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NULLITY OF MARRIAGE IN CANON AND CIVIL LAW IN NIGERIA: A COMPARATIVE DOCTRINAL EXAMINATION

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ABSTRACT

In Nigeria, statutory marriage is regulated primarily by the Marriage Act and the Matrimonial Causes Act, while Catholic matrimonial validity is governed by the 1983 Code of Canon Law and related ecclesiastical norms. Although the two systems share an important concern with valid consent, capacity, and compliance with prescribed requirements, they differ in their underlying purposes, legal categories, procedures, and institutional consequences. Civil law distinguishes between void and voidable marriages and applies statutory grounds through the courts. Canon law presumes the validity of marriage and permits a declaration of nullity only where a relevant impediment, defect of consent, or defect of canonical form is proved. A declaration of nullity is conceptually distinct from divorce: it determines that the marriage was invalid from its inception, whereas divorce terminates a valid marriage under civil law. The coexistence of these systems can create uncertainty for couples who marry both in a church and under the Act. The article argues for improved marriage preparation, clearer public information, accessible proceedings, stronger protection of children and economically vulnerable spouses, and constructive dialogue between civil justice institutions and ecclesiastical tribunals. It concludes that coordination should respect the distinct jurisdiction and purpose of each system while promoting fairness, legal certainty, and human dignity.

KEYWORDS: nullity of marriage; canon law; Nigerian family law; Matrimonial Causes Act; Marriage Act; valid consent; void marriage; voidable marriage; Catholic Church; comparative law.

1. INTRODUCTION

Marriage is a personal relationship, a social institution, and a legal status that generates rights and obligations. According to Lord Penzance in *Hyde v Hyde*, [1] marriage is said to be the "voluntary union for life of a man and a woman with the exclusion of all others." In Nigeria, its regulation takes place within a plural legal environment in which statutory, customary, Islamic, and religious norms may affect how individuals understand and organise family life. This article focuses on the relationship between Catholic canon law and Nigerian civil law where a marriage is alleged to be invalid.

Nullity is not simply another word for divorce. In a nullity proceeding, the question is whether the legal requirements for a valid marriage were present at the time of celebration. A declaration of nullity therefore concerns validity from the beginning. Divorce, by contrast, brings a valid civil marriage to an end under the conditions prescribed by law. Confusion between the two concepts can cause personal distress and lead parties to misunderstand their legal and religious status.

The issue has particular importance in Nigeria because many couples celebrate a marriage in church (Catholic) and also contract a statutory marriage under the Marriage Act. The church ceremony is subject to canon law, while the civil status and remedies available in a statutory marriage are governed by Nigerian legislation. The same facts may be relevant to both systems, but the legal tests, decision-makers, and consequences are not identical.

The central argument of this article is that canon law and civil law share a concern for the reality of consent and the validity of the marital bond, but they approach nullity from different normative foundations. The civil system is structured by legislation and judicial interpretation; canon law is grounded in ecclesiastical law, theological understandings of marriage, and the presumption that a marriage is valid until the contrary is established. Understanding both systems is essential for legal practitioners, pastoral ministers, researchers, and couples seeking accurate advice.

2. Concept and Nature of Nullity of Marriage

The ordinary legal meaning of nullity is the absence of legal force or effect. Black's Law Dictionary describes a nullity as an act or proceeding having no legal force or effect. Applied to marriage, the concept concerns a union that fails to satisfy legal conditions necessary for validity. The precise effect depends on the governing legal system and on whether the marriage is classified as void or voidable. Two forms of marriages are recognized in Nigeria;

[1] (1866) L.R. 1 P. & D. 130

Customary and statutory marriages. Customary marriage is not just the union of two parties it is the coming together of two families; it extends to extended families of the couples and requires bride price either in the form of cash or a gift in kind to be given by the husband to be to the family of the bride and it allows for polygamy. Islamic marriages form part of customary marriages governed primarily by the Quran. Statutory marriages are marriages governed by the Marriage Act. [2] Christian marriages are closely linked to marriage under the Act because of the received English law which has a Christian foundation and forms the basis for the Marriage Act. One of the important features of marriage under the Act is that it is monogamous in nature.

