

A DISCOURSE ON IYA CUSTOMARY MARRIAGE IN OKRIKA: FOCUS ON OKURU-KAKA CEREMONY AND A REVISIT OF DIVORCE LAWS IN AFRICA*

Abstract

Divorce was rare, if not absent, in many customary marriages in Africa, and African society had much more stable families in the pre-colonial era. Marriage institution is the bedrock upon which any orderly society is built. A solid marriage institution is necessary for a stable family and society. This paper is a discourse of Iya or Ya customary marriage in Okrika which is basically devoid of divorce despite the infiltration of divorce laws into the fabrics of statutory and civil marriages, as well as most African customary marriages. The paper is a call not to liberalise divorce, but to strengthen the core traditional values of the African society. The State has the role to safeguard the family structure as provided in the African Charter for Human and Peoples' Rights. It was discovered that the courts of law and lawyers are at the forefront in implementing this, and all hands must be on deck to actualise these core values.

Keywords: Iya Customary Marriage, Okrika, Oruku-Kaka Ceremony, Divorce Laws, Africa

1. Introduction

Cultural values have meaning and fulfil certain purposes in the locality and lives of the persons who practice it. However, culture is not static but in a constant flux. People will change their cultural practices when they understand that it is possible to give up harmful practices without giving up meaningful aspects of their culture.¹ A solid marriage institution is necessary for a stable family and society. *Ya* or *Iya* customary marriage in Okrika is a type of marriage amongst customary marriages in Nigeria which has defied the infiltration of divorce law. The words '*Ya*' and '*Iya*' will be used interchangeably in this paper. Although Christianity and modernisation have had much impact on *Ya* marriage, the indissoluble aspect of the marriage remains unaffected to a great extent. This is worthy of commendation for the retention of meaningful aspect of this Okrika culture. Tradition or culture is an important aspect of any society. It helps to mold the views and behavioural patterns of society. Culture includes the values, customs, beliefs and symbols a people accepts and passes from one generation to another.² It can be said that the culture of a people is their image³ reflected in unwritten law known as customary law. Customary law is described as a body of customs and traditions, which regulates the various kinds of relationships between members of the community in their traditional setting.⁴ It emerges from the customs or traditional usage and practice of people in a given community acquired over the years.⁵ Although it is correct that the validity of a custom is derived from the consent or assent of the native community, custom appears to have noble goals or perceived moral principles.⁶ Customary law is structured to reflect the way of life of a people and their attitude towards the laws governing their community.⁷ While it is convenient to view customary law as a blanket description covering very many different systems, there is no uniform customary law which applies to the different tribes and communities in Nigeria. Indigenous customary law differs from tribe to tribe. For centuries, customary law has regulated virtually all kinds of relationships and, notwithstanding the galling influence of the received English law and local legislation, customary law still serves the needs of the ordinary citizens especially in the areas of personal law including marriage, succession and property rights.⁸

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¹ Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Hart Publishing 2009) 412.

² Oguntokun Oluwanike Olufunke, 'Culture and Religion as Impediments to the Elimination of Violence against Women and the Girl-Child in Nigeria' (2017) 1 *BUALJ* 243, 244.

³ Ougua VC Ikpeze, *Gender Dynamics of Inheritance Rights in Nigeria: Need for Women Empowerment* (Folmech Printing and Pub Co Ltd 2009) 63.

⁴ JO Asein, *Introduction to Nigerian Legal System* (2nd edn, Abba Press Ltd 2005) 114.

⁵ Oluwabusayo T Wuraola and Hameenat Bukola Ojibara, 'Revisiting the Effects of Colonialism on the Development of Customary Laws in Nigeria' (2017) 20 (1) *NLJ* 113.

⁶ Margaret Kennedy and Maxwell Eremic, 'Gender Bias: Roadblocks to Equal Distribution of Inheritance in Okrika Clan Rivers State, Nigeria: Implication for Family Counselling' (2016) 4(4) (Oct – Dec) *International Journal of Innovative Legal and Political Studies*, 32; <https://www.researchgate.net/publication/315706610_Gender_Bias_Roadblock_To_Equal_Distribution_of_Inheritance_in_Okrika_Clan_Rivers_State_Nigeria_Implication_For_Family_Counselling> accessed 29 March 2024.

⁷ *ibid.*

⁸ JO Asein, (n4) 115.

Marriage is a universally recognised institution and a respected union all over the world.⁹ The institution of marriage is the very foundation of society.¹⁰ As observed by Justice Tsammani JCA, as he then was, marriage institution is the bedrock or foundation upon which any orderly and civilised society is built. Its collapse will inevitably have a negative effect, not only on the children and the couple involved, but ultimately on the society at large. To this end, it will be in the interest of society that divorce is not granted unless the Court is fully satisfied upon unassailable facts that its grant is the only remedy to the marriage. In other words, the jurisdiction of the Court to dissolve a marriage is one which should not be readily applied, because such jurisdiction involves the status of the parties.¹¹ In the context above, for there to be an orderly society, there is the need for marriages to be stable. Public interest and the law demand that marriage bond must not be set aside unless absolutely necessary and unavoidable.¹²

This paper will delve into the types of marriage in Okrika. The paper shall compare the incidents of *Ya* marriage with that of another customary marriage in Nigeria – the pre-colonial Yoruba customary marriage. *Ya* customary marriage in Okrika does not permit actual divorce. Any such Order by a Customary Court will be fruitless or inchoate until certain steps are taken. The steps to be taken are usually cumbersome or even impracticable, thus, making the Court Order somewhat unenforceable, and the marriage, indissoluble in substance. Consequently, the attitude of the court having jurisdiction over Okrika customary law, seems to be that of reluctance to make an order of divorce of *Ya* marriage. This makes the proclivity towards divorce, either by judicial or non-judicial mode, very minimal among natives. This paper is a wake-up call to some of the core traditional values of the African society and the need to revisit our divorce laws. The divorce laws of Nigeria and some African States such as Namibia and Zambia, selected at random, will be considered.

