding these judicial developments, the Nigerian approach remains largely inconsistent and discretionary, with significant tension between strict proof of contribution and emerging equitable doctrines.⁷² While some courts adhere strictly to documentary ownership, others adopt a more flexible partnership-based reasoning. This inconsistency has been widely critiqued for creating uncertainty in post-divorce settlements and for failing to fully reflect the economic and non-economic realities of marital partnership. Hence, judicial discretion remains the dominant but contested mechanism for resolving post-divorce property and maintenance disputes in Nigeria.

⁶⁵ Matrimonial Causes Act 1970, s70-s72.

⁶⁶ NA Duson, 'Nigerian Courts and the Adoption of Strict Property Title Rights Approach in the Settlement of Property in Divorce Proceedings Relating to Statutory Marriage: The Need to Jettison the Approach' *Bori Bar Journal* (2021) 1(10), 1-16.

⁶⁷ (1987) 3NWLR (Pt 62) 697.

⁶⁸ (1998) 7 NWLR (Pt. 559) 661.

⁶⁹ (2010) 3 NWLR (Pt. 1182) 564 (CA).

⁷⁰ (2006) 6 NWLR (Pt. 977) 627. See also *Egunjobi v Egunjobi* [1976] 2 FNLR 7.

⁷¹ (2014) LPELR-24287 (CA).

⁷² CJ Efe and OE Eberechi, 'Property Rights of Nigerian Women at Divorce: A Case for a Redistribution Order' *Potchefstroom Electronic Law Journal* (2020) 1(1), 1-39.

5. Comparative Analysis with Selected Jurisdictions

United Kingdom

In the United Kingdom, the legal framework governing post-divorce financial settlement is primarily contained in the Matrimonial Causes Act.⁷³ It empower courts to make a wide range of financial orders, including property adjustment orders, lump sum payments, spousal maintenance, and pension sharing orders.⁷⁴ The Act sets out statutory factors that guide judicial discretion. These include the income and earning capacity of the parties, their financial needs and obligations, the standard of living enjoyed during the marriage, the age of the parties, the duration of the marriage, and contributions made by each party, both financial and non-financial.⁷⁵ The statute also permits consideration of conduct, but only where it would be inequitable to disregard it.⁷⁶

The UK judiciary has significantly shaped the interpretation of these statutory provisions through landmark decisions that have introduced clearer guiding principles. In *White v White*,⁷⁷ the House of Lords established the yardstick of equality, holding that there should be no bias in favour of the breadwinner in dividing matrimonial assets. This decision marked a major shift from traditional approaches and established equality as the starting point in property division.⁷⁸

However, equality is not applied rigidly, rather, courts must justify any departure from it. This principle was further developed in *Miller v Miller; McFarlane v McFarlane*,⁷⁹ where the court identified three distinct rationales for financial remedies: needs, compensation, and sharing. The needs principle ensures that parties are not left in financial hardship, the compensation principle addresses economic disadvantages arising from the marriage, and the sharing principle reflects the idea that matrimonial assets should be divided fairly as joint contributions.⁸⁰ These principles have brought greater coherence to judicial decision-making. Subsequent cases such as *Charman v Charman*⁸¹ reaffirmed the equality principle as a benchmark, while *Standish v Standish*⁸² clarified the distinction between matrimonial and non-matrimonial property, emphasizing that only assets generated or acquired during the marriage are ordinarily subject to equal sharing unless they have been matrimonialised.⁸³

In relation to maintenance, UK courts also adopt a needs-oriented approach, ensuring that spousal support is awarded where appropriate to meet reasonable financial requirements.⁸⁴ The emphasis is not solely on strict contribution but on achieving economic justice between the parties after divorce.

Canada

Canada presents a hybrid legal framework in which post-divorce financial relief is governed by both federal and provincial legislation. The federal Divorce Act⁸⁵ regulates spousal and child support, , while property division is primarily governed by provincial statutes such as the Ontario Family Law Act.⁸⁶ This dual structure allows for a more comprehensive and systematic approach to post-divorce financial resolution.

⁷³ Matrimonial Causes Act 1973, s23-s25.

⁷⁴ Matrimonial Causes Act 1973, s23-s25.

⁷⁵ *Ibid*, s25

⁷⁶ *Ibid*.

⁷⁷ [2001] 1 AC 596.

⁷⁸ *Ibid*.

⁷⁹ [2006] UKHL 24.

⁸⁰ *Ibid*.