In Nigerian civil law, the distinction between void and voidable marriage is significant. A void marriage is treated as invalid from the outset. A voidable marriage, in contrast, is treated as subsisting unless and until a competent court grants a decree annulling it. This distinction affects who may challenge the marriage, the applicable grounds, and the procedural requirements. The Matrimonial Causes Act sets out grounds relating to void and voidable marriages, and judicial interpretation determines how those provisions apply to particular facts.[3]

Canon law uses the language of a declaration of nullity. It does not treat the process as a religious form of divorce. Under the canonical framework, the tribunal investigates whether a valid matrimonial bond arose in the first place. The Church presumes the validity of marriage until the contrary is proven. A declaration is therefore not a penalty for a failed relationship; it is a juridical determination about the validity of consent, capacity, impediments, or canonical form at the time of marriage.[4]

The distinction between the breakdown of married life and invalidity at the time of consent is essential. A marriage may end in severe conflict without necessarily having been invalid when celebrated. In canonical proceedings, the fact that spouses later separated is not by itself proof of nullity. The tribunal must consider the relevant ground and the evidence supporting it. Similarly, civil nullity proceedings must be based on the statutory grounds and not merely on the parties' unhappiness or incompatibility. *Aderibigbe* [5] encourages public legal education because of the confusion between nullity and divorce. While nullity suggests that the marriage never really existed, divorce puts a permanent break to a marital union that was

[2] LFN, 2004, Cap. M6
[3] Sections 3&5 Matrimonial Causes Act, 2004
[4] Code of Canon Law, (1983),
[5] R. Aderibigbe, *Family Law in Nigeria: A Friendly Guide to Rights and Obligations on Marriage and the Family*.
(Lagos: Godas Publishing Consult, 2004) P.200

valid. There is a common misunderstanding where many see nullity as a form of divorce hence the need for public enlightenment and awareness of the difference between nullity of a marriage and divorce.

3. Civil Law Framework in Nigeria

The historical evolution of nullity of marriage in Nigeria, from the pre-colonial period through the reception of English law during the colonial era, the enactment of the Marriage Act and Matrimonial Causes Act, and the post-independence developments that continue to shape contemporary jurisprudence was renewed. Prior to British colonization, marriage among Nigerian peoples was governed exclusively by customary law, which varied considerably across ethnic groups. Among the Yoruba, Igbo, Hausa-Fulani, and numerous other communities, marriage was primarily a social institution binding not just two individuals but two families or clans, and its validity depended upon the satisfaction of customary requirements such as payment of bride price, parental consent, and prescribed ceremonies. The concept of void or voidable marriages, as understood in English ecclesiastical and later secular law, did not find a direct equivalent in customary regimes; rather, marriages could be dissolved or repudiated through community-sanctioned processes.

The most significant legislative development in the history of nullity of marriage in Nigeria is the enactment of the Matrimonial Causes Act (MCA) 1970, which came into force following the end of the Nigerian Civil War and consolidated the law relating to statutory marriages on a national basis. Modelled substantially on the Australian Family Law Act and influenced by English reforms, the MCA 1970 codified in explicit terms the grounds upon which a marriage may be declared void or voidable under Nigerian law.

Sagay [6] offers a critical analysis of the MCA 1970 framework, arguing that while the statutory codification brought welcome clarity and predictability to the law of nullity, several provisions fail to adequately account for the social realities of Nigerian family life. In particular, he highlights the restricted grounds for voidable marriages and contends that the absence of broader bases — such as willful refusal to consummate in non-consummation cases distinct from incapacity — leaves lacunae that the courts have had to fill through creative interpretation. However, Sagay sees the MCA as a positive step in helping to clarify the provisions of the law.

