

CHAPTER 106

LEGITIMACY LAW

ANSI
Cap 81

A Law to provide for legitimation of children born out of wedlock and for connected matters.
(27th August 1991)

Short title

1. This law may be cited as Legitimacy Law.

2. In this law –

interpretation

‘Christian marriage’ means a marriage which is recognized by the law of the place where it is contracted as the voluntary union for life of one man and one woman to the exclusion of others.

“date of legitimation”; means the date of the marriage leading to the legitimation or where the marriage occurred before the commencement of the law:

“disposition” means an assurance of any interest in property by any instrument whether inter vivos or by will;

“intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

“legitimated person” and means a person Legitimated by this law;

‘marry’ ‘married’ and marriage” refer to Christian marriages only

3. (1) Subject to the provision of this section, where the parents or an illegitimate person marry or have married one another, whether before or after the commencement of this Law, the marriage renders that person of living legitimates- from the commencement of this law domiciled in Nigeria shall, if the father of the illegitimate person was or is at the date of the marriage or from the date of the marriage whichever last happens;

Legitimation
by subsequent
marriage of
parents

(2) The legitimation of a person under this law does not enable him or his spouse, children or remoter issue to take any interest in real or personal property save as is hereinafter in this Law expressly provided.

Decrees of
legitimacy
of
legitimated
person

4.(1)A person claiming that he or his parent or any more remote ancestor became or has become a legitimated person may apply by petition to the High Court for a decree declaring that the petitioner is the legitimated child Of his parents.

5(1) Subject to the provisions of this Law, a legitimated person, and his spouse children or more remote issue shall be entitled to take interest –

(a) in the estate of an intestate dying after the date of legitimation.

(b) under any disposition coming into operation after the date of the legitimation.

(2) Where the right to any property, real or personal, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall ranks if he or they become legitimated by virtue of this Law, and if more than one such legitimated person become legitimated at the same time, they shall rank as between themselves in order of seniority:

Provided that nothing in this subsection shall confer preferential rights on legitimated children when succession to property depends on customary law.

(3)This section applies only if and so far as a contrary intention is not expressed in the disposition and shall have effect subject to the term of such disportion and to the provisions therein contained.

6.Where a legitimated person or a child or more remote issue of a legitimated person dies intestate in respect of all or any of his real or personal property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

.7. Where an illegitimate person dies after the commencement of this Law and before the marriage of his parents leaving any spouse. children or more remote issue living at the time of the marriage, then, if that person would, if ;living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Law with respect to the taking of interests in property by. or in succession to. the spouse, children and remoter issue of a legitimated person shall apply as if such person as aforesaid had been a legitimated person and the date of the marriage of this parents had been the date of legitimation.

Rights of legitimated persons and others to take interest in property.

Succession on intestacy of legitimated person and their

Application to illegitimate person dying before marriage of parents.

Personal rights and obligation of legitimated persons.

8. A legitimated person shall have the same rights, and shall he under the same obligations in respect of the maintenance and support of himself or of any other person ns if he had been born legitimate, and subject to the provisions of this Law, the provision of any law relating to claims for damages, compensation, allowance, benefit, or otherwise by or in respect of a legitimate child shall apply in like manner to the case of a legitimated person.

9, (I) Where the parents of an illegitimate person marry or have married one another, whether before or alter the commencement of this Law. and the father of the illegitimate person was or is. at the time of the marriage, domiciled, in a country, other than Enugu State of Nigeria by the Law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in Enugu State of Nigeria be recognized as having been so legitimated from the commencement of this Law or from the date of the marriage, whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country to which legitimation by subsequent marriage was permitted by law.

Provisions
as to
persons
legitimated
by
extraneous
law.

(2) All the provisions of this Law relating to legitimated persons and to the taking of interests in properly by or in succession to a legitimated person and the spouse, children and more remote issue of a legitimated person (including those relating to the rate of death duties) shall apply in the case of a person recognized .is having been legitimated under this section, or who would, had he survived the marriage of his parents, have been recognized: and, accordingly this Law shall have effect as if references therein to a legitimated person included a person so recognized as having been legitimated.

(3) For the purposes of this section, the expression "country" includes any part of the commonwealth,as well.as a foreign country.

10. (I) Save as provided in subsection (3), where, after the commencement of this Law. the mother of an illegitimate child, such child not being a legitimated person, dies intestate as respects all or any of her real or personal property, and does not leave any legitimate issue her surviving the illegitimate child, or if he is dead, his issue shall be entitled to take any interest therein to which he or such issue would have been entitled it he had been born legitimate

(2) Save as provided in subsection(3), where, after the commencement of this Law,an illegitimate child, not being a legitimated person, dies intestate respect of all or any of his real

Right of
illegitimate
child of
mother of
illegitimate
child to
succeed on
intestacy of
the other

or personal property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had born legitimate and she had been the only surviving parent.

(3) Nothing in this section shall affect inheritance or succession under customary law when the mother of the illegitimate child is a citizen of Nigeria.