⁸¹ [2007] EWCA Civ 503.

⁸² [2025] UKSC 26.

⁸³ *Ibid*.

⁸⁴ *SS v NS (Spousal Maintenance)* [2014] EWHC 4183 (Fam).

⁸⁵ Divorce Act 1985 (as amended), s15.2 and s16-s17.

⁸⁶ Ontario Family Law Act 1986.

A defining feature of the Canadian system is the net family property (NFP) equalization model, particularly under the Ontario Family Law Act.⁸⁷ Under this model, each spouse calculates the increase in value of their assets during the marriage, and the spouse with the higher net gain pays half the difference to the other spouse.⁸⁸ This mechanism avoids disputes over individual ownership of assets and instead focuses on economic partnership and equitable distribution of marital gains. It provides a high level of predictability compared to discretionary systems.

Canadian courts have also developed a strong jurisprudence on spousal support. In *Moge v Moge*,⁸⁹ the Supreme Court of Canada held that spousal support is primarily compensatory, aimed at addressing economic disadvantages arising from the marriage or its breakdown. The court emphasized that divorce should not disproportionately burden one spouse, particularly where traditional roles such as homemaking have affected earning capacity.⁹⁰ This was further expanded in *Bracklow v Bracklow*,⁹¹ where the court recognized that spousal support may also be needs-based, even in the absence of direct economic disadvantage, thereby broadening the scope of post-divorce maintenance.

In the area of property division, *Pettkus v Becker*⁹² remains a foundational authority. The Supreme Court introduced the doctrine of unjust enrichment, allowing courts to recognize equitable interests where one spouse has contributed indirectly, such as through domestic labour or caregiving to the accumulation of property held in the other spouse's name.⁹³ This principle captures a modern understanding of marriage as an economic partnership rather than a purely title-based arrangement.

Comparative Evaluation

A comparative analysis of the United Kingdom, Canada, and Nigeria reveals fundamental differences in legal structure and judicial philosophy. The United Kingdom adopts a highly structured discretionary model anchored on statutory factors and judicially developed principles such as equality, needs, and compensation. Canada, on the other hand, combines statutory equalization of matrimonial property with a flexible but well-developed spousal support regime that recognizes both economic disadvantage and financial need. Both jurisdictions place strong emphasis on fairness, predictability, and recognition of non-financial contributions within marriage.

In contrast, Nigeria's approach under the Matrimonial Causes Act⁹⁴ remains largely discretionary and contribution-oriented, with courts often relying heavily on strict proof of ownership or financial input. This has resulted in a less predictable system, where outcomes may vary significantly depending on judicial interpretation. Unlike the structured frameworks in the UK and Canada, Nigeria lacks a comprehensive statutory scheme for equitable distribution of matrimonial property, leading to inconsistencies in judicial decisions.

Thus, the comparative jurisdictions make clear that a more structured statutory framework, combined with clear judicial principles, enhances fairness, predictability, and efficiency in post-divorce financial settlements. These comparative insights bring to the fore the need for reform in Nigeria's legal framework to better reflect modern realities of marriage as an economic partnership rather than a strictly title-based arrangement.

⁸⁷ *Ibid.*, s5(1).

⁸⁸ *Ibid.*

⁸⁹ [1992] 3 SCR 813.

⁹⁰ *Ibid.*

⁹¹ [1999] 1 SCR 420.

⁹² [1980] 2 SCR 834.

⁹³ *Ibid.*

⁹⁴ Matrimonial Causes Act 1970.

6. Challenges Affecting Post-Divorce Property Settlement and Maintenance in Nigeria

Absence of a Clear Statutory Matrimonial Property Regime

A fundamental difficulty is the absence of a detailed statutory regime defining matrimonial property and prescribing how it should be divided upon divorce.⁹⁵ The Matrimonial Causes Act merely grants courts discretionary powers without establishing clear rules for classification, valuation, or distribution of assets.⁹⁶ As a result, courts are left to determine outcomes based on general notions of fairness and contribution. This has resulted in a fragmented system where similarly situated parties may receive different outcomes depending on judicial interpretation.

Judicial Inconsistencies and Unpredictability

Nigerian courts have not developed a fully settled jurisprudence on whether matrimonial property should be treated as jointly owned or individually held subject to contribution.⁹⁷ Some decisions lean toward strict legal ownership, while others adopt a more equitable approach that considers indirect contributions. This inconsistency is evident in cases such as *Akinbuwa v Akinbuwa*,⁹⁸ which emphasises contribution, contrasted with other decisions that prioritise strict proof of title. The result is a lack of doctrinal certainty, making legal advice and litigation outcomes difficult to predict.