In the northern states of Nigeria, Islamic personal law (*Sharia*) governs the marriages of Muslims and provides its own framework for the annulment of marriages. Under the Sharia

[6]I. E Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries* (Malthouse Press, 2003) P. 23

system applicable in states such as Kano, Katsina, Sokoto, and others, a marriage (*nikah*) may be declared invalid (*fasid* or *batil*) on the basis of impediments recognized under classical Islamic jurisprudence, including consanguinity, fosterage, and the absence of a valid *wali* (guardian) or *mahr* (dower). The establishment of Sharia Courts of Appeal in the northern states following constitutional amendments in 1999 has significantly expanded the institutional capacity for adjudicating these matters within the Islamic law framework.

The interaction between the Sharia-based nullity regime and the statutory framework of the MCA 1970 has generated scholarly and jurisprudential controversy. As Anderson [7] writing in the context of Islamic law in West Africa, anticipated, the jurisdictional boundaries between secular and religious courts in matrimonial matters would prove a persistent source of conflict, particularly in cases involving parties of mixed religious background or marriages celebrated under both customary and Islamic forms. This dimension of Nigerian nullity law remains one of the most contested and underdeveloped areas in contemporary family law scholarship.

The Marriage Act regulates the celebration and formal requirements of marriages contracted under the Act, while the Matrimonial Causes Act governs, among other matters, proceedings concerning validity and dissolution. Sections 3 and 5 of the Matrimonial Causes Act 2004 are central to the statutory classification of void and voidable marriages and sections 34–38 provides for the proceedings and the effects of decrees of nullity of marriage.

The grounds identified in the dissertation for a void marriage include a prior existing lawful marriage, prohibited degrees of consanguinity or affinity, formal invalidity under the applicable law of the place of celebration, lack of real consent, and marriageable-age requirements. The grounds for voidability include incapacity to consummate, mental incapacity or defect, communicable venereal disease existing at the time of marriage, and pregnancy of the wife by a person other than the husband at the time of marriage.

Civil courts have a central role in determining whether the statutory requirements have been met. The process is not merely administrative: it requires the court to examine the facts, the applicable ground, and the legal consequences of a decree. According to Tijani,[8] procedural safeguards and judicial discretion are important in the interpretation and application of

[7] J. N. D. Anderson, *Islamic Law in Africa.* Her Majesty's Stationery Office, 1954.

[8] Nasiru Tijani, *Matrimonial Causes in Nigeria: Law and Practice*, 3rd ed. (Lagos: Renaissance Law Publishers Ltd, 2023), pp. 125–145.

voidable grounds. *Nwogugu* [9] likewise distinguishes between void marriages and voidable marriages, highlighting the different legal status attached to each category.

The civil framework has a secular statutory orientation. It does not determine whether a marriage is sacramental in Catholic theology. Its task is to decide civil status and rights under Nigerian law. Consequently, a civil court's decree and an ecclesiastical tribunal's declaration answer different legal questions, even when they concern the same couple and overlapping facts.

5. Canon Law Framework

The history of nullity can be traced from scriptural and patristic foundations through medieval legal development to the present Code. Christian teaching on marriage draws on biblical passages such as Genesis 2:24 and Mark 10:9. Over time, ecclesiastical authorities developed more systematic rules concerning impediments and consent. The medieval period was particularly important in the formation of a technical canonical system for deciding matrimonial disputes.

Reynolds [10] *How Marriage Became One of the Sacraments*, identifies the gradual development of the sacramental understanding of marriage. Charles Donahue Jr.'s work on marriage litigation in the later Middle Ages, highlights the gap that could emerge between legal doctrine and the practical operation of ecclesiastical courts. The Council of Trent's *Tametsi* decree of 1563 was a significant stage in regulating the form of marriage in territories where its requirements were promulgated.

The 1917 Code of Canon Law consolidated matrimonial law in the Latin Church and systematized grounds of nullity under impediments, defects of consent, and defects of form. The 1983 Code revised this framework in the light of the renewal associated with the Second Vatican Council and placed marriage within the covenantal language of canon 1055. The Code retains the presumption of validity while providing detailed norms for investigating alleged invalidity.