It is imperative at this juncture to point out, that, in addition to printed texts, formal and informal interviews with natives of Okrika extraction as well as empirical study were resorted to in the course of this research.¹³ Usually, the Courts, in deciding questions of customary law and custom, rely on and admit in evidence the opinions of traditional rulers, chiefs or other persons having special knowledge of the customary law and custom. The Courts also rely on and admit in evidence any book or manuscript recognised as legal authority by people indigenous to the locality in which such law or custom applies.¹⁴ This is the decision of the Supreme Court in the case of *Usiobaifo v. Usiobaifo*.¹⁵ It is on this premise that the writer, in the course of this research, relied on available texts, interviews with Okrika natives having special knowledge of the custom and empirical study.

2. Okrika People and their Native Land

The Okrika people are part of the *Izon (Ijaw)* ethnic group, and they occupy the south-eastern part of Rivers State, Nigeria.¹⁶ The people of *Ijaw*, also known as “*Ijo*” or “*Izon*”, are unarguably the most populous tribe inhabiting the Niger Delta region and arguably the fourth largest ethnic group in Nigeria.¹⁷ The name ‘Okrika’ is the English or Anglicised version of the word, ‘*Kirike*’, which is a short form for ‘*Wakirike*’. The Okrika people are etymologically referred to as the *Wakirike* people. The word ‘*Wakirike*’ means “We are not different”, or rather, “We are the same people”.¹⁸ Okrika native land comprises the Okrika Island, and Okrika mainland which is also known as Port Harcourt mainland. Currently, Okrika speaking people are situated in three Local Government Areas of Rivers State, Nigeria, namely, Okrika (Walga), Ogu/Bolo (Obolga) and Port Harcourt (PHALGA). In

⁹ Iniye Linda Iyaye Ikimi, ‘Legal Implication of Dissolution of Statutory Marriage in a Dual Marriage: A Cultural Relativist Examination’ (2022) 2 (2) *UCC Law Journal* 197.

¹⁰ Funke Fagbohun, *You and the Law: Layman’s Guide to Rights and Liabilities* (MIJ Professional and Publishers Limited 1986) 178.

¹¹ *Oguntoyinbo v Oguntoyinbo* (2017) LPELR-42174(CA) 27 para. A.

¹² *Umar v Umar* (2022) LEPLR-57114(CA) 29-30 para. C.

¹³ I am indebted to many Okrikans for their willingness to disseminate in-depth information on *Ya* marriage, particularly on Okurukaka ceremony. I am particularly indebted to Pastor Amabere B. Jamabo (Head of Oko and Marcus Families of Nangibo and Jamabo-Owu War Canoe Houses in Ogoloma, respectively; Amaopusenibo of Ogoloma Kingdom) for the tour to Okrika communities to personally witness *Ya* marriage with its Okurukaka ceremony. I also owe a debt of gratitude to Sir Granville Isetima Abibo (Senior Advocate of Nigeria) now of blessed memory, Elder Wilcox Abereton (Senior Advocate of Nigeria) and all other natives of Okrika that were interviewed in the course of this research, particularly, Pastor Amabere B. Jamabo (Head of Oko and Marcus Families of Nangibo and Jamabo-Owu War Canoe Houses in Ogoloma, respectively; Amaopusenibo of Ogoloma Kingdom), Pastor (Elder) Dieprie L. Jamabo (Elder and Vice Chairman of Owu and Okolobo War Canoe Houses in Ogoloma, respectively), Mr. Peter Levi Amadi and Dr. Nemi Erema.

¹⁴ Evidence Act 2011, s 70.

¹⁵ (2005) 3 NWLR (pt. 913) 665.

¹⁶ John Kalipa, *Okrika Customary Law (in Perspective)* (Kraft Books Limited 2010) 22.

¹⁷ Pulse.ng, ‘Ijaw Culture: A brief walk into the lives of one of the world’s most ancient people’ <<https://www.pulse.ng/lifestyle/food-travel/ijaw-culture-a-brief-walk-into-the-lives-of-one-of-the-worlds-most-ancient-people/wjfy3mb>> accessed 6 April 2024; Connect Nigeria, ‘7 Facts You Didn’t Know About the Ijaws’ <<https://articles.connectnigeria.com/articles/2015/04/7-facts-you-didn-t-know-about-the-ijaws/>> accessed 6 April 2024.

¹⁸ Charles DS Ogan, *Okrika: A Kingdom of the Niger Delta* (Onyoma Research Publications 2008) 1.

addition, there are people of Okrika stock in Opobo/Nkoro Local Government Area of Rivers State. These are Nkoro people, many of whom are reported to be the descendants of the original inhabitants of Port Harcourt. They migrated upon the acquisition of Port Harcourt by British colonists in 1913.¹⁹ The Okrika people speak a dialect of the *Izon (Ijaw)* language, very similar to Kalabari and Ibani dialects.²⁰ Okrika dialect, with Kalabari and Bonny (Ibani) dialects, fall into the North-Eastern group of dialects which are interintelligible with Brass-Nembe dialect.²¹ Thus, the word ‘Okrika’ may be used to refer to any of two things; the nativity of the Okrika people or a dialect of the *Izon (Ijaw)* language.

3. Types of Marriage in Okrika Custom

There are basically two recognised types of marriage in Okrika namely *Igwa* and *Ya*.²² A renowned author, Opuogulaya, pointed out that other than the two recognised marriages, any other type of relationship between a man and woman whereby off-springs result is a ‘back-door’ affair, and termed *Lekiria*.²³ In essence, *Lekiria* is cohabitation. It is regarded as potential or ‘would-be marriage’, but not marriage properly so called. The Okrika society frowns at this union. It does not condone it, although it sometimes winks at the union with the hope that by cohabitation, a resultant marriage will ensue.²⁴

***Igwa* Marriage**

The *Igwa* marriage is the small-bride-wealth form of marriage or loose form of marriage.²⁵ The nuptial knots are loose, meaning that divorce is permitted. Death of either spouse brings the marriage to an end.²⁶ The marriage is contracted between natives of Okrika or between a daughter of Okrika extraction and a non-native. The word ‘*Igwa*’ means ‘Mixed’.²⁷ Thus, a woman and a man can marry under *Igwa* marriage even though they hail from different families (War Canoe Houses) in Okrika tribe or where the man is from another tribe other than Okrika tribe.²⁸ *Igwa* marriage is basically matrilineal in form.²⁹ The husband does not have full rights over his children, and the wife usually retains her maiden name. The children of such marriage inherit properties from their mother’s lineage.³⁰ Thus, all off-springs from the marriage belong either to the lawful husband of the wife’s mother or to her brothers.³¹ Customary law of inheritance from the paternal family does not apply and a woman and her children may return to her birthplace.³² However, the tight customary rope around the possession of children born under *Igwa* marriage is slackening under the pressure of modern times.³³ Consequently, in recent times, some children of *Igwa* marriage are seen to inherit from their father’s lineage.³⁴

