

**NAURU**

**MATRIMONIAL CAUSES ACT**

**AN ACT**

**To make new provision relating to matrimonial causes, maintenance and declarations of legitimacy.**

**(Certified: 8th November, 1973)**

**Enacted by the Parliament of Nauru as follows:**

**PART I - PRELIMINARY**

**SHORT TITLE AND COMMENCEMENT**

**1.** This Act maybe cited as the Matrimonial Causes Act 1973 and shall come into force on a date to be notified by the Minister in the Gazette.

**INTERPRETATION**

**2.** In this Act, unless the context otherwise requires-

"decree of nullity" includes-

- (i) a decree declaring that a marriage is void; and
- (ii) a decree annulling a marriage;

"divorce" means dissolution of a subsisting marriage;

"marriage" includes avoid marriage;

"matrimonial cause" means a suit of any of the types referred to in section 3;

"petition for nullity" includes -

- (i) a petition for a declaration that a marriage is void; and
- (ii) a petition for a marriage to be annulled;

"relevant child" means, in relation to any marriage, a child who is -

- (a) a child of both parties to that marriage; or
- (b) a child of one party to that marriage who has been accepted as one of the family by the other party;

and in paragraphs (a) and (b) of this definition -

"child" includes illegitimate child and adopted child;

"the Court" means the Family Court.

### **PROCEEDINGS IN MATRIMONIAL CAUSES TO BE IN THE FAMILY COURT**

3. (1) All suits for -

- (a) divorce;
- (b) judicial separation;
- (c) presumption of death and dissolution of marriage;
- (d) annulment of marriage;
- (e) declaration that a marriage is void,

shall be commenced in, and heard and, subject to the provisions of section 48 of this Act, finally determined by, the Family Court.

(2) Every matrimonial cause shall be commenced by a petition.

### **PART II - DIVORCE**

#### **RESTRICTIONS ON DIVORCE PETITIONS WITHIN THREE YEARS OF MARRIAGE**

4. (1) Subject to the next following subsection, no petition for divorce shall be presented to the Court before the expiration of the period of three years from the date of marriage, hereafter in this section referred to as "the specified period".

(2) The Chairman of the Court may, on an application made to him, allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; but in determining the application the Chairman shall have regard to the interests of any relevant child and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.

(4) If it appears to the Court, at the hearing of a petition for divorce presented in pursuance of leave granted under this section, that the leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the Court may -

- (a) dismiss the petition, without prejudice to any petition which may be brought after the expiration of the period of three years from the date of the marriage upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or

(b) if it grants a decree, direct that the decree shall not become absolute until the expiration of that period

### **DIVORCE NOT PRECLUDED BY PREVIOUS JUDICIAL SEPARATION**

5. (1) A person shall not be precluded from presenting a petition for divorce, or the Court from granting a decree of divorce, by reason only that the petitioner has at anytime, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation under the provisions of this Act or under the Matrimonial Causes Jurisdiction Ordinance 1910 of the Territory of Papua in its application to Nauru.

(2) On a petition for divorce in such a case as is mentioned in the preceding subsection, the Court may treat the decree of judicial separation as sufficient proof of the facts established as constituting the ground on which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of a petition for divorce in such a case as is mentioned in subsection (1), a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation shall, if the parties have not resumed cohabitation and the decree has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition

### **JOINDER OF OTHER PARTIES**

6. (1) Where-

(a) a party to a suit for divorce alleges in his petition or answer that his spouse has behaved in such a way that he cannot reasonably be expected to live with his spouse; and

(b) the behaviour alleged includes an allegedly improper association with any other identified person,

the party making the allegation shall serve on such person a copy of the petition or answer containing the allegation together with a notice to such person that he may apply to the Court ex parte by summons to be made a party thereto if he wishes;

Provided that the Court may, if it thinks fit, upon application by summons, direct that a copy of the petition or the answer need not be served on any such person if he is outside Nauru.

(2) No person other than a spouse of the marriage to which the petition relates shall be joined as a party to a suit for divorce unless he is a person with whom a spouse of that marriage is alleged to have had an improper association and he applies to be so joined. If he is joined as a party to the suit, he shall be known as an "additional party".

### **NO ORDER TO BE MADE AGAINST ADDITIONAL PARTY EXCEPT FOR COSTS**

7. (1) No order shall be made in any matrimonial cause against an additional party thereto except for the payment of costs resulting from his participation in the suit.

(2) Nothing in this section shall be taken as precluding any person whose marriage has been dissolved under this Act from commencing proceedings against any other person for enticement of such first-mentioned person's spouse under section 46 of this Act.

### **BREAKDOWN OF MARRIAGE TO BE SOLE GROUND FOR DIVORCE**

8. The sole ground on which a petition for divorce may be presented to the Court by either party to a marriage shall be that the marriage has broken down irretrievably.

### **PROOF OF BREAKDOWN OF MARRIAGE**

9. (1) The Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless -

(a) The Court is satisfied of one or more of the following facts -

(i) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(ii) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(iii) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted; or

(iv) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition; or

(b) all the conditions set out in subsection (1) of section 10 are fulfilled.

(2) In the preceding subsection references to the petitioner and the respondent respectively shall, where the respondent in his answer admits that the marriage has broken down irretrievably but alleges facts establishing the breakdown different from the facts alleged by the petitioner, be taken, in respect of those facts to refer to the respondent and the petitioner respectively.

