

CHAPTER K34 - KWARA STATE MARRIED WOMEN'S PROPERTY LAW

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A Law to regulate the capacity and property and liabilities of married women in the State.

[KWS 28 of 1991.]

[Date of commencement: 1st October, 1987]

1. Short title

This Law may be cited as the Kwara State Married Women's Property Law.

2. Commencement

This Law shall be deemed to have come into operation on the 1st day of October, 1987.

3. Interpretation

In this Law, unless the context otherwise requires—

"**company**" includes a corporation and a public body, municipal, commercial, or otherwise and any industrial, provident, friendly, benefit, building or loan society;

"**contract**" includes the acceptance by a married woman of any trust or of the office of executrix or administratrix;

"**deposits**" means deposits in any post office or other savings bank or in any other bank;

"**married woman**" means a woman married under the Marriage Act;

"property" includes lands and buildings and interest in them, and includes a thing in action;

"shares" includes any sum forming part of the public stocks or funds or any other stocks or funds transferable in the books of any bank and any shares, stock, debentures, debenture stock, and any other benefit, right, claim or other interests of or in any company; and

"State" means Kwara State of Nigeria.

4. Liabilities of married women

The provisions of this Law as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration.

5. Application

Nothing in this Law shall affect the capacity, property or liabilities of any persons married solely in accordance with the requirement of customary law, or Islamic law.

6. Capacity of married women

Subject to the provision of this Law a married woman shall—

(a) be capable of acquiring, holding and disposing of any property;

(b) be capable of rendering herself and being rendered liable in

respect of any tort, contract, debt or obligation;

- (c) be capable of suing and being sued, either in tort or in contract, or otherwise; and
- (d) be subject to the law relating to the enforcement of judgments and orders, in all respects as if she were *feme sole*.

7. Property of married women

- (1) Subject to the provisions of this Law all property which—
 - (a) immediately before the passing of this Law was the separate property of a married woman or held for her separate use in equity;
 - (b) belongs at the time of her marriage, to a woman married after the passing of this Law; or
 - (c) is acquired by or devolves upon a married woman after the passing of this Law, shall belong to her in all respects as if she were a *feme sole* and may be disposed of accordingly:

Provided that nothing in this subsection shall interfere with or render inoperative any existing restriction on alienation attached to the enjoyment of any property by virtue of any provision attaching such a restriction contained in any instrument executed before the commencement of this Law.

- (2) Any instrument executed after the commencement of this Law shall, in so far as it purports to attach to the enjoyment of any property by a woman any restriction upon anticipation of alienation which could not have

been attached to the enjoyment of that property by a man, be void.

(3) For the purposes of the provisions of this section relating to restrictions upon anticipation of alienation—

(*a*) an instrument attaching such a restriction as aforesaid executed after the commencement of this Law in pursuance of an obligation before then imposed to attach such a restriction shall be deemed to have been executed before the commencement of this Law;

(*b*) a provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument only and not in the instrument by which the power was created; and

(*c*) the will of any testator who dies after the expiration of ten years from the commencement of this Law shall, notwithstanding the actual date of the execution thereof, be deemed to have been executed after the commencement of this Law.

8. Validity of settlements

Subject to the provisions of the foregoing section nothing in this Law shall interfere with or affect any settlement or agreements for a settlement made or to be made whether before or after marriage respecting the property of any married woman, but no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors:

Provided that a settlement or agreement for a settlement made after the commencement of this Law by the husband or intended husband whether before or after marriage, respecting the property of any woman he may marry

or have married, shall not be valid unless it is executed by her if she is of full age or confirmed by her after she attains full age, but if she dies an infant any covenant or disposition by her husband contained in the settlement or agreement shall bind or pass any interest in any property of hers to which he may become entitled on her death and which he could have bound or disposed of if this Law had not been passed.

Provided also that nothing in this section shall render invalid any settlement or agreement for a settlement made or to be made under the provisions of any written law relating to the making of settlements by infants.

9. Stock, etc., to which a married woman is entitled

(1) All deposits, all annuities granted by any person, and all shares which at the commencement of this Law are standing in the sole name of a married woman shall be deemed, unless and until the contrary be shown, to be the property of such married woman.

(2) The fact that any such deposit, annuity, or share as aforesaid is standing in the sole name of a married woman shall be sufficient *prima facie* evidence that she is beneficially entitled thereto so as to authorise and empower her to receive or transfer the same and to receive the dividends, interest and profits thereof without the concurrence of her husband and to indemnify all directors, managers and trustees of every such company aforesaid in respect thereof.

(3) All such deposits, annuities, or shares as aforesaid which after the commencement of this Law shall be allotted to or placed, registered or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her property in respect of which so far as any liability may be incident thereto she shall alone be liable.

Provided always that nothing in this Law shall require or authorise any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident contrary to the provisions of any written law articles of association or deed of settlement regulating such corporation or company.

(4) All the provisions of the preceding subsections shall respectively extend and apply, so far as relates to the estate, right, title or interest of the married woman to any deposits, annuities or shares which, at the commencement of this Law or at any time afterwards, shall be standing in or shall be allotted to, placed, registered or transferred to or into or made to stand in the name of any married woman jointly with any person or persons other than her husband.