***Ya* Marriage**

The full name for the Okrika word ‘*Ya*’ or ‘*Iya*’ is ‘*Iyaye*’, which means ‘My Own’.³⁵ *Ya* marriage is the big-bride-wealth form of marriage.³⁶ It is patrilineal in form or nature.³⁷ Thus, a woman married under *Ya* marriage ceases to be a member of the family of her parents but solely a member of her husband’s family.³⁸ The desire of some typical Okrika women is that their husbands of Okrika extraction marry them under the *Ya* system of marriage. This is because the marriage gives an Okrika woman an edge over other women; either of Okrika extraction or not, married by *Igwa* system of marriage. It is also the belief of Okrika indigenes that *Ya* marriage is like a woman’s birthright in her husband’s family. Thus, *Ya* marriage gives a woman a pride of place among Okrika communities. It serves as a crown of full authority amongst her husband’s people. It accords a woman the highest form of respect in her husband’s family. It is usually a great honour to an Okrika woman and her father’s

¹⁹ *ibid* 2.

²⁰ *ibid* 29.

²¹ Kay Williamson, ‘Changes in the Marriage System of the Okrika Ijo’ (1962) 32 (1) *Africa: Journal of the International African Institute* 53.

²² Charles DS Ogan, (n17) 38.

²³ EDW Opuogulaya, *The Cultural Heritage of the Wakirike: The Okrika People* (Rivers State Council for Arts and Culture 1975) 9.

²⁴ Alfred S Abam, *The Customs and Traditional of the Okrika People* (SAMAG Stationery Limited 2012) 102.

²⁵ Charles DS Ogan, (n17) 38.

²⁶ *ibid*.

²⁷ EDW Opuogulaya, (n22) 9.

²⁸ *ibid*.

²⁹ Alfred S Abam, (n23) 101.

³⁰ Dokiye Oforibika, ‘The Indispensability of African Religion to the Culture of Bolo People in Rivers State’ 249 <<https://www.ajol.info/index.php/lwati/article/view/79668/69945>> accessed 27 October 2024.

³¹ EDW Opuogulaya, (n22) 9.

³² Charles DS Ogan, (n17) 38.

³³ EDW Opuogulaya, (n22) 9.

³⁴ Dokiye Oforibika, (n29) 250.

³⁵ EDW Opuogulaya, (n22) 7; Alfred S Abam, (n23) 96; Charles DS Ogan, (n17) 7.

³⁶ Charles DS Ogan, (n17) 38.

³⁷ Alfred S Abam, (n23) 96.

³⁸ *Ibid*.

family when her husband marries her by *Ya* marriage which is regarded as the highest form of marriage in Okrika. It is pertinent to point out that *Ya* marriage is incomplete without the *Okuru-kaka* ceremony.

Okuru-kaka Ceremony of Ya Marriage

The climax of *Ya* marriage in Okrika is a special ceremony known as *Okuru-kaka*. Although *Ya* marriage is a type of marriage celebrated amongst the Kalabari tribe, which is also part of the *Izon (Ijaw)* ethnic group, the marriage celebration is devoid of *Okuru-kaka* ceremony. This ceremony is only performed between couples from Okrika extraction. *Okuru-kaka* is the completion or perfection of *Ya* marriage, and it involves tying the nuptial knot with 'Okuru' (raffia cloth).³⁹ The *Okuru* is a raffia palm-cloth consisting of loose threadlike raffia sewn or woven together into one piece like a mat. It is a symbolic palm-cloth. According to Opuogulaya, the effective factor in *Ya* marriage is the provision of one yard of raffia cloth or the *Okuru*, which is tied round the bride's waist seven times by an elderly member of the family calling on the ancestors of the family. The couple is expected to drink together from the same cup, and the knot is thus tied.⁴⁰ Before the *Okuru* is tied on the woman (bride), it will be placed in the family ancestral shrine,⁴¹ libation will be poured to the spirits of the ancestors who are called upon not only to witness the *Okuru-kaka* ceremony, but also to give their consent as the *Okuru* is tied round the waist of the woman seven times.⁴² While libation is being poured, petitions are directed to both the ancestral spirits and deities for connubial blessings.⁴³ Due to modernity and influence of Christianity, there are slight modifications in the marriage ceremony to accommodate Christian *Okuru-kaka* ceremony in order not to deprive Okrika indigenes that are of the Christian faith, the benefit of this customary marriage. At the celebration of Christian *Okuru-kaka*, instead of calling on the ancestors of the family and exchanging vows before a deity in the family shrine, rather Christian priests are consulted and prayers are offered to the Almighty God. Christian priests pray on the *Okuru*, bless it and then hand it over to an elderly woman from the bride's family, who would tie it around the bride's waist in the bride's family compound.⁴⁴

It is pertinent to note that the most vital moment or climax of *Ya* marriage is the tying of *Okuru* around the woman's waist, which is performed in the bride's family during the *Okuru-kaka* ceremony. The bride will be officially tied the *Okuru* by an elderly person chosen by the War Canoe House (family) of the bride.⁴⁵ Once tied, the *Okuru* will not be loosened from the woman's waist until she reaches her husband's family house which may be in the same community or another Okrika community. It is only in the husband's family house that the *Okuru* can be loosened. There, the bride's mother-in-law will use a fathom of traditionally recognised wrapper known as *njiri* (George wrapper), to replace the *Okuru*. The *Okuru* would be loosened and the *njiri* tied around the bride's waist.⁴⁶ That act of loosening the *Okuru*, known as *Okuru-fima*, is the conclusion of the entire *Okuru-kaka* ceremony. At the end of the ceremony, the *Okuru* is kept in a safe place and remains in the possession of the bride forever.⁴⁷ At her death, the *Okuru* will be buried with her. Although *Ya* marriage may, in rare occasions, be contracted between a daughter of Okrika extraction and a man from another tribe, the climax of *Ya* marriage, which is the *Okuru-kaka* ceremony, is usually excluded from the marriage celebration. This is because the worth of the *Okuru* is unknown to the man's tribe, and the concluding part of the ceremony - *Okuru-fima* - is not performed by non-natives of Okrika. *Okuru-kaka* ceremony is the uniqueness and peculiarity of *Ya* marriage in Okrika. It is also one of the distinctive features between *Ya* marriage in Okrika and *Ya* marriage in Kalabari. The Kalabari tradition of *Ya* marriage is devoid of *Okuru-kaka* ceremony.