### **PROOF IN CERTAIN CIRCUMSTANCES**

10. (1) The conditions referred to in paragraph (b) of subsection (1) of section 9 are -

(a) that the parties to the marriage are living apart at the time of filing the petition and, subject to the next following subsection, have lived apart continuously throughout the period between the filing of the petition and the grant of the decree dissolving the marriage;

(b) that, subject to subsection (3), the parties have both attended before the Court on one or more occasions, as required by the Court, in every month for a period of six months after presentation of the petition;

(c) that, subject to subsection (4), on every occasion on which a party has attended before the Court he has stated that he wishes the marriage to be dissolved;

(d) that the Court is satisfied of the voluntary nature of every statement by a party that he wishes the marriage to be dissolved and is further satisfied that he understands the consequences of that statement; and

(e) that the Court has attempted to promote reconciliation of the parties on every occasion on which either of them has attended before in the course of the proceedings.

(2) For the purpose of paragraph (a) of the preceding subsection, where the parties resume living together as the result of attempts by the Court to reconcile them, they shall be deemed to have continued to live apart during that time if it does not exceed three months:

Provided that, where the parties, having resumed living together as the result of attempts by the Court to reconcile them, again separate and live apart, a decree for dissolution of the marriage shall not be granted until three months after the last date on which such separation took place and the parties resumed living apart and unless after the said last date the parties have continued to attend before the Court once or more, as required by the Court, in every month up to the grant of the decree and each has stated on every such occasion that he wishes the marriage to be dissolved.

(3) Notwithstanding the provisions of paragraph (b) of subsection (1), where, as the result of an attempt by the Court to reconcile the parties, the parties have resumed living together, it shall not be necessary for them to attend before the Court while they are living together.

(4) Notwithstanding the provisions of paragraph (c) of subsection (1), it shall not be necessary for any party to have stated that he wishes the marriage to be dissolved on any occasion when he has agreed to be reconciled with the other party, whether such agreement is conditional or unconditional:

Provided that a decree for the dissolution of the marriage shall not be granted unless on every occasion on which the parties have attended before the Court during the three months immediately preceding such grant both parties have stated that they wish the marriage to be dissolved.

## **EVIDENCE IN DIVORCE SUITS**

**11.** (1) On the hearing of a suit for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the parties.

(2) For the purpose of sub-paragraph (ii) of section 9(1) (a) the Court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the Court is such that, had that

party not been so incapable, the Court would have inferred that his desertion continued at that time.

(3) For the purposes of this Act a husband and wife shall be treated as living apart unless they are living with each other in the same household.

(4) Where as provided for by sub-paragraph (iii) of section 9(1) (a) any party attends before the Court and consents to a decree being granted, or evidence is given to prove such consent, the Court shall not grant the decree unless it is satisfied that that party has been given such reformation as will enable him to understand the consequences to him of his consenting to a decree being granted.

## **PROVISIONS DESIGNED TO ENCOURAGE RECONCILIATION**

**12.** (1) If at any stage of proceedings for divorce, other than proceedings in which the parties rely upon compliance with the provisions of section 10 to establish that their marriage has broken down irretrievably, it appears to the Court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation. Such power is additional to any other power of the Court to adjourn proceedings.

(2) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the Court to support his allegation, that fact shall be disregarded in determining for the purposes of sub-paragraph (i) of section 9(1)(a) whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(3) In considering for the purposes of paragraph (a) of section 9(1) whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period not exceeding six months, or of any two or more periods not exceeding six months in all, during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case maybe.

(4) References in this section and in Section 10 to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

## **DECREE OF DIVORCE GENERALLY TO BE DECREE NISI IN FIRST INSTANCE**

**13.** (1) Subject to the provisions of subsection (3), every decree of divorce shall in the first instance be a decree nisi.

(2) Subject to section 40 and to any direction given under paragraph (b) of section 4(4), a decree nisi of divorce shall become absolute -

(a) if no appeal against the decree nisi as commenced within the time limited for such an appeal and no application for financial protection has within that time been made by the respondent under section 17, on the expiration of that time;

(b) if an application for financial protection has been made within that time but no appeal against the decree nisi has been commenced within that time -

(i) upon the petitioner complying with any order made by the Court under section 17;

(ii) on the determination of the application where no order is made for the petitioner to make financial provision or to undertake to do so; or

(iii) on the expiration of the time limited for an appeal, whichever is the later; and

(c) if an appeal against the decree nisi has been commenced within that time –

(i) if it is dismissed, upon such dismissal;

(ii) upon its discontinuation; or

(iii) upon the expiration of the originally limited for the commencement of an appeal,

whichever is the later.

Provided that, if an application for financial protection has been made within the time originally limited for commencing an appeal and the application has not been determined or discontinued at the time when the appeal is dismissed or discontinued, the decree nisi shall become absolute upon the determination or discontinuation of the application, or as ordered by the Court in the determination of the application, and not before.

(3) Subject to section 40, where both parties to the marriage -

(a) are present in court;

(b) state that they do not intend to appeal against the decree; and

(c) consent to a decree absolute being pronounced forthwith.

then, unless the Court has held that the only fact mentioned in subsection (1) of section 9 on which the petitioner was entitled to rely in support of his petition was that mentioned in subparagraph (iii) or sub-paragraph (iv) of paragraph (a), or in paragraph (b), of that subsection the decree shall, notwithstanding the provisions of subsection (1) but subject to any direction given under paragraph (b) of section 4(4), be a decree absolute in the first instance.