A major procedural development followed Pope Francis's 2015 motu proprio *Mitis Iudex Dominus Iesus.* The reform simplified aspects of the process for the Latin Church, including the removal of the general requirement for two conforming sentences and the introduction of an abbreviated process before the bishop in cases meeting the required conditions. The

[9] Nwogugu, E. I. *Family law in Nigeria* (3rd ed.) Heinemann Educational Books,2014

[10] Reynolds, P. *How Marriage Became One of the Sacraments: The Sacramental Theology of Marriage from its Medieval Origins to the Council of Trent*. Cambridge:Cambridge University Press, 2016.

reform sought to make ecclesiastical justice more accessible without abandoning the need for evidence or the presumption that marriage is valid.

Canon 1055 of the 1983 Code of Canon Law describes the matrimonial covenant as a partnership of the whole of life, ordered by its nature to the good of the spouses and the procreation and education of offspring, and raised by Christ to the dignity of a sacrament between the baptised. This understanding shapes the Church's emphasis on consent, capacity, impediments, and the indissolubility of a valid and consummated sacramental marriage. According to the Catechism of the Catholic Church, [11] "If free consent is absent or for other reasons causing nullity, the Church may declare the marriage invalid (annulment), meaning it never existed. In these situations, the individuals are free to marry again after fulfilling any natural obligations from the previous union".

Beal *et al* [12] define nullity of marriage as the *"canonical determination that a valid marital covenant was never established due to the absence of valid consent, capacity, or lawful form."* The canonical framework for marriage is principally found in canons 1055–1165. The provisions on diriment impediments, matrimonial consent, and canonical form are especially relevant to nullity. The grounds for nullity under canon law is divided into three broad categories: impediments, defects of consent, and defects of canonical form. Impediments may include a prior bond, disparity of cult where applicable, sacred orders, public perpetual vows, abduction, consanguinity, affinity, and public propriety. The precise application of each impediment depends on the Code and any applicable dispensation or exception.

Defects of consent may arise where consent is absent, seriously impaired, affected by error or fraud, simulated, conditional in a legally relevant way, or given under force or grave fear. Canon 1095 is particularly important in cases involving incapacity to assume essential matrimonial obligations due to causes of a psychological nature. The legal issue is not whether a spouse later proved difficult or immature in ordinary terms, but whether the person had the capacity required by canon law at the time consent was exchanged. A defect of canonical form may also affect validity where the law requires a particular form of celebration and that form was not observed, subject to applicable exceptions.

The canonical presumption of validity is a safeguard against treating a failed relationship as automatically invalid. The person seeking a declaration must establish a legally recognised ground through evidence. The defender of the bond participates to argue for the validity of

[11]Catechism of the Catholic Church, art. 1629

[12]J. P. Beal et al (Eds.). (2000). *New Commentary on the Code of Canon Law*. New York: Paulist Press.

the marriage and ensure that the evidence and law are carefully considered. This institutional design reflects the Church's commitment both to the indissolubility of valid marriage and to justice where a valid bond was never established.

7. Convergence Between Canon and Civil Law

The most important point of convergence is the insistence that marriage must satisfy essential requirements to be valid. Both systems attach importance to consent, legal capacity, and compliance with prescribed requirements. Neither system treats the outward celebration alone as conclusive where the law establishes a defect that invalidates the marriage.

Consent is central in both frameworks. The parties must enter marriage in a legally meaningful way; a purported union cannot be considered valid simply because a ceremony occurred if a recognised defect undermined the necessary consent. Both systems also recognise that a pre-existing bond or prohibited relationship may prevent a valid marriage. Their precise categories and legal consequences, however, are not always identical.

Both systems also seek to protect individuals from being held to a purported marriage that lacked an essential condition of validity. The provisions of nullity of marriage are not designed only to protect the institution of marriage; they can also protect persons from unions entered into without valid consent or legal capacity. Properly understood, nullity is a legal safeguard rather than a device for escaping the consequences of an unhappy marriage.