4. Ya Marriage and the Issue of Divorce

The *Okuru* is a symbol of unbreakable bond between the married couple. Once the *Okuru* is tied and *Okuru-kaka* ceremony is performed, the nuptial knot is expected to be for life and unbreakable at death.⁴⁸ This means that tying the *Okuru* around the bride's waist is symbolic of the marriage' indissolubility.⁴⁹ The woman now belongs completely to the husband's family and simultaneously ceases to be a legitimate member of her family of birth.⁵⁰ Traditionally speaking, the tying of *Okuru* on the bride's waist is an act of sealing which binds the woman to her husband. It signifies that she is bound to her husband and cannot be totally separated from him while she lives,

³⁹ EDW Opuogulaya, (n22) 10; Charles DS Ogan, (n17) 38.

⁴⁰ EDW Opuogulaya, (n22) 8-9.

⁴¹ Ibid 10.

⁴² Alfred S Abam, (n23) 98.

⁴³ Ibid.

⁴⁴ Nemi W Adoki and DB Oforibo Balaka and Okrika Divisional Council of Chiefs, *Marriage Price Structure* (Samag Limited 2015) 12; Dokiye Oforibika, (n29) 250.

⁴⁵ Nemi W Adoki and DB Oforibo Balaka and Okrika Divisional Council of Chiefs, (n43) 11.

⁴⁶ Ibid 11-12.

⁴⁷ John Kalipa, (n15) 48.

⁴⁸ Charles DS Ogan, (n17) 38.

⁴⁹ Dokiye Oforibika, (n29) 250.

⁵⁰ Charles DS Ogan, (n17) 38.

unless she is divorced; which is usually rare.⁵¹ Thus the seal can only be broken at her death. Opuogulaya points out the weighty implication of tying the *Okuru* thus:

By this type of marriage all off-springs of the marriage as well as the wife, unless she is divorced, belong legally and customarily to the husband. The wife can never be married by another man under this type of marriage, unless divorced.... A woman married under *Ya* system can be married under *Igwa* if the *Ya* husband is not actually carrying on with her as husband and wife. But the overriding condition is, that all off-springs of such a marriage belong, not to the biological father, but to the *Ya* husband who by custom is regarded as the legal father of all such children.⁵²

Okrika native law and custom in respect of *Ya* marriage is symbolic and reflects an acceptable usage by the people.⁵³ A wife by *Ya* marriage ceases to be a member of her family of birth, she cannot single-handedly divorce her husband. She must seek the support of her father's family. However, there is paucity or dearth of cases on judicial and non-judicial dissolution of *Ya* marriage. This is because in actual practice, to dissolve the marriage is easier said than done. A man may divorce his *Ya* marriage wife, but this is only in form and not in substance.⁵⁴ *Okuru-kaka* ceremony, which is the climax of *Ya* marriage, signifies that the marriage is indissoluble in substance. The concept of indissolubility of *Ya* marriage is captured by Kalipa in the following words: 'The use of the 'raffia cloth' in an *Iya* marriage under Okrika custom denotes indissolubility of the marriage. Indissolubility in the sense that the woman who contracted an 'Iya marriage' belongs to her husband for life as she cannot by Okrika custom contract another 'Iya marriage'.⁵⁵ As a result of tying the *Okuru* and performing the *Okuru-kaka* ceremony, the man by Okrika native law and custom is expected to accommodate and maintain his wife even when he decides not to continue with the marriage because she belongs to him for life.⁵⁶ Something, culturally significant, has to be done to the *Okuru* (raffia cloth) else any steps taken by the husband in the process of divorce is a mere divorce in form. In substance, she is still his wife because, according to Okrika traditional belief, even the bones of the woman belong to her *Ya* marriage husband after her death. This belief applies even when the divorce is initiated by the wife.

The concept and practice of indissolubility of *Ya* customary marriage has been in existence from time immemorial. In the past, *Ya* marriage was contracted mainly within the *Omaru Wari* (War-Canoe family House under a Chief), and it was almost impracticable for a man from one such House to marry a woman from another House under *Ya* marriage.⁵⁷ One author puts it plainly, stating that originally, there was actually no divorce and the couple could not be separated. Even when the marriage breaks down, the woman would not go back to her parents because by tradition, she belongs completely to the husband's family and ceased to be a member of her family of birth at the moment the *Okuru* was tied on her.⁵⁸ Only the death of the woman terminates the marriage. The death of the man does not terminate the marriage because it does not discharge those who will inherit his property from their obligation of caring for his surviving wife and seeing to her welfare.⁵⁹ In modern times where many women are educated and gainfully employed, the welfare of a deceased man's wife by *Ya* marriage is barely entrusted to relatives of the deceased since the woman and her children not only inherit the property but are capable of managing their inheritance. Generally, the death of a wife terminates a customary marriage completely and for all purposes.⁶⁰ It extinguishes all the usual customary rights and obligations which exist between the families of the two spouses by virtue of the marriage, but the death of the husband, on the other hand, does not necessarily terminate the marriage.⁶¹ Termination of the marriage at the death of the wife and not at the death of the husband *per se* is not peculiar to *Ya* marriage. Customary law regards marriage as coterminous with the life of the customary law wife. This implies that the death of the husband does not necessarily terminate the marriage because a woman may retain the status of a married woman for a number of purposes, which is usually the case, in spite of her husband's death. The fact that divorce of customary marriage is sometimes easy and even without judicial intervention does not alter the position.⁶²

Cumbersome Procedure for Divorce of *Ya* Marriage

It is common knowledge that in modern times, a woman married under customary law may initiate a non-judicial process of dissolving her marriage by leaving her matrimonial home with all her personal belongings and

⁵¹ Nemi W Adoki and DB Oforibo Balaka and Okrika Divisional Council of Chiefs, (n43) 12.