(4) Upon a decree becoming absolute or being pronounced as a decree absolute under the last preceding subsection, each of the parties to the suit shall be entitled to receive

from the Clerk of the Court upon written application therefor a certificate of the decree absolute.

#### **DECREE TO BE REFUSED IN CERTAIN CIRCUMSTANCES**

**14.** (1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in sub-paragraph (iv) of section 9(1) (a) may oppose the grant of a decree nisi on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree nisi is opposed by virtue of this section, then -

(a) if the Court is satisfied that the only fact mentioned in paragraph (a) of section 9(1) on which the petitioner is entitled to rely in support of his petition is that mentioned in sub-paragraph (iv) of that paragraph; and

(b) if apart from this section it would grant a decree nisi,

the Court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the Court is of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this section hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

#### **POWER TO RESCIND DECREE NISI IN CERTAIN CASES**

**15.** Where the Court on granting a decree of divorce has held that the only fact mentioned in paragraph (a) of section 9(1) on which the petitioner was permitted to rely in support of his petition was that mentioned in sub-paragraph (ii) of that paragraph, it may, on an application made by the respondent at any time before the decree becomes absolute, rescind the decree if it is satisfied that the petitioner misled the respondent, whether intentionally or unintentionally, about any matter which the respondent took into account in deciding to consent to the grant of a decree.

#### **ASSISTANCE TO THE COURT BY THE SECRETARY FOR JUSTICE**

**16.** (1) In any suit for divorce the Court may direct that all necessary papers in the matter are to be sent to the Secretary for Justice who shall argue, or instruct an officer of the Department of Justice, a barrister and solicitor or a pleader to argue before the Court any question or matter which the Court deems it necessary or expedient to have fully argued, including questions relating to the interests of the children of the marriage.

(2) The Secretary for Justice or any person appearing on his instructions to argue any question or matter before the Court under the provisions of the preceding subsection may call such witnesses and adduce such evidence as to that question or matter as he thinks fit and may cross-examine any witnesses who give evidence in the suit.

(3) The Court may order any party to a suit in which the Secretary for Justice or any person acting on his instructions argues any question, or matter before the Court to pay or to contribute towards the costs of the Secretary for Justice, if the Court thinks it just to do so.

## **FINANCIAL PROTECTION FOR RESPONDENT IN CERTAIN CASES**

**17.** (1) The following provisions of this section shall have effect where -

(a) the respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in sub-paragraph (iii) or sub-paragraph (iv) of paragraph (a) or in paragraph (b) of section 9(1) has applied to the Court under this section for it to consider for the purposes of subsection (2) hereof the financial position of the respondent after the divorce;

(b) a decree nisi of divorce has been granted on the petition and, except where all the conditions set out in subsection (1) of section 10 are fulfilled, the Court has held that the only fact mentioned in the said paragraph (a) on which the petitioner was entitled to rely in support of his petition was that mentioned in the said sub-paragraph (iii) or the said sub-paragraph (iv).

(2) The Court hearing an application by the respondent under this section shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as having regard to the divorce it is likely to be after the death of the petitioner should the petitioner die first, and the Court may, if it thinks it just to do so, order the petitioner to make financial provision for the respondent or to undertake to its satisfaction to do so.

## **RULES MAY ENABLE CERTAIN AGREEMENTS OR ARRANGEMENTS TO BE REFERRED TO THE COURT**

**18.** Provision may be made by rules of Court for enabling the parties to a marriage, or either of them on application made either before or after the presentation of a petition for divorce, to refer to the Court any agreement or arrangement made or proposed to be made between them being, an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the Court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any in the matter as it thinks fit.

## **REMARRIAGE OF DIVORCED PERSONS**

**19.** Where a decree nisi of divorce has become absolute or a decree absolute has been pronounced in the first instance, either party to the former marriage may marry again.

## **PART III - NULLITY**

### **DECLARATIONS OF NULLITY AND ANNULMENT OF MARRIAGE**

**20.** (1) Where a marriage is void, the Court shall, upon the application of either party thereto or of any other person having a sufficient interest in obtaining a decree declaring the nullity thereof, grant a decree declaring it to be void.

(2) Where a marriage is voidable the Court shall, upon the application of any party thereto entitled to make such application or, in the case of a marriage alleged to be voidable on any of the grounds referred to in paragraphs (a), (c) and (d) of section 22 of any other person having a sufficient interest in having the marriage annulled and subject to the other provisions of this Part grant a decree annulling the marriage.

(3) Application for a void marriage to be declared void or, where a marriage is alleged to be voidable on any of the grounds referred to in paragraphs (a), (c) and (d) of section 22, for the marriage to be annulled may be made and a decree may be granted declaring the marriage to be void or annulling the marriage, notwithstanding that one or both the parties to the marriage have died.

(4) Nothing in this Act shall be construed as validating a marriage which is by law void but with respect to which a decree declaring that it is void has not been obtained.

## **VOID MARRIAGES**

**21.** A marriage is void if -

(a) the marriage was celebrated in Nauru and either party thereto had, at the time when the marriage was solemnized, already been validly married, in Nauru or elsewhere, and such previous marriage was still subsisting at that time; or

(b) it is provided by any written law for the time being in force, that such a marriage is void.