(5) It shall not be necessary for the husband of any married woman in respect of her interest to join in the transfer of any deposits, annuities or shares which are now or shall at any time hereafter be standing in the sole name of any married woman or in the joint names of such married woman and any other person or persons other than her husband.

10. Investments with money of husband without his consent

If any investment in any such deposit, annuity or shares, shall have been made by a married woman by means of money of her husband without his consent the High Court may upon an application under section 20 order such investment and the dividends thereof or any part thereof to be transferred and paid respectively to the husband.

11. Fraud

Nothing in this Law shall give validity as against creditors of the husband to any gift by a husband to his wife of any property which, after such gift, shall continue to be in the order and disposition or reputed ownership of the

husband or to any deposit or other investment of money of the husband made by or in the name of his wife in fraud of his creditors, but any money so deposited or invested may be followed as if this Law had not been passed.

12. Policy of assurance

A married woman may effect a policy of assurance upon her own life or life of her husband for her own benefit and the same and all benefit thereof shall ensure accordingly.

13. Remedies for protection of property

Every woman whether married before or after the commencement of this Law shall have in her own name against all persons whomsoever, including her husband, the same civil remedies for the protection and security of her own property as if she were a *feme sole*.

Provided that, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.

14. Antenuptial debts and liabilities

A woman after her marriage shall continue to be liable for all debts contracted and all contracts entered into or wrongs committed by her before marriage and may be sued for any such debt and for any such contract or in respect of any such wrong.

15. Abolition of husband's liability in certain cases

Subject to the provisions of this Law the husband of a married woman shall not, by reason only of his being her husband be liable—

(a) in respect of any tort committed by her whether before or after the marriage or in respect of any contract entered into or debt or obligation incurred by her before the marriage; and

(b) to be sued or made a party to any legal proceeding brought in respect of any such tort, contract debt or obligation.

16. Will of married woman

(1) The will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, shall be construed with reference to all the property comprised in her estate to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

(2) No such will shall require to be re-executed or republished after the death of her husband.

17. Legal representatives

For the purposes of this Law the legal personal representatives of any married woman shall in respect of her estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

18. Married woman as executrix or trustee

A married woman who is an executrix administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued and may transfer or jointly transfer, any annuity or deposit or any shares of or in any company in that character without her husband, as if she were a *feme sole*.

19. Acquisitions and dispositions of trust estates by married women

(1) A married woman shall be able to acquire, as well from her husband as from any other person, and hold any interest in property of any kind solely or jointly with any other person (whether or not including her husband) as a trustee or personal representative, in like manner as if she were a *feme sole*; and no interest in such property shall vest or be deemed to have vested in the husband by reason only of the acquisition by his wife.

(2) A married woman is able, without her husband, to dispose of or to join in disposing of any interest in real or personal property held by her solely or jointly with any other person (whether or not including her husband) as trustee or personal representative in like manner as if she were a *feme sole*.

(3) This section operates to render valid and confirm all such acquisitions and dispositions made whether before or after the commencement of this Law, but where any title or right has been acquired through or with the concurrence of the husband before the commencement of this Law that title or right shall prevail over any title or right which would otherwise be rendered valid by this section.

20. Summary disposal of questions between husband and wife as to property

(1) In any question between husband and wife as to the title to or possession of property, either party or any bank or company, in whose books any shares of either party are standing, may apply in a summary way, summons or as may be otherwise prescribed by rules of court, to any judge of the High Court and the judge may make such order with respect to the property in dispute and as to the costs of and consequent upon the application as he thinks fit or may direct such application to stand over from time to time and may cause any inquiry touching the matter in question to be made as he

shall think fit.

(2) The judge may, if either party so requires, hear any such matter or any such application in chambers.

(3) Any such bank, or company as aforesaid shall, in the matter of any such application for the purposes of costs or otherwise be treated as a stakeholder only.

21. Money and property derived from housekeeping allowance

If any question arises as to the right of a husband or wife to money derived from any allowance made by the husband for the expenses of the matrimonial home or for similar purposes, or to any property acquired out of such money, the money or property shall, in the absence of the agreement between them to the contrary, be treated as belonging to the husband and wife in equal shares.

22. Savings

(1) Nothing in this Law shall—

(a) affect any legal proceeding in respect of any tort if proceedings had been instituted in respect thereof before the commencement of this Law;

(b) enable any judgment or order against a married woman in respect of a contract entered into, or debt or obligation incurred before the commencement of this Law to be enforced otherwise than against property.

(2) For the avoidance of doubt it is hereby declared that nothing in

this Law—

- (a) renders the husband of a married woman liable in respect of any contract entered into or debt or obligation incurred by her after the marriage in respect of which he would not have been liable if this Law had not been passed;
- (b) exempts the husband of a married woman from liability in respect of any contract entered into or debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred by her after the marriage in respect of which he would have been liable if this Law had not been passed;
- (c) prevents a husband and wife from acquiring, holding and disposing of any property jointly or as tenants in common or from rendering themselves or being rendered jointly liable in respect of any tort, contract, debt or obligation, and of suing or being sued either in tort or contract, otherwise in like manner as if they were not married;
- (d) prevents the exercise of any joint power given to a husband and wife.

CHAPTER K34

KWARA STATE MARRIED WOMEN'S PROPERTY LAW

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