Evidentiary Difficulties in Proving Contribution and Ownership

A recurring practical challenge is the burden placed on spouses, often wives in traditional arrangements, to prove financial contribution to property acquisition.⁹⁹ Courts frequently require documentary evidence such as receipts, bank transfers, or title documents.¹⁰⁰ However, many marital contributions are non-financial and informal in nature, including child-rearing, household management, and emotional support, which are difficult to quantify in legal terms. This evidentiary gap often leads to the undervaluation of domestic contributions and reinforces economic inequality after divorce.

Enforcement Problems in Maintenance Orders

Even after maintenance is awarded, enforcement remains weak and inconsistent.¹⁰¹ Some spouses deliberately evade compliance by concealing income, changing employment, or relocating assets. Although courts have coercive powers, including attachment of earnings and contempt proceedings, these mechanisms are not always effectively utilized due to procedural delays and institutional limitations. As a result, many maintenance beneficiaries experience irregular or no payment, defeating the protective purpose of such orders.¹⁰²

Economic Hardship and Inflationary Pressures

Nigeria's economic volatility significantly undermines the effectiveness of maintenance awards. Inflation, fluctuating exchange rates, and unemployment mean that maintenance sums fixed at the time of judgment often lose real value over time. Courts rarely revisit or automatically adjust maintenance orders to reflect

⁹⁵ HO Obiageli, 'Tatutory Divorce in Nigeria: A Rethink of Division of Marital Property in Accordance with Global Trend' *Journal of International Human Rights and Contemporary Legal Issue* (2021) 1(1), 75-91.

⁹⁶ L Ogbogu, 'Settlement of Property under the Matrimonial Causes Act 1970 of Nigeria: Defining Court's Requirement to Consider What Is Just and Equitable' *Chukwuemeka Odumegwu Ojukwu Univeristy Journal of Commercial and Property Law* (2025) 5(2), 128-139.

⁹⁷ Tope Adebayo LP, (n 14).

⁹⁸ (1998) 7 NWLR (Pt. 559) 661.

⁹⁹ OH Onyi0gelle and A Nwawulu, 'An Appraisal of the Legal Framework for the Protection of Women's Proprietary Rights in Marriages in Nigeria' *African Journal of Law and Human Rights* (2023) 7(2), 114-118.

¹⁰⁰ *Ibid.*

¹⁰¹ A Owolabi, 'Maintenance under the Nigerian Statutory Family Law: A Critical Appraisal' *Journal of the Indian Law Institute* (2003) 45(3), 429-438.

¹⁰² *Ibid.*

economic realities, leaving dependants exposed to financial hardship despite having obtained favourable judgments.¹⁰³

Socio-Cultural and Gender-Related Constraints

Deep-seated cultural norms also affect post-divorce financial outcomes. In many communities, property is traditionally regarded as belonging to the husband, and women may be discouraged from asserting proprietary claims after divorce.¹⁰⁴ Social stigma attached to divorce further weakens bargaining power, especially for women who may prioritize settlement over litigation.¹⁰⁵ These cultural realities indirectly influence access to justice and sometimes shape judicial attitudes in subtle ways.

Delays in Judicial Proceedings

The Nigerian judicial system is often burdened by congestion and procedural delays, which significantly affect matrimonial causes.¹⁰⁶ Ancillary reliefs such as maintenance and property settlement are sometimes determined long after the divorce has been granted, rendering the relief less meaningful. Prolonged litigation increases financial strain on parties and may discourage enforcement or pursuit of legitimate claims.

Limited Legal Awareness and Access to Justice

A further challenge is the limited awareness among many litigants regarding their rights to maintenance and equitable property settlement. A significant number of spouses enter divorce proceedings without adequate legal representation or understanding of the scope of ancillary reliefs available under the law.¹⁰⁷ This knowledge gap often results in unclaimed entitlements or poorly negotiated settlements, particularly among economically weaker parties.