## **VOIDABLE MARRIAGES**

**22.** A marriage is voidable if -

(a) either party thereto was at the time of the marriage, suffering from such disease or defect of the mind that he was unable to understand the nature of the contract and the duties of marriage;

(b) either party thereto was, at the time of the marriage -

(i) suffering from mental deficiency or disorder of such a kind or to such an extent as to be unfitted for marriage or the procreation of children; or

(ii) was subject to recurrent attacks of insanity,

(c) either party thereto did not freely consent to the marriage, whether such lack of consent was the result of -

(i) threats or duress;

(ii) mistake as to the identity of the other party thereto or as to the nature of the ceremony; or

- (iii) inability for any cause to form an intention to marry,
- (d) either party thereto who was at the time of the marriage domiciled or resident in Nauru was, at that time, under the age of sixteen years;
- (e) the marriage has not been consummated owing to -
  - (i) the inability of either party thereto to consummate it; or
  - (ii) the wilful refusal of either party thereto to consummate it;
- (f) either party thereto was, at the time of the marriage, suffering from venereal disease in a communicable form; or
- (g) the female party thereto was, at the time of the marriage, pregnant by some person other than the male party thereto

### **LIMITATIONS ON PETITIONS FOR ANNULMENT**

**23.** (1) A marriage shall not be annulled -

- (a) on any ground referred to in paragraphs (a), (b), (c), (f) and (g) of section 22, upon the petition of either party to the marriage, unless -
  - (i) the Court is satisfied that the petitioner, at the time of the marriage, was ignorant of the facts alleged to constitute that ground;
  - (ii) the petition was presented within a year from the date of the marriage; and
  - (iii) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of that ground,
- (b) on the ground referred to in paragraph (f) of section 22, upon the petition of a party who was at the time of the marriage suffering from venereal disease in a communicable form;
- (c) on the ground referred to in paragraph (g) of section 22, upon the petition of the female party to the marriage; and
- (d) on the ground referred to in paragraph (d) of section 22, -
  - (i) if the marriage took place before the commencement of this Act;
  - (ii) upon the petition of a party thereto who was of, or over, the age of sixteen years at the time of the marriage; or
  - (iii) if the petition is not presented until after the petitioner's eighteenth birthday.

(2) A marriage shall not be annulled upon the petition of any person who is not a party thereto unless the petition is presented within one year of the marriage.

## **PARTIES OF NULLITY PROCEEDINGS**

**24.** Save as is provided by section 20, no person other than a party to the marriage, or, where he is dead, his personal representative, shall be a party to proceedings for a marriage to be declared void or to be annulled.

## **HEARING OF PETITION**

**25.** (1) On a petition for a marriage to be declared void or to be annulled it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged.

(2) If the Court is satisfied on the evidence that the petitioner's case has been proved, it shall grant a decree declaring the marriage to be void or a decree annulling the marriage, as the case may be; and, if the Court is not satisfied thereof, it shall dismiss the petition.

## **APPLICATION OF SECTIONS 13, 16 AND 19 TO NULLITY PROCEEDINGS**

**26.** (1) Sections 13, 16 and 19 of this Act shall apply mutatis mutandis to proceedings for a marriage to be annulled as if for any reference to a petition or a decree of divorce there were substituted a reference to a petition for annulment of a marriage or a decree annulling the marriage.

(2) Section 19 of this Act shall apply mutatis mutandis to proceedings for a marriage to be declared to be void.

## **LEGITIMACY OF CHILDREN OF ANNULLED MARRIAGES**

**27.** Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

## **PART IV - OTHER MATRIMONIAL SUITS**

### **JUDICIAL SEPARATION**

**28.** (1) A petition for judicial separation may be presented to the Court by either party to a marriage on the ground that any such fact as is mentioned in paragraph (a) of section 9(1) exists.

(2) The Court, when hearing a petition for judicial separation, shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in paragraph (a) of section 9(1) it shall, subject to section 40, grant a decree of judicial separation.

(3) Where the Court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(4) The Court may, on an application by petition of the spouse against whom a decree of judicial separation has been made and on being satisfied that the allegations in the petition are true, rescind the decree at any time on the ground that it was obtained in the absence of the applicant or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

(5) Sections 6, 7, 11, 12, 16 and 18 shall apply mutatis mutandis to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

## **PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE**

**29.** (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the Court to have it presumed that the other party is dead and to have the marriage dissolved, and the Court may, if satisfied that such reasonable grounds exist, make a decree of presumption of death and dissolution of the marriage.

(2) In any proceedings under this section the fact that for a period of seven years or more the other party to the marriage, has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.

(3) Sections 11(1), 13, 16, and 19 shall apply mutatis mutandis to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

(4) In determining for the purposes of this section whether a woman is domiciled in Nauru, her husband shall be treated as having died immediately after the last occasion on which he knew or had reason to believe him to be living.

## **PART V – ANCILLARY RELIEF**

### **INTERIM MAINTENANCE ORDERS**

**30.** (1) On a petition for divorce, nullity or judicial separation, the Court may make such interim orders as it thinks just for the payment of moneys by either party for the maintenance of the other party or the maintenance or education of the children of the marriage pending the determination of the petition.

(2) Application for an interim order under this section for the payment of maintenance may be made at any time after the presentation of the petition.

### **MAINTENANCE ORDERS**

**31.** (1) On granting a decree of divorce, nullity or judicial separation or at any time thereafter, whether before or after the decree, if it is granted as a decree nisi, becomes absolute the Court may, if it thinks fit, make one or more of the following orders –

(a) an order requiring either party to secure to the other party, to the satisfaction of the Court, such lump or annual sum for any term not exceeding the life of that

other party as the Court thinks reasonable having regard to the respective fortunes, if any, ability and conduct of the parties;

(b) an order requiring either party to pay to the other party during their joint lives such monthly or weekly sum for the maintenance of that other party as the Court, having regard to the matters referred to in the preceding paragraph, thinks reasonable;

(c) an order requiring either party to pay to the other party such lump sum as the Court, having regard to the matters referred to in paragraph (a), thinks reasonable.