A further area of convergence is the need for reliable evidence and a structured decision-making process. Civil courts apply statutory rules and procedural safeguards; canonical tribunals evaluate evidence under the Church's procedural law. Each system requires more than a bare assertion that the relationship failed. In both, legal classification and proof are essential to a reasoned decision.

8. Divergence Between Canon and Civil Law

Despite these shared concerns, the two systems differ in their foundations and institutional purposes. Civil law determines civil status and the consequences that Nigerian law attaches to statutory marriage. Canon law determines the canonical status of the marriage within the Church and, where relevant, its sacramental implications. Civil law is primarily statutory and secular in orientation, while canon law is inseparable from the Church's theological understanding of marriage.

The systems also differ in their procedural institutions. Civil nullity is determined by a court with jurisdiction under Nigerian law. Canonical nullity is considered by an ecclesiastical

tribunal under the Code of Canon Law and applicable procedural norms. A decision in one forum does not automatically substitute for a decision in the other. Couples may therefore need advice about both their civil status and their standing in the Church.

The legal treatment of age is an example requiring careful statutory verification. The dissertation notes differences between the minimum ages set out in canon law and Nigerian legal provisions. The Marriage Act, the Matrimonial Causes Act, the Child's Rights Act, and state-level laws interact. The general point remains that age and capacity are governed by different legal instruments and should be assessed within the correct jurisdiction.

The systems also differ in their understanding of indissolubility. Canon law maintains that a valid, consummated sacramental marriage between baptised persons cannot be dissolved by human power except by death, subject to the Church's wider legal treatment of other categories of marriage. Civil law, by contrast, provides for dissolution of a valid statutory marriage through divorce on the grounds and procedures prescribed by legislation. Nullity and divorce therefore have different juridical bases and should not be conflated.

9. Practical Challenges of Nullity of Marriage in Nigeria

The coexistence of civil and canonical rules can create confusion for couples, lawyers, clergy, and court users. One challenge is the mistaken belief that a declaration of canonical nullity automatically changes civil marital status. Another is the assumption that a civil divorce or decree of nullity necessarily settles the canonical question. Each forum applies its own law and determines the issues within its competence.

A second challenge is limited public awareness. Couples may know that a church ceremony and a registry marriage have taken place without understanding the distinct legal consequences of each. Some may confuse annulment with divorce, or assume that the failure of a marriage is itself proof that it was invalid from the start. Public education should explain the distinction in clear language before and after marriage.

Cost, delay, and geographical access may also make proceedings difficult. The dissertation recommends simplifying and expediting civil proceedings and improving access to canonical tribunal services, especially in rural dioceses. Any procedural reform must preserve fairness, the opportunity to present evidence, and the rights of both parties. Efficiency should not be achieved at the expense of due process.

Nullity can also carry social and economic consequences, particularly for women and children. A declaration may affect expectations concerning maintenance, housing, property,

and social standing. *Oraegbunam,* [13] makes a critical examination of the tension between divorce in civil courts and the indissolubility of Christian marriages. He sees the Canonical response as a way to bring stability to family life for the good of society. The legal consequences for children must be assessed under the applicable constitutional and statutory protections; a finding that a marriage was invalid should not be used to stigmatise children. Vulnerable parties may need legal assistance and pastoral support to navigate proceedings and protect their interests. *Alloh* [14] critically analyzes the legal grounds for nullity in Nigerian law and recommends that those who intend to marry under the statute should adhere strictly to the laws regulating marriage in the jurisdiction or locality where the marriage is intended to take place. The adherence to the laws regulating marriages will help intending couples to appreciate the essence and meaning of their union. *Anekwe* [15] recommends, that there is need for Legal and Judicial Reform, enforcement and implementation, awareness and collaboration with religious leaders so as to help in resolving the challenges facing dissolution of marriage in Nigeria.