⁵² EDW Opuogulaya, (n22) 7, 9.

⁵³ John Kalipa, (n15) 58.

⁵⁴ Iniye LI Ikimi, 'Development of the Human Rights of Women in a Cultural Milieu' (2018) 9 (2) *NAUJILJ* 62.

⁵⁵ John Kalipa, (n15) 58.

⁵⁶ *ibid*; Alfred S Abam, (n23) 100.

⁵⁷ EDW Opuogulaya, (n22) 8.

⁵⁸ Charles DS Ogan, (n17) 38.

⁵⁹ *ibid* 38-39.

⁶⁰ SN Chinwuba Obi, *Modern Family Law in Southern Nigeria* (Sweet and Maxwell 1966) 378.

⁶¹ *ibid* 156.

⁶² *Ibid*.

informing her husband of her intention; or by permitting a subsequent customary marriage to be conducted with another man, with the aim of refunding the bride price paid by her former husband; or by defiantly indulging in promiscuity while still living with her husband.⁶³ All these acts by a woman may constitute the process of divorce under *Igwa* marriage but not under *Ya* marriage. Despite all or any of these acts, a woman married under *Ya* marriage still belongs to her husband. Divorce of *Ya* marriage contracted between a man and a woman of Okrika extraction is utterly different from the general mode of dissolving customary marriages. A woman may choose to separate from her husband but at her death, custom demands that the man bears the burial rites of the deceased woman. Thus, there cannot be said to be an outright divorce although there may be separation.

Non-Judicial Divorce

Divorce of *Ya* marriage is quite difficult, almost impracticable and most rare.⁶⁴ In the past, it was very rare for a man to divorce his *Ya* marriage wife. On the other hand, a wife could seek to obtain a divorce on very stringent conditions which includes refund as bride price the highest denomination of the currency in use which will be multiplied by the total number of strands counted from the loosened *Okuru* (raffia cloth).⁶⁵ In reality, the nuptial knot which was sealed by the tying of the raffia cloth or *Okuru*, bought by the husband during the marriage ceremony, must be disintegrated as one of the conditions that must be fulfilled in the process of divorce. Where divorce is initiated by the wife, she or a member of her father's family will be expected to disintegrate the raffia (*Okuru*) without allowing any piece to break or cut. Each piece of the raffia has its monetary equivalence which will be stated by the husband. Any broken piece of the *Okuru* is regarded as a full piece and attracts the monetary equivalence of a whole piece. Consequently, the woman's family will be expected to return the monetary equivalence of the entire pieces of disintegrated *Okuru*. The disintegrating of the *Okuru* is the most difficult task in the divorce proceedings of *Ya* marriage. It is difficult to loosen the *Okuru* (entire piece of raffia cloth) without breaking or cutting each strand of raffia thread into shreds or smaller pieces. This is one reason that even in modern times, divorce is very rare under *Ya* marriage. Another reason is the general belief in Okrika that there is no divorce, whatsoever, of *Ya* marriage because the consent of the ancestral spirits remains immutable and cannot be reversed.⁶⁶ For couples that celebrated Christian *Okuru-kaka*, it is the belief that there is no divorce since the Almighty Creator and originator of marriage hates divorce.

Judicial Divorce

Customary marriage can also be dissolved by judicial means. However, *Ya* customary marriage cannot, in reality, be dissolved by a judgment of a Customary Court without the performance of the non-judicial cumbersome procedure of detaching the *Okuru* by the *Ya* marriage wife or her family member, and payment of the price named by the husband for each detached *Okuru*. Any judgment dissolving the *Ya* marriage without the procedure of detaching the *Okuru* will be inchoate. This could be the reason for paucity of decided cases on dissolution of *Ya* marriage. It would be an exercise in futility to commence divorce by judicial means without first disintegrating the *Okuru* and fulfilling all the attached conditions. The *Okuru* is the proof of *Okuru-kaka* ceremony; the completion or perfection of *Ya* marriage. Thus, the *Okuru* symbolises the evidence of *Ya* marriage. Although the Court of Appeal has rightly held in the case of *Adeyemo v. Omobhude*⁶⁷ that no certificate is issued in the case of a marriage contracted under native law and custom and such a marriage can be proved by the credible oral evidence of any person who had witnessed the marriage ceremony in addition to that of one of the spouses,⁶⁸ it appears that under Okrika native law and custom, the *Okuru* serves the same purpose as a certificate of marriage.

To reiterate the above stated fact, several years back, it was near impossible to divorce. Where a couple could no longer live together, they usually separated instead of divorce. If at the long run there must ultimately be divorce where mutual separation alone was not sufficient, the wife's parents or brothers were required to refund double the total amount of money spent by the husband to marry his wife.⁶⁹ More so, divorce proceedings barely reached the final aspect of disintegrating the *Okuru* and paying the monetary equivalence because the husband's consent must first be sought before divorce was commenced by his wife. And where he withheld consent, there was no divorce. One learned author puts it thus: 'With particular reference to Okrika Division ... under the system of marriage known as *Iya* a husband can take steps to divorce his wife but the wife is not permitted by the local customary law to do so unless her husband consents to her doing so. If he refuses to give his consent, the marriage will continue to subsist'.⁷⁰

⁶³ Margaret C Onokah, *Family Law* (Spectrum Books Limited 2003) 168.

⁶⁴ EDW Opuogulaya, (n22) 10.

⁶⁵ Alfred S Abam, (n23) 98.

⁶⁶ Ibid 99.

⁶⁷ (1993) 8 NWLR (pt. 311) 291.

⁶⁸ Ibid 291 [305 para A].

⁶⁹ EDW Opuogulaya, (n22) 10.

⁷⁰ Margaret C Onokah, (n62) 165.