(2) In making an order under the preceding subsection the Court shall take into account any order, agreement or arrangement made for the care and custody of the children, if any, of the marriage.

### **COMMENCEMENT OF PROCEEDINGS WITH RESPECT TO MAINTENANCE**

**32.** (1) Where a petition for divorce, nullity or judicial separation has been presented, proceedings under the foregoing provisions of this Part of this Act may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition; but –

(a) no order under section 31 shall be made unless a decree nisi or decree absolute has been granted; and

(b) no order under section 31 shall take effect unless the decree is, or has become, absolute.

(2) The preceding subsection shall have effect notwithstanding anything in the foregoing provisions of this Part of this Act but subject to section 36.

### **NEGLECT TO MAINTAIN**

**33.** (1) Where –

(a) one party to a subsisting marriage has, by reason of the circumstances of the other party thereto or of a child to whom this subsection applies, an obligation to maintain such other party or child and, having had the means to do so, has wilfully neglected to provide reasonable maintenance for such other party or child; and

(b) the Court would have jurisdiction to entertain proceedings by such other party for judicial separation,

the Court may on the application of such other party, or, where that other party is unable, for any reason to make the application in person, by another person on his behalf order the party in default to make to such other party or to a trustee approved by the Court on his behalf such periodical payments as may be just.

(2) The preceding subsection applies to any child of the marriage who is under twenty-one years of age or, being over twenty years of age, is unable by reason of any physical or mental condition to maintain himself and to any illegitimate child of both parties to the marriage who is under twenty-one years of age or, being over twenty years of age, is unable by reason of any physical or mental condition to maintain himself.

(3) Where the Court makes an order under subsection (1),-

(a) the order may be enforced in the same manner as an order under section 31 for the payment of maintenance; and

(b) the Court may, if it thinks fit, order that the party in default shall, to the satisfaction of the Court, secure the periodical payments to the other party.

## **VALIDITY OF MAINTENANCE AGREEMENTS**

**34.** (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to the Court for an order containing financial arrangements, then –

(a) that provision is void; but

(b) any other financial arrangements contained in the agreement are not thereby, rendered void or unenforceable and, unless they are void or unenforceable for any other reason and subject to section 35, are binding on the parties to the agreement.

(2) In this section and section 35 –

"maintenance agreement" means any agreement in writing made whether before or after the commencement of this Act, between the parties to a marriage for the purposes of their living separately, being-

(a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage or the declaration that it is void;

(b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements.

"financial arrangements" means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage, including a marriage which has been dissolved, annulled or declared to be void, in respect of the making or securing of payments or the disposition or use of any property including such rights and liabilities with respect to the maintenance or education of any child, whether or not, a child of the marriage, and

"child of the marriage" includes any child of both parties to the marriage, whether legitimate or not, and any child adopted by both parties to the marriage.

## **ALTERATION OF AGREEMENTS BY THE COURT DURING THE LIVES OF THE PARTIES**

**35.** (1) Where a maintenance agreement is for the time being subsisting and the parties to the agreement are for the time being either domiciled or both ordinarily resident in Nauru and on an application by either party the Court is satisfied either –

(a) that by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it, the agreement should be altered so as to make different, or as the case may be so as to contain, financial arrangements; or

(b) that the agreement does not contain proper financial arrangements with respect to any child of the marriage.

The Court, may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it or by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the marriage as may appear to the Court be just having regard to all the circumstances or, as the case may be, as may appear to that Court to be just in all the circumstances in order to secure that the agreement contains proper financial arrangements with respect to any child of the marriage, and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.

(3) For the avoidance of doubt it is hereby declared that nothing in this section or section 34 affects any power of the Court before which any proceedings between the parties to a maintenance agreement are brought under any written law, including a provision of this Act, to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

#### **APPLICATIONS FOR ANCILLARY RELIEF**

**36.** (1) Rules of court may provide, in such cases as may be prescribed by the rules –

(a) That all applications for ancillary relief shall be made in the petition or answer; or

(b) that applications for ancillary relief which are not so made shall be made only with the leave of the Court.

(2) In the preceding subsection "ancillary relief" means relief under section 30 or section 31 of this Act.

#### **PAYMENT OF MAINTENANCE TO TRUSTEES, ETC.**

**37.** (1) Where the Court makes an order for payment of maintenance under section 30, section 31 or section 33, it may –

(a) direct that the maintenance be paid either to the wife or husband as the case may be or to a trustee approved by the Court on his or her behalf;

(b) impose such terms and restrictions as the Court thinks expedient, and

(c) from time to time appoint a new trustee if for any reason it appears to the Court expedient to do so.

(2) Where-

(a) on hearing a petition for divorce or judicial separation the Court is satisfied that the respondent is insane or mentally deficient or disordered; or

(b) a petition for nullity is presented on the ground of either party's insanity or mental deficiency or disorder,

and the Court orders payment of maintenance in favour of that party under section 30 or section 31, the Court may order the payments to be made to any such person having charge of that party as the Court may direct.

### **VARIATION AND DISCHARGE OF CERTAIN ORDERS FOR RELIEF**

**38.** (1) Where the Court has made an order under any of sections 30, 31 and 33, other than an order for the payment of a lump sum, the Court shall have power to discharge or vary the Order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) The powers exercisable by the Court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(3) In exercising the powers conferred by this section the Court shall have regard to all the circumstances of the case including any increase or decrease in the means of either of the parties to the marriage.