11. RECOMMENDATIONS

First, marriage preparation should provide accurate information about both the religious and civil requirements applicable to the couple. Where a statutory marriage and a church ceremony are planned, couples should be advised about the legal significance of each, including capacity, existing marriages, consent, age, prohibited relationships, and required formalities.

Second, the scrutiny of consent should be treated as a serious part of marriage preparation. Pastoral ministers and civil registrars should ensure that parties understand the nature of the commitment and are not acting under force, grave fear, deception, or other circumstances that may affect validity. Such scrutiny should be conducted respectfully and should not become arbitrary or discriminatory.

Third, public legal education should distinguish nullity from divorce. Clear information should be made available through legal aid offices, family-law practitioners, marriage registries, diocesan offices, and community education programmes. This would reduce misconceptions and help individuals seek advice from the correct institution.

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[13]I. K. E. Oraegbunam*Civil Divorce in Nigeria Versus Indissolubility of Christian Marriages Under Canonical Jurisprudence: A critical look*. Journal of Customary and Religious Law (2024)., 1(1), 43–58.
[14] B.O.Alloh., *Family Law* (Delta: Delsu Press, 2020) p. 129.
[15]A. E. Anekwe, (2024). *Legal Framework for the Dissolution of Marriage in Nigeria: Prospects, challenges and the Way Forward*. SSRN. https://doi.org/10.2139/ssrn.4971062

Fourth, civil courts and ecclesiastical tribunals should pursue constructive dialogue on issues of common concern, including consent, incapacity, fraud, and protection of children. Such cooperation should not mean that one system's decision is automatically binding on the other. Instead, each system should respect the other's jurisdiction and may, where legally appropriate, consider relevant findings as informative rather than determinative.

Fifth, proceedings should be made more accessible and efficient. Civil procedural reform may include clearer guidance, better case management, and appropriate specialist expertise. Canonical institutions should continue to improve access to tribunal services and explain procedural requirements to parties. Any reform must maintain impartiality and the presumption of validity.

Sixth, the interests of children and economically vulnerable spouses should be safeguarded. Legal and pastoral support should address maintenance, custody, property, housing, and the stigma that may follow a nullity declaration. Decisions about marital validity should not be used to deny children dignity or to ignore the practical consequences for the family.

Seventh, judicial and tribunal decisions should be documented and published where confidentiality rules permit. Accessible and reasoned decisions can improve consistency, support legal scholarship, and help practitioners understand how rules are applied. Confidentiality and personal dignity must remain protected, especially in sensitive matrimonial cases.

Finally, professional bodies, legal academics, church authorities, and relevant public institutions should encourage interdisciplinary research and dialogue. A national conversation involving family-law practitioners, canon lawyers, civil justice institutions, and Catholic leadership could identify recurring problems and promote accurate information without merging the distinct legal systems.

12. CONCLUSION

Nullity of marriage in canon law and Nigerian civil law is a complex subject because it involves legal status, personal relationships, social expectations, and, for Catholic couples, religious beliefs and church regulations. The two systems share the fundamental proposition that a valid marriage requires more than an outward ceremony: the essential conditions prescribed by the applicable law must be present. Consent is particularly important, alongside capacity, freedom from relevant impediments, and compliance with required formalities.

The systems nevertheless remain distinct. Nigerian civil law applies statutory rules through the courts and determines the civil consequences of a marriage. Canon law applies

ecclesiastical norms and evaluates whether a canonical marriage bond was validly established. A civil decree and a canonical declaration should therefore not be treated as interchangeable. Equally, the breakdown of a relationship does not, by itself, establish that the marriage was invalid at its inception.

The comparative approach developed in the supplied dissertation points to a practical way forward: strengthen marriage preparation, improve legal and pastoral education, make proceedings accessible, protect children and vulnerable spouses, and encourage constructive dialogue between civil and ecclesiastical institutions. Such collaboration should respect the independence and purposes of each legal order. Ultimately, a fair approach to nullity must combine legal precision with compassion, protecting human dignity while maintaining the integrity of the institution of marriage.

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