Refusal of the *Ya* husband to give consent would affect the commencement of divorce by judicial means as well. While the wife required her husband's consent to divorce him in the past, the husband did not require any consent from anyone to divorce his wife. According to Kalipa, the symbolic raffia cloth (*Okuru*) is tied round the woman seven times but the same is not done to the man as it is the man that is marrying the woman, and not the woman marrying the man. It is for this same reason that the man can divorce the woman while the woman cannot divorce the man without his consent.⁷¹ This appears to be discriminatory. Many African States, including Nigeria, are placed in a double bind; compelled on the one hand to protect and affirm customary laws whilst also obligated to uphold women's rights to equality and non-discrimination.⁷² A situation where one spouse to a marriage is the repository of consent and can withhold or refuse consent to the detriment of the other spouse appears not only discriminatory but subjugating as well. The Court also frowned at this practice. In the case of *Solomon v Gbobo*,⁷³ the wife of the defendant whom the defendant married under *Ya* customary marriage had left the defendant for another man. The plaintiff who is the father of the defendant's wife sought a declaratory judgment at the High Court that he was entitled to compel the defendant to receive the repayment of the dowry offered by him. Counsel to the defendant contended that the High Court lacked original jurisdiction to hear the case. The Court presided by Holden CJ held that since there was no Customary Court in existence which had jurisdiction, the High Court could assume jurisdiction. In granting the declaratory reliefs sought, the Court held that *Ya* marriage in Okrika native law and custom gives the father the right to sue the husband in respect of the marriage contracted with his daughter, that the Plaintiff's daughter can divorce the defendant without the defendant's consent. Furthermore, the Court held that a custom which the husband can divorce his wife at will, but the wife cannot obtain a divorce unless the husband consents is contrary to natural justice, equity and good conscience. This decision of the Court overrides the cultural practice of obtaining consent before initiating divorce.

5. Cultural Implication of Separation and Remarriage of *Ya* Marriage Wife

Where there is separation and not an outright divorce, the husband is expected, by native law and custom, to bear the burial expenses of his wife if she predeceases him, and specify the place of her internment because her remains belong to him. In a situation where the man predeceases his wife, the family of the deceased man would specify the place of the woman's internment at her death even though she was separated from her husband before her demise. A woman who separates from her *Ya* marriage husband may choose to remarry. She can marry a native of Okrika or a non-native under *Igwa* marriage, but cannot remarry under *Ya* marriage. The Okrika custom frowns at such person remarrying under *Ya* marriage because the woman belongs to her *Ya* marriage husband and is bound to him alone till her demise. Furthermore, if the woman separates from her *Ya* marriage husband and marries a non-native of Okrika under the Marriage Act, that subsequent marriage is not recognised under Okrika native law and custom. The woman is still regarded as belonging to her *Ya* marriage husband and at her death, her corpse will be sent back to her *Ya* marriage husband's family for internment. More so, any child born in the course of promiscuity of a woman married under *Ya* marriage or while she is separated from her husband or while she is remarried under *Igwa* marriage without a proper divorce by the disintegrating of the *Okuru* and payment of monetary equivalence, is customarily regarded as the child of her husband by *Ya* marriage. In that case of *Solomon v Gbobo*,⁷⁴ the substantive issue of the children belonging to the defendant was not decided upon by the court. However, the court, while referring to the custom, held that a custom by which a husband could divorce his wife at will, but the wife could not divorce her husband at will except with the prior consent of her husband was contrary to natural justice, equity and good conscience and therefore unenforceable under section 20(1) of the then High Court Law 1963.

6. Philosophy behind Indissolubility of *Ya* Marriage

Traditionally, the Okrika family is polygynous. As in all the neighbouring tribes, the prospective husband's family gives bride-price to the bride's family.⁷⁵ *Iya* marriage is the most esteemed type of marriage in Okrika having a unique cultural practice. This unique cultural practice is anchored on a philosophy which will be discussed below. According to John Mbiti, philosophy of one kind or another is behind the thinking and acting of every people.⁷⁶ The philosophy behind indissolubility of *Ya* marriage is that a man and a woman joined together in matrimony are one flesh and where vows are taken before a deity coupled with the invoking of ancestral spirits to give consent to the union, such married couple can never be separated because the consent of the ancestral spirits are unalterable.⁷⁷ This is also found in the act of the Almighty Creator of the Universe who removed a rib out of the first-created man (Adam), formed the first-created woman (Eve) from that rib and presented the first-created

⁷¹ John Kalipa, (n15) 58.

⁷² Sonya R Cotton and Anthony C Diala, 'Silences in Marriage Laws in Southern Africa: Women's Position in Polygynous Customary Marriages' (2018) 32(1) *Speculum Juris Law Journal* 18.

⁷³ (1975) ECSNLR 457.

⁷⁴ (1975) ECSNLR 457.

⁷⁵ Kay Williamson, (n20) 55.

⁷⁶ John S Mbiti, *African Religions and Philosophy* (2nd edn, Heinemann Educational Publishers 1990) 1.

⁷⁷ Alfred S Abam, (n23) 99.

woman to the first-created man, thereby instituting marriage and making the couple one bone and flesh.⁷⁸ Furthermore, the one who originated marriage (Almighty Creator) stated that He hates divorce.⁷⁹ This philosophy behind *Ya* marriage is the reason that even if the *Ya* married couple can no longer live together, what is obtainable at best is separation and not divorce. And where in the course of separation, the woman dies, her remains will be taken to her husband by *Ya* marriage for internment. This is because by virtue of the *Okuru-kaka* ceremony the woman became part and parcel of the man and her bones belong to him. This is also the reason that the woman cannot be remarried under *Ya* marriage to another man, and even if she remarries under *Igwa* marriage to a different man, the children of the *Igwa* marriage are still regarded as those of her *Ya* husband.⁸⁰ It is believed that, any exchange of *Ya* marital vow before the Almighty God, for those Okrika natives that are Christians, require the consent of the Almighty God in order for such vows to be broken. And the Almighty Creator has stated that He hates divorce. On the other hand, for those natives that are not Christians, the family deity and ancestral spirits were called upon to give their consent during the *Okuru-kaka* ceremony. Such consent of the ancestral spirits remains immutable and cannot be reversed.⁸¹ One author puts it this way – a ceremony performed before the ancestors to solemnize marriage can never be revoked.⁸²