### **AVOIDANCE OF TRANSACTION INTENDED TO PREVENT RELIEF**

**39.** (1) Where proceedings under this Act for financial relief are brought by any person the Court may on application by that person –

(a) if it is satisfied that the other party is, with the intention of defeating the claim for financial relief, about to make any disposition of, or to transfer out of Nauru or otherwise deal with, any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;

(b) if it is satisfied that the other party has with the intention aforesaid, made a disposition to which this subsection applies and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order, including directions requiring the making of any payment or the disposal of any property;

(c) if it is satisfied, in a case where an order under the relevant provisions of this Act has been obtained by the applicant against the other party, that the other party has, with the intention aforesaid, made a disposition to which this subsection applies, make such an order and give such directions as are mentioned in the last preceding paragraph,

an application for the purposes of paragraph (b) of this subsection shall be made in the proceedings for the financial relief in question.

(2) Paragraphs (b) and (c) of the preceding subsection apply respectively to disposition made by the other party, whether before or after the commencement of the proceedings for financial relief, within the period of three years ending with the date of the application made for the purposes of the paragraph in question, not being a disposition made for valuable consideration, other than marriage, to a person who at the time of the disposition acted in relation to it in good faith and without notice of any such intention to defeat the claim for financial relief on the part of the other party.

(3) Where an application is made under this section with respect to a disposition or other transaction and the Court is satisfied –

(a) in a case falling within paragraph (a) or paragraph (b) of subsection (1), that the disposition or other transaction would, apart from this section, have the consequence; or

(b) in a case falling within paragraph (c) of subsection (1), that the disposition has had the consequence,

of defeating the applicant's claim for financial relief, the disposition shall be presumed, unless the contrary is shown, to have been made by the other party with the intention to defeat the claim.

(4) In this section –

"disposition" does not include any provision contained in a will or codicil but, with that exception, includes any conveyance assurance of gift of property of any description, whether made by an instrument or otherwise;

"financial relief" means relief under any of the relevant provisions of this Act;

"former spouse" means a person whose marriage with the person bringing the proceedings has been, or is by virtue of section 50 of this Act deemed to have been dissolved, annulled or declared void under this Act;

"property" means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, any debt or other chose in action, or any other right or interest whether in possession or not;

"the other party" means the spouse or former spouse of the person bringing the proceedings; and

"the relevant provisions of this Act" means any of the provisions of sections 30, 31 and 33,

and any reference to defeating an applicant's claim for financial relief is a reference to preventing financial relief from being granted to the applicant or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be made at the instance of the applicant under the relevant provisions of this Act.

## **PART VI – PROTECTION OF CHILDREN**

### **RESTRICTIONS ON DECREES OF DIVORCE, NULLITY AND JUDICIAL SEPARATION AFFECTING CHILDREN**

**40.** (1) Notwithstanding anything in Parts II, III and IV of this Act but subject to the following subsection, a decree of divorce or annulling a marriage shall not become or be in the first instance, absolute, nor shall a decree of judicial separation be granted, unless the Court is satisfied with respect to every relevant child who is under sixteen years of age that –

(a) arrangements for his care and upbringing have been made and satisfactory or are the best that can be devised in the circumstances; or

(b) it is impracticable for the party or parties appearing before the Court to make any such arrangements,

where the Court is so satisfied, its satisfaction shall be endorsed on the record of the proceedings.

(2) The Court may, if it thinks fit, waive the requirements of the preceding subsection if

–

(a) it appears that there are circumstances making it desirable that the decree should become absolute or should be granted as the case may be, without delay; and

(b) the Court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the Court within a specified time,

Such waiver shall be endorsed on the record of the proceedings.

### **MAINTENANCE OF CHILDREN AFFECTED BY MATRIMONIAL SUITS**

**41.** (1) Irrespective of whether or not the Court makes an order under section 87 of the Family Court, Juveniles and Guardianship Act 1973 for the custody of any child, the Court may, subject to subsection (5) of this section, make such order as it thinks just for the maintenance of education of such child, being a relevant child, -

(a) in any proceedings for divorce, nullity or judicial separation before, by or after the final decree; and

(b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(2) Subject to subsection (5), on granting a decree of divorce or nullity or at any time thereafter, whether before or after the decree is made absolute, the Court may make an order requiring either party to secure for the benefit of the relevant children such lump or annual sum as the Court thinks reasonable, but the term for which any sum is secured for the benefit of a child in pursuance of this subsection shall not extend beyond the

date when the child shall attain the age of twenty-one years, unless there is reason to believe that the child will be unable by reason of any physical or mental condition to maintain himself after attaining that age.

(3) In considering whether any and what order should be made under this section for requiring any party to make any payment for the maintenance or education of a child who is a relevant child by virtue of paragraph (b) of the definition of that expression in section 2 of this Act and who is not his own child, the Court shall have regard -

(a) to the extent, if any, to which that party had, on or after the acceptance of the child as one of the family, assumed responsibility for the child's maintenance; and

(b) to the liability of any person other than a party to the marriage to maintain the child.

(4) While the Court has power to make an order in any proceedings by virtue of paragraph (a) of subsection (1), it may exercise that power from time to time, and where the Court makes an order by virtue of paragraph (b) of that subsection with respect to a child it may from time to time make a further order with respect to his maintenance.

