

Adjudication of Matrimonial Cases

Overview

- Include divorce, judicial separations, or the nullification of a marriage.
- All matrimonial proceedings must be heard at the high court.
- A divorce can be jointly claimed and the parties can negotiate the ancillary considerations of the divorce action (i.e. custody of minor children, maintenance and division of the matrimonial estate).
- The court will hear the case irrespective of the manner in which parties contracted their marriage (i.e. customary, religious or common law marriages).
- Upon divorce, nullity, or separation the court has wide ranging powers to, among other things, order the transfer of the matrimonial home and property from one party to the other or alter either party's rights in the separation, in particular to provide for dependent children.
- The court being the upper guardian of the minor child. In the event of custody of the minor child; the court has to be satisfied that a party is of good repute and is a fit and proper person to be entrusted with the custody of the child and possess adequate means to maintain and educate the child.

Who is eligible?

- Either party to a marriage may bring an action before the High Court for divorce, judicial separation, or a request for a marriage to be declared null and void.
- Under the law, the irretrievable breakdown of a marriage constitutes grounds for divorce.
- The marriage having existed for two (2) years

Restrictions on filing a divorce, nullity or separation are the following:

- Per subsection two of the Matrimonial Causes Act, no action for divorce can be taken during the period of two years following the date of registration of the marriage ("the specified period").
- An application for divorce during the specified period may be considered if it is a situation of exceptional hardship suffered by the plaintiff or depravity on the part of the respondent. In determining if such an application is considered, the court will take into account the well-being of dependent children where reasonable probability exists of a reconciliation between the spouses.
- An application for divorce after the specified period may be brought based on matters which occurred during the specified period.

How do I get this service?

In order to institute divorce proceedings an applicant should file writ of

summons, in **Summons-Form 2** in the first schedule with such variations as circumstances require – (High Court Rules).

- The Plaintiff, or the Plaintiff's attorney or agent shall bring the original originating process documents and four copies to the Civil Registry in Gaborone, Francistown or Lobatse for date stamp, signing and filing.
- The Civil Registry will register the summons and retain two copies.
- One copy is to be served to the respondent.
- One copy is retained by the applicant.
- It is the responsibility of the filing party (applicant) to furnish the respondent with the originating process.
- Service upon a person of a summons, may be made by any adult person who has no interest in the cause and is able to explain its nature and contents
- Except in the case of arrest; writs of summons, shall not be served on a Sunday or between 1900 hrs and 0700 hrs of any other day, and no such service shall be valid if made.
- The registered case is then assigned to a judge who will preside over it until completion.
- Following due process as instructed by the judge, a decree -nisi (tentative order granting divorce) is granted. An applicant/respondent can then apply for a decree absolute (final divorce order) six (6) weeks following the order.
- A rule nisi is a court order that does not have any force until such time that a particular condition is met, in the case of divorce it is six (6) weeks. Once the condition is met, the ruling becomes decree absolute and is binding.
- Once the rule nisi is granted, the litigants have to wait six (6) before applying for the decree absolute
- The application for decree absolute can be made in the form of a letter addressed to the Registrar stating the case particulars and when the rule nisi was granted and whether six (6) weeks has passed since the order was granted

What supporting documents are required?

Applicants will need to submit:

- 4 Copies of an Originating process, specifically claiming divorce and ancillaries.
- The original marriage certificate or a certified copy

How long will this service take?

- Applicants can apply for a decree absolute six (6) weeks following the granting of a rule nisi.
- The duration of the case is dependent on whether the other party is opposing the divorce; in that case, the matter will go to trial and as thus will be dependent on the availability of trial dates on the judge's

schedule.

How much does it cost?

- A cost of BWP 120.00 applies to the stamp for all four (4) summonses.
- The cost of having the deputy Sheriff's office serve the summons will be BWP 30.00

Where can I get more information on this Service

This service is provided at all High Court locations in Botswana.

The Registrar and Master

High Court - Gaborone

Private Bag 00220

Gaborone

Tel: (+267) 3718000 / (+267) 3971706

Fax: (+267) 3915119

The Deputy Registrar Office

High Court - Francistown

Private Bag F13

Francistown

Tel: (+267) 2412125 / (+267) 2416378

Fax: (+267) 2416378

The Deputy Registrar

High Court - Lobatse

Private Bag 001

Lobatse

Tel: (+267) 5338000 / (+267) 5332317

Fax: (+267) 5332317

Further information on the Originating process can be found in Order 6, Rules of the High Court.