7. Similarity between *Ya* Marriage and Yoruba Customary Marriage in Pre-colonial Era

Divorce had no place in pre-colonial Nigerian communities.⁸³ The introduction of foreign marriage laws with divorce as the necessary incident has had a tremendous influence on the indigenous attitude towards the formation of marriage and divorce.⁸⁴ Reiterating the issue of no-divorce in indigenous customary laws prior to colonial times, Ajisafe, noted that divorce was not permissible in native law.⁸⁵ Commenting on the Yoruba custom, Johnson stated that some of the peculiarities that mark the Yoruba wedded life are that women are never really married twice; that once married, they are attached forever to the house and family of their deceased husbands; that divorce is very rare, so rare as to be practically considered as non-existing; that a woman divorced from her husband can never be married.⁸⁶ Both Okrika and Yoruba tribes shared similar features in relation to marriage and divorce during the pre-colonial era. Until date, Okrika tribe still retains its cultural practice of indissolubility of *Ya* marriage.

8. Divorce and African Society

Other than *Ya* marriage in Okrika, divorce was rare in many customary marriages across the African continent, and African society had much more stable families than what is obtainable of recent. According to Elias, marriage under ancient customary law was almost always indissoluble, as it was looked upon as a permanent social and spiritual bond between man and wife on the one hand and their respective families on the other.⁸⁷ However, from the advent of colonization and the imposition of colonial laws which were further incorporated into municipal laws in Africa, divorce has infiltrated into African traditional marriages. Thus, resulting in broken marriages, broken families and broken societies. A stable marriage has undeniable impact on the family and society at large. This is because marriage is the root of the family and the society. Marriage can also be described as the only solid foundation for family life, and that without it, there cannot be a stable family, and by extension, a stable society.⁸⁸ The family is the smallest unit in the social structure of every society. The family is the basis of every human community, and may be regarded as the nucleus of society.⁸⁹ In the Tanzanian case of *Mathias s/o Masaka v. Republic*,⁹⁰ the Court of Appeal reiterated the point that a family is the nucleus of any society. Consequently, the welfare of a family or of families anywhere should be the concern of the community. It was also pointed out by the Supreme Court in the Namibian case of *Chairperson of the Immigration Selection Board v. Frank and Another*,⁹¹ that family is the natural and fundamental group unit of society and an institution of Namibian society. Family is the most important primary group in the society. As such, it is universal in the sense that no human

⁷⁸ Holy Bible, Genesis 2:21-24.

⁷⁹ Holy Bible Malachi 2:16.

⁸⁰ EDW Opuogulaya, (n22) 7, 9.

⁸¹ Alfred S Abam, (n23) 99.

⁸² RE Bradbury and PC Lloyd, *The Benin Kingdom and the Edo-speaking Peoples of South-Western Nigeria – Together with a Section on the Isekiri* (International African Institute 1957) 190.

⁸³ Margaret C Onokah, (n62) 16.

⁸⁴ *ibid.*

⁸⁵ Ajayi Kolawole Ajisafe, *The Laws and Customs of the Yoruba People* (George Routledge & Sons Ltd 1924) 54.

⁸⁶ Samuel Johnson, *The History of the Yorubas: From the Earliest Times to the Beginning of the British Protectorate* (CMS Nigeria Bookshops 1921) 116.

⁸⁷ T Oluwale Elias, *The Nigerian Legal System* (Routledge & Paul 1963) 298.

⁸⁸ MA Ayemeye, 'The Illegality of Cohabitation' being a paper delivered on the occasion of International Federation of Women Lawyers (FIDA) Workshop tagged "Towards a Better Tomorrow" held at Yenagoa, Bayelsa State on 6th June, 2012, 5.

⁸⁹ EI Nwogugu, *Family Law in Nigeria*, (rev edn, Heinemann Educational Books (Nigeria) Plc 1990) lxxxvii.

⁹⁰ (Criminal Appeal No. 274 of 2009) [2014] TZCA 272 (11 December 2014).

⁹¹ (SA 8 of 1999) [2001] NASC 1 (5 March 2001).

society could possibly exist or has ever existed without some form of family organisation.⁹² The African Charter on Human and Peoples' Rights which was adopted by the Heads of State and Government in Nairobi, Kenya, on 27th June 1981 and which entered into force on 21st October 1986 in accordance with Article 63 of the Charter, provides in Article 17.3 that the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State. Article 18.1 of the Charter provides that the family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and morals. Furthermore, the Charter provides in Article 18.2 that the State shall have the duty to assist the family, which is the custodian of morals and traditional values recognized by the community. This means that the State has a role to play in the safeguarding of family structure in society. Both the Court, law and even lawyers have a part to play in order to achieve a stable society in Africa. The purpose of law in any society claiming to be civilized is to bring order, stability and interdependence consciousness in a given society.⁹³ African traditional values of the past included sustainable marriages and secured family bond. All hands must be on deck to ensure that the marriage institution in Africa, with its laws, objectives and traditions are preserved.