(5) Section 32 shall apply to proceedings and orders under subsection (2) of this section as it applies to such proceedings and orders as are mentioned in the said section 32, and section 36 shall apply to relief under subsections (1) and (2) of this section, other than relief under paragraph (b) of subsection (1), as it applies to ancillary relief within the meaning of the said section 36.

(6) Section 39 shall apply to relief under this section as if for references in that section to the relevant provisions of this Act there were substituted references to this section.

## **PART VII - MISCELLANEOUS AND GENERAL**

### **ENFORCEMENT OF MAINTENANCE ORDERS**

**42.** (1) Maintenance orders made under this Act may be enforced by the Court-

(a) as provided by or under the Attachment of Earnings and Phosphate Royalties Act 1973 or any other written law;

(b) in respect of orders for periodical payments to the same manner as orders for the payment of allowances made under the Maintenance Ordinance 1959-1967; and

(c) in respect of orders to secure a lump sum or an annual sum or to pay a lump sum, in the same manner as an order of a like nature or a judgment-debt, as the case may be, is enforceable in the District Court.

(2) For the purpose of the enforcement of any maintenance order under paragraph (b) of the preceding subsection, the Court shall have all the powers and jurisdiction conferred on it by the Maintenance Ordinance 1959-1967 for the enforcement of orders made thereunder.

(3) For the purpose of the enforcement of any maintenance order under paragraph (c) of subsection (1), the Court shall have all the powers and jurisdiction conferred on the District Court by the Civil Procedure Act 1972 for the enforcement of orders and of the payment of judgment-debts and the relevant provisions of the Civil Procedure Rules 1972 shall apply mutatis mutandis to such enforcement.

(4) In this section "maintenance order" means an order under any one of sections 30, 31, 33 and 41 for payment of a lump sum or periodical payments, or for the securing of a lump sum or an annual sum, for the maintenance of a party to the proceedings in which the order is made or of any child of a party to those proceedings.

## **DECLARATIONS OF LEGITIMACY**

**43.** (1) Any person who is a Nauruan citizen or a member of the Nauruan Community, or whose right to be a Nauruan citizen or a member of the Nauruan Community depends wholly or in part on his legitimacy or on the validity of any marriage, may, if he is domiciled or habitually resident in Nauru or claims an interest vested or contingent, in any real or personal estate situated in Nauru, apply by petition to the Court for a decree declaring that he is the legitimate child of his parents, or that the marriage of his father and mother or of his grandfather and grandmother was a valid marriage or that his own marriage was a valid marriage.

(2) Any person claiming that he or his parents or any remoter ancestor became or has become a legitimated person may apply by petition to the Court for a decree declaring that he or his parent or remoter ancestor, as the case may be, became or has become a legitimated person.

In this subsection "legitimated person" means a person legitimated by the Legitimation Ordinance 1959-1966.

(3) On any application under the preceding provisions of this section the Court shall make such decree as it thinks just, and the decree shall be binding on the Republic and all other persons whatsoever, so however that the decree shall not prejudice any person

-

(a) if it is subsequently proved to have been obtained by fraud or collusion; or

(b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.

(4) A copy of every application under this section and of any affidavit accompanying it shall be delivered to the Secretary for Justice at least one month before the application is made, and the Secretary for Justice shall be a respondent on the hearing of the application and a party to any subsequent proceedings relating thereto.

(5) Where any application is made under this section, such persons as the Court thinks fit shall, subject to rules of Court be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.

(6) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any Court of competent jurisdiction.

## **JURISDICTION IN MATRIMONIAL SUITS**

**44.** (1) The Court shall have jurisdiction to entertain petitions in matrimonial suits where –

- (a) in respect of any petition, both the parties to the marriage are or, if they have died, were at the time of death domiciled in Nauru;
- (b) in respect of any petition, the petitioner is habitually resident in Nauru and both parties were habitually resident in Nauru at the time of the marriage;
- (c) in respect of any petition by a wife she is habitually resident in Nauru and was domiciled or habitually resident in Nauru immediately before her marriage;
- (d) in respect of a petition for a marriage to be declared void, the marriage was celebrated in Nauru; or
- (e) in respect of a petition for judicial separation, both parties are ordinarily resident in Nauru.

(2) In any proceedings in which the Court has jurisdiction by virtue of the preceding subsection the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in Nauru at the time of the proceedings.

## **NEXT FRIEND AND GUARDIAN AD LITEM NOT REQUIRED IN MATRIMONIAL SUITS**

**45.** Notwithstanding any provision to the contrary in any other written law or in the common law of England in its application to Nauru, in a matrimonial suit -

- (a) it shall not be obligatory for the petition of a petitioner who is an infant to be presented by a next friend and such a petitioner may present his petition himself or by his barrister and solicitor or pleader; and
- (b) it shall not be obligatory for a guardian ad litem to be appointed for a respondent who is an infant:

Provided that the Court may at any stage of the proceedings, including the hearing of an application for ancillary relief require that a petitioner who is an infant be represented by a next friend or appoint a guardian ad litem for a respondent who is an infant and may stay the proceedings until the petitioner can be represented therein by the next friend or the respondent by the guardian ad litem, as the case may be:

And provided further that nothing in this section shall be taken as preventing the petition of a petitioner who is an infant being presented by a next friend on his behalf without an order of the Court.

## **ENTICEMENT**

**46.** (1) The enticement of a party to a subsisting marriage by any person is tortuous and shall subject to the provisions of subsection (5), be actionable at the instance of the other party to that marriage within a period of three years after the presentation by that party of a petition for dissolution of the marriage.