11. Nothing in this Law shall affect the operation or construction of any disposi ion coming into operation before the commencement of this Law. or alTcct any rights under the intestacy of a pet son dying before the commencement of this Law or affect any rights under the intestacy of a person dying before the commencement of this Law.

SUBSIDIARY LEGISLATION

Legitimacy Law

LEGITIMACY RULES

I. These rules may be cited us Legitimacy Rules

Short title

2. In these Rules "petitioner" means a person applying for a legitimacy declaration and "petition" has a corresponding meaning.

Interpretation

3, The practice and High Court Rules, shall so far as practicable govern all proceedings under the Legitimacy Law. subject nevertheless to the particular provisions of these rules.

Practice and rules (leader)

4, (1) A petition shall be headed ‘In the matter of the legitimacy Law’, and In the matter of (the person to be declared legitimated) and shall be according to the prescribed form, with such variations and additions as the circumstances may require, and shall state amongst other matters-

Matters to be stated (Petition)

(a) the place and date of the marriage;

(b)the status and residence of eachof the parents and the occupation and domicile of the father of the person whose legitimacy the Court is asked to declare-

(i) at the date of his birth,

(ii) and at the date of the marriage.

(c) whether there is living other issue of the parents of such person as aforesaid and the respective names and dates of the birth of any such issue;

(d) the person (if any) affected by the legitimation of such person as aforesaid and the value so far as is known of the property (if any) thereby involved;

(e) whether any, if so what previous, proceedings under the Legitimacy Law or, otherwise with reference to the paternity of such person as aforesaid, or the validity of the marriage leading to his legitimation have been taken in any court;

(f) that there is no collusion.

(2) A petition shall also include an undertaking by the petitioner (if not an infant or person of unsound mind) to pay the costs of the respondents if the Court shall so direct.

(3) If the petitioner is an infant or person of unsound mind, he shall petition by a next friend and the full names, occupation or description, and residence or place of business of the next friend shall be stated in the petition and there shall be lodged with the petition an undertaking to be responsible for costs.

5. If the petitioner does not reside in Enugu State the petition shall state an address within Enugu State at which the petitioner may be served with any summons, notices, order of Court or other process.

6. Where it appears on the presentation of a petition that the petitioner does not reside in Enugu State the petition shall not be filed until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the Registrar

Provided that where the petition is filed through a legal practitioner, an undertaking by him, in the form to be approved by the Registrar, to be responsible for the costs shall be sufficient.

7. The respondents to a petition shall be the Attorney-General of Enugu State and all persons whose interests may be affected by the legitimacy declaration asked for, and the Court may at any time direct any person not made respondents to be made respondents and to be served

Petitioner
resident
outside Enugu
State

Security for
costs by
petitioner
resident outside
Enugu State

Person to be
respondents

with the petition and affidavit, and may adjourn the hearing of the petition for that purpose on such terms as to costs or otherwise as may be just.

Affidavit of
verification

8. The petition shall be accompanied by an affidavit made by the petitioner, or by his next friend (if any) verifying the facts of which he has personal knowledge and deposing as to his belief in the truth of the other facts alleged in the petition, and the affidavit shall be filed with the petition.

Copies of
petition to
be filed

9.(1) There shall be filed with the petition as many copies of the petition and the affidavit in which there are respondents to be served and also two copies for use of the Court

(2) There shall be lodged with the petition every birth, death or marriage certificate intended to be relied upon at the hearing

10(i) A copy of the petition and a copy of the affidavit shall be delivered or sent by registered post by the petitioner to the Attorney-General at least two months before the petition is presented or filed.

Copies of
papers to be
sent to
Attorney
General

(2) Any document or notice addressed to the Attorney-General shall be addressed to him at Attorney-General's Chambers, Ministry of Justice, Enugu.

11.(1) A sealed copy of the petition and affidavit shall unless the court otherwise directs be served by a bailiff or by a police constable fifty-six days at least before the hearing on every respondent (other than the Attorney-General) shall be endorsed with a notice in the prescribed form.

Personal service
on other
respondents

(2) At least fifty-six days before the day where the petition will be heard shall be given by the Registrar to the Attorney-General.

12.(1) A respondent may within twenty-eight days after service of the petition upon him file an answer to the petition.

Filing of
answers

(2) Every answer which contains or matters other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent verifying such other

matter as far as he has personal knowledge thereof, and deposing to his belief in the truth of i
he rest of such other matter.

(3) There shall be filed with the answer as many copies of the answer and the affidavit (if
any) as there are other parties to be petitioned and also two copies for the use of the Court

(4)The Rcgistrar shall within forty-eight hours of receiving them send by post one sealed
copy of the answer and the affidavit (if any) to the petitioner, the Attorney General, and other
respondent.

Evidence

13.Evidence on the heaeing of the petition shall be given orally;

Provided that the court or a judge in chambers may .on application made before or at hearing
‘for good cause shown’direct that any particular fact or facts alleged in the petition or answer
may be proved by affidavit.

Costs

14 The Court may make orders as to costs as it shall think just.

15A copy of the order made on the hearing of a petition sealed with the seal of the Court shall
be supplied by Registrar to any party to the proceedings on payment of the prescribed fees.

Copy of
order to be
supplied