It is well known that customary marriage is a contractual relationship between two families - the husband's family and the wife's family. Divorce of such marriage has to involve two families as well. Generally, either the husband or the wife of a customary marriage may initiate divorce action. Once divorce has been initiated the families of the two spouses usually become involved. They participate in the divorce proceedings, just as they did in contracting the marriage.⁹⁴ Generally, there are two forms of dissolution of customary marriages, viz, non-judicial and judicial divorce. The non-judicial divorce; also known as extra-judicial divorce, is one made without resort to the courts.⁹⁵ Usually, a couple would have recourse first to non-judicial mode. In the event of a deadlock of the dispute, judicial mode is then resorted to as a final recourse.⁹⁶ On the other hand, statutory marriage in Nigeria or civil marriages as it is referred to in some other jurisdictions, is said to be dissolved when it is terminated by death or divorce.⁹⁷ In a strict sense, divorce in some jurisdictions such as Namibia means the termination of a marriage by an order of court.⁹⁸ Thus, statutory or civil marriage can only be dissolved via judicial means. The court can only pronounce a decree of dissolution of the marriage where it finds that the marriage has broken down irretrievably after certain facts culminating into irretrievable breakdown of marriage as contained in the marriage law or Matrimonial Causes Act of the jurisdiction in question has been proved.⁹⁹ Referring to the Zambian Court, Mushota observed that the duty of the Court is to inquire into the facts alleged to establish irretrievable breakdown of marriage. If there is anything inconsistent with this, then the condition has not been met.¹⁰⁰ Irretrievable breakdown of marriage has been described as a marriage which stood no chance because the parties to the marriage have ceased cohabiting and one of the parties or both intend not to resume cohabitation.¹⁰¹ Divorce law has always been one of the most contentious subjects in family law. Marriage and its place in society are seen as significant political and cultural issues, with the health of society somehow bound up with the extent to which marriages appear to be stable or to be failing.¹⁰² It has been observed that making divorce too easy is viewed by some persons as a means of undermining traditional family life as well as the stability of society.¹⁰³ Furthermore, it was observed that some persons have sought to liberalise divorce in order to assist the emancipation of women from the traditional role of being a house wife.¹⁰⁴ However, it is the suggestion of this paper that the State can protect the family institution and by implication, marriage institution, by the Court encouraging more of reconciliatory meetings between estranged spouses. Aside divorce, there are other matrimonial causes which can be resorted to, such as judicial separation. Lawyers have a role to play in preserving marriages. Clients seeking divorce can be dissuaded from it through alternative dispute resolution mechanisms or alternative matrimonial causes. Lawyers must take heed and not wish to pull a fast one on their clients and the community at large by putting their financial interests over and above the interests of the civilized society.¹⁰⁵

⁹² EE Ezewu and TO Fasokun and CS Akpe and MA Oluduro, *Sociological and Philosophical Foundations of Education* (Heinemann Educational Books (Nigeria) Limited 1981) 26.

⁹³ *N.B.N. Ltd. v Savol W.A. Ltd.* (1994) 3 NWLR (pt. 333) 435.

⁹⁴ Margaret C Onokah, (n62) 165.

⁹⁵ Funke Fagbohun, (n9) 182.

⁹⁶ Margaret C Onokah, (n62) 166.

⁹⁷ EL Johnson, *Family Law* (2nd edn, Sweet & Maxwell 1965) 29.

⁹⁸ Dissolution of Marriages Act 2024, s1.

⁹⁹ Matrimonial Causes Act (MCA) (Cap M7) LFN 2004, s15(1) and (2); Matrimonial Causes Act (MCA) 2007 of Zambia, ss8 and 9; Dissolution of Marriages Act 2024 of Namibia, s2.

¹⁰⁰ Lilian Mushota, *Family Law in Zambia: Cases and Materials*, (University of Zambia Press, 2005) 157.

¹⁰¹ B McKenna, 'Breakdown of Marriage' (1967) 30(2) *Modern Law Review*; 14.

¹⁰² N Lowe and G Douglas, *Bromley's Family Law* (10th edn, Oxford University Press, 2007) 262; *Dr. Mutombo v Livian Mutombo* (HP/D 181 of 2009) [2012] ZMHC 83 (13 December 2012).

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *NBA v Ofomata* (2017) 5 NWLR (pt. 1557) 128.

9. Conclusion

The Okrika people are part of the *Izon* or *Ijaw* ethnic group which is arguably the fourth largest ethnic group in Nigeria. This paper discussed customary marriages of the Okrika people with particular reference to *Iya* or *Ya* marriage. The unique aspect of *Ya* marriage is that once the final segment of the marriage known as *Okuru-kaka* has been done, the woman is regarded as bound to her *Ya* husband forever; both in her lifetime and at death.¹⁰⁶ Thus, divorce is quite rare because the procedure for divorce is cumbersome. At best what is obtainable in *Ya* marriage is separation. The *Ya* husband is responsible for the burial expenses of his estranged wife at her death and he decides the place of her internment because in substance, there is barely any divorce between the couple. If the husband predeceases his estranged wife, the family of the husband will be responsible for the burial expenses and place of internment of the woman at her death. Only the woman's death can actually dissolve the marriage after internment has been done. The husband's death does not dissolve *Ya* marriage.

Unlike statutory marriage which is dissolved by a decree of dissolution of marriage made by a court of competent jurisdiction, *Ya* marriage cannot, in reality, be dissolved by a judgment of a court only. Any judgment which orders the dissolution of *Ya* marriage will, in essence, be inchoate. This is because the non-judicial procedure of detaching the *Okuru* and paying the price quoted by the *Ya* husband for each detached *Okuru* must be done before a divorce can be said to have taken place. However, such divorce is only in form and not in substance. There cannot be said to be any divorce even if an Order has been given by a court for dissolution of *Ya* marriage. The customary court would also be wary in order not to make an Order in futility. More so, the *Ya* husband may not give his consent to commence the non-judicial procedure for divorce. Where consent is not granted, the *Okuru* which serves as a symbol or proof of the existence or continuance of *Ya* marriage will not be detached. However, the Court has frowned at the issue of withholding consent.

The indissolubility or no-divorce rule is not only applicable to *Ya* marriage. It is also a feature of statutory or civil marriages in some jurisdictions. However, it is for just a period of two years in Nigeria, which can be abridged with the leave of court.¹⁰⁷ In Zambia, the no-divorce rule is for a shorter period of one year.¹⁰⁸ The rate of divorce, particularly for statutory marriage, is quite on the increase. It appears that customary marriages are even much more enduring in recent times than statutory or civil marriages. There is the need to strengthen the marriage institution in Africa, which is the bedrock of society. Thus, divorce should not be liberalised. It is thus recommended that the no-divorce rule in statutory or civil marriages be extended beyond the shorter period provided in the different laws. Reconciliation between estranged spouses through Court-centred and non-Court-centred alternative dispute resolution mechanisms be made mandatory and encouraged by lawyers, Court, State and stakeholders. Where all efforts at reconciliation fail, estranged spouses should be encouraged to resort to other matrimonial causes such as judicial separation, especially where there are children born to the marriage.

¹⁰⁶ Iniye LI Ikimi, (n53) 62.

¹⁰⁷ MCA (Cap M7) LFN 2004, s30.

¹⁰⁸ MCA 2007, s 6 (1).