(2) In proceedings to recover damages for enticement shall be commenced by writ of summons in the Supreme Court or, where the damages claimed are within the pecuniary limit of the jurisdiction of the District Court, in the District Court.

(3) In proceedings to recover damages for enticement the Court hearing those proceedings may direct in what manner any damages awarded are to be paid or applied and may, if it thinks fit, direct that the whole or any part of the damages be settled for the benefit of the children, if any, of the marriage or for the maintenance of either party to the marriage.

(4) For the purpose of this section, a person entices a party to a marriage where, knowing that party to be married, he wilfully seeks to influence that party -

(a) to behave in such a way associating with him that the other party to the marriage cannot reasonably be expected to live with that party; or

(b) to desert the other party to the marriage.

(5) In deciding the quantum of the damages to be awarded where enticement is proved, the Court shall take into account the conduct of the plaintiff as a party to the marriage insofar as it may be relevant to the issue and in particular any specific consent, or implied or apparent consent, given by him to association of the other party to the marriage with the defendant or with any other person.

(6) Proceedings to recover damages for enticement may be commenced at any time after a petition for divorce has been presented but save with the leave of the Court, which the proceedings are taken, or of a judge in the case of the Supreme Court or the resident magistrate in the case of the District Court, the suit shall not be set down for hearing until the marriage has been dissolved by a decree absolute and, where pursuant to special leave being granted the suit is heard and determined before the marriage is so dissolved, any award therein of damages shall be conditional upon the marriage being so dissolved.

## **EVIDENCE**

**47.** (1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period and a husband or wife shall be compellable to give evidence of the matters aforesaid in any proceedings other than criminal proceedings.

(2) The parties -

(a) to any matrimonial suit in which there is an allegation of an improper association by one spouse with another person; and

(b) to any suit for damages for enticement,

and the husbands and wives of the parties shall be competent to give evidence in the proceedings.

## **APPEALS**

**48.** (1) An appeal shall lie to the Supreme Court-

(a) against the granting of, or the refusal to grant, a decree nisi in a suit for -

(i) divorce;

(ii) annulment of marriage; or

(iii) presumption of death and dissolution of marriage;

(b) against the granting of, or the refusal to grant, a decree in a suit for -

(i) judicial separation; or

(ii) a declaration that a marriage is void; and

(c) against an order made under or upon an application made under, any provision of Part V or Part VI of this Act, other than section 46, including an interim maintenance order.

(2) An appeal shall lie under either of paragraphs (a) and (b) of the preceding subsection notwithstanding that the appellant consented to the granting of the decree or decree nisi but in any such case the only ground of appeal shall be fraud or misrepresentation.

(3) Unless the Family Court, the Chairman thereof, the Supreme Court or a judge otherwise orders, an appeal shall not, subject to the provisions of section 13, result in the stay of proceedings in the suit or of enforcement of any order therein.

(4) The provisions of Parts III and IV of the Appeals Act 1972 shall apply mutatis mutandis to appeals under this section.

(5) No appeal shall lie to any person, court or tribunal against any decree granted or order made, or against the refusal to grant any decree, under any provision of this Act, other than section 46, except as provided for in this section.

(6) No appeal shall lie to any person, court or tribunal against the Supreme Court's decision of any appeal under this section.

(7) The Supreme Court shall have power, upon the application of any party to the proceedings or of its own motion to sit in private during the whole or any part of proceedings in any appeal under this section, but it shall give its decision and the reasons for it in public, unless it considers in that there are good and sufficient grounds for giving them in private, in which case it shall state those grounds in public.

(8) An application to the Supreme Court to sit in private during the whole or any part of the proceedings in any appeal under this section shall be heard in private.

(9) The powers conferred on the Supreme Court by this section shall be in addition to any other power of the Court to sit in private.

(10) In this section references to power to sit in private are references to a power to sit in camera or in chambers.

## **RULES**

**49.** The Chief Justice may make rules of court prescribing all matters and things required or authorised by this Act to be prescribed or provided or which are necessary or convenient to be prescribed or provided for carrying out or giving effect to this Act, and in particular in regulating matters relating to the practice and procedure of the Courts, to the duties of the officers thereof and to fees payable to the Courts in matrimonial suits.

## **MATRIMONIAL CAUSES JURISDICTION ORDINANCE 1910 OF PAPUA TO CEASE TO APPLY**

**50.** (1) The Third Schedule of the Laws Repeal and Adopting Ordinance 1922-1967 is amended by deleting therefrom the Matrimonial Causes Jurisdiction Ordinance 1910:

Provided that any decree or order made by the Supreme Court, under the said Ordinance in its application to Nauru shall continue to have the same force and effect as it would have had if the said Ordinance had continued to be applied to Nauru but, for the purpose of Parts V, VI and VII and section 41 of this Act it shall be deemed to be a decree or order of a like nature made by the Family Court under the appropriate provision of this Act.

(2) Where at the commencement of this Act any matrimonial suit is pending hearing or determination in the Supreme Court, -

(a) if a decree nisi has been pronounced therein, the suit shall continue in the Supreme Court and the Matrimonial Causes Jurisdiction Ordinance 1910 of the Territory of Papua shall be deemed to continue to be in force for the purposes of that suit until the decree is made absolute; and

(b) in any other case, the proceedings shall lapse upon the commencement of this Act and the petition shall be deemed to have been dismissed but without prejudice to the petitioner's right to commence new proceedings in the Family Court under this Act.

-----