7. Conclusion and Recommendations

Post-divorce property settlement and maintenance are an important aspect of family law that address the financial consequences arising from the dissolution of marriage. The Matrimonial Causes Act¹⁰⁸ and judicial decisions provide the primary legal framework for resolving disputes relating to matrimonial property and maintenance in Nigeria. While courts possess broad discretionary powers to ensure fairness between parties, the effectiveness of the existing framework is often affected by challenges such as statutory uncertainties, inconsistent judicial approaches, evidentiary difficulties, enforcement issues, and socio-economic realities. Through a comparative analysis of the United Kingdom and Canada, this work found post-divorce financial relief remains a crucial mechanism for protecting the rights and welfare of former spouses and children. It is evident the legal regulation of property settlement and maintenance continues to play a vital role in promoting justice, equity, and financial stability following the breakdown of marriage. The following measures will belly the ache:

Enactment of a Comprehensive Matrimonial Property Framework: There is a need for legislative reform to establish a comprehensive statutory regime governing the identification, valuation, and distribution of matrimonial property upon divorce. Such a framework would provide greater clarity and reduce the uncertainties associated with the current discretionary approach adopted by the courts.

¹⁰³ AV Ogunnubi, 'Maintenance Orders in Nigeria: Statutory and Judicial Consideration' <<https://www.mondaq.com/nigeria/divorce/1410054/maintenance-orders-in-nigeria-statutory-and-judicial-consideration>> Accessed 9th June, 2026.

¹⁰⁴ MO Ajayi, 'Property Rights of Women Married Under Customary Law: Review of Arajulu V. Monday' <<https://ir.bowen.edu.ng:8443/bitstream/123456789/821/1/40.%20%20Property%20rights%20of%20Women%20Married%20under%20Customary%20Law%2C%20Review%20of%20Aruloju%20v%20Monday.%20The%20Eastern%20Africa%20Law%20Review%20School%20of%20Law.pdf>> Accessed 9th June, 2026.

¹⁰⁵ DC Elekwa, (n 8).

¹⁰⁶ K Adenji, 'Revolutionizing Matrimonial Proceedings in Nigeria: A Modern Approach' <<https://www.mondaq.com/nigeria/divorce/1706302/revolutionizing-matrimonial-proceedings-in-nigeria-a-modern-approach>> Accessed 10th June, 2026.

¹⁰⁷ NA Oluwayemisi and RA Chindah, 'Available Settlement Measures for Marriage Disputes under Nigerian Statutes' *UNIZIK Law Journal* (2026) 20(1), 11-19.

¹⁰⁸ Matrimonial Causes Act 1970.

Recognition of Non-Financial Contributions in Property Distribution: Courts should place greater emphasis on non-financial contributions such as homemaking, child-rearing, and domestic support when determining proprietary interests in matrimonial assets. This would ensure a more equitable assessment of the respective contributions of spouses during the subsistence of the marriage.

Strengthening Enforcement Mechanisms for Maintenance Orders: The enforcement of maintenance orders should be enhanced through more effective legal and institutional mechanisms capable of ensuring compliance. This would provide greater protection for dependent spouses and children and reduce the incidence of default in maintenance obligations.

Periodic Review of Maintenance Awards: Maintenance orders should be subject to review where there are substantial changes in the financial circumstances of the parties or prevailing economic conditions. This would help ensure that maintenance awards remain adequate and responsive to the needs of beneficiaries.

Promotion of Alternative Dispute Resolution Mechanisms: Greater use should be made of mediation, conciliation, and other alternative dispute resolution mechanisms in resolving post-divorce property and maintenance disputes. These processes can facilitate amicable settlements, reduce litigation costs, and promote faster resolution of family disputes.

Establishment of Specialized Family Courts: The establishment or strengthening of specialized family courts would enhance the efficient adjudication of matrimonial causes and ancillary relief proceedings. Such courts would be better equipped to address the unique legal and social issues associated with post-divorce property settlement and maintenance.

Enhancement of Legal Aid and Access to Justice: Efforts should be intensified to strengthen legal aid services and improve access to justice for financially disadvantaged parties involved in post-divorce proceedings. Many spouses, particularly those with limited financial resources, encounter difficulties in asserting their rights to maintenance and property settlement due to the high cost of litigation and inadequate legal representation. Improved access to legal assistance would facilitate the effective enforcement of legal rights and contribute to more equitable post-divorce outcomes.

Establishment of an Effective Maintenance Compliance Mechanism: There is a need for the establishment of an effective institutional framework for monitoring and enforcing compliance with maintenance orders. Such a mechanism would facilitate the prompt detection of defaults, improve accountability among maintenance obligors, and ensure the regular payment of maintenance obligations.