

The 'new' MARRIAGES ACT {CHAPTER 5:17}

FACTS and DISPELLING MYTHS

1. The Marriages Act {Chapter 5:17} came into force in September 2022. Its correct citation is The Marriages Act Chapter 5:17. It was originally published in error as Chapter 5:15 and this was corrected by a Statutory Instrument. The Marriage Act has many implications on the rights and obligations of married and unmarried persons.
2. It merges the (Civil) Marriages Act (Ch 5:11) and Customary Marriages Act (Chapter 5: 07) and confers equal status and validity to the two different marriages meaning neither type of marriage is deemed superior to the other. Parties can choose the type of marriage they want to be married under and obtain a certificate for either a customary marriage or a civil marriage. Chiefs are now marriage officers for customary marriages.
3. Marriages are contracted between men and women only even though homosexual relationships are not a crime in Zimbabwe. No one can be arrested and charged for being a homosexual but they can be prosecuted for committing sodomy.
4. Civil and customary marriages are both are out of community of property. This means there is no automatic sharing of property by virtue of contracting a marriage. Property ownership remains separate during and after the marriage unless the parties can prove valid claims for apportionment and distribution according to the proportion of contribution to the acquisition.
5. Parties are regarded as married only when they have entered into a civil or registered or unregistered customary marriage. Unregistered customary marriages constitute the majority of marriages in Zimbabwe and are valid but in the absence of written evidence can be hard to prove.
6. People are not deemed as married only by virtue of having lived together for any length of period whether short or long. They are not entitled to each other's property only because they cohabited unless they have a genuine provable claim in the property.

7. Civil marriages are monogamous while customary marriages are potentially polygamous. Only men in customary marriages can be polygamous and can marry more than one wife. Women are not allowed to be married to more than one man at the same time.
8. Lobola remains a compulsory requirement for the purposes of customary law. The marriage officer presiding over a customary marriage certification will only certify the marriage after being satisfied by asking the parties and their witnesses that the customary requirements were fulfilled before the parties came to court. Section 16(2).
9. It is not a requirement and never has been for parties entering into a civil marriage to pay lobola and perform any customary rights before they can be married under civil law. The majority of Zimbabweans have always submitted themselves voluntarily to contract both civil and customary marriages simultaneously.
10. Adultery damages remain a part of Zimbabwean law and are applicable only to civil marriages in the event of infidelity of one of the parties. Adultery damages are claimed from the third party engaged in an adulterous relationship with one of the spouses.
11. The Marriage Act repealed Chapter 22 of the Marriages Act which had allowed child marriages of girls in contravention of the Constitution. The 2013 Constitution prescribes the minimum age of marriage as 18. The old Customary Marriage Act was silent on the minimum age of marriage thus providing a loophole through which people could facilitate child marriages.
12. Section 41 recognises the rights of partners in civil partnerships. Civil partnerships are defined as when a man and woman live together in a relationship but without being legally married. Civil partners are not regarded as being married but the partners are given the same property rights as married people only at the dissolution of the partnership. Sections 7 to 11 of the Matrimonial Causes Act [Chapter 5:13] apply to the dissolution of civil partnerships only for the sake of protecting parties' property rights and distribution.
13. Courts will determine the distribution of property acquired during the subsistence of the civil partnership by determining amongst other things the duration of the relationship, the degree of financial dependence or

interdependence and any financial arrangements between the parties and ownership and acquisition of the shared property. This means that people who cohabit (kubika mapoto) now also have the same rights in the property they acquired together as if they had been married. This does not mean they are deemed married or that the property will be shared equally. Even in a civil marriage there is no automatic equal ownership and claim to property. Each party to a marriage or civil partnership has to prove their claim and entitlement and property is distributed only on the basis of a valid and proved claim. It does not mean that if people are married or have lived together they have an automatic equal share or even any other share in the other person's property or the matrimonial property.

14. Civil partners do not have the same rights as spouses at the death of the other partner. Only surviving spouses have clear inheritance rights in terms of the Section 3A Deceased Estates Succession Act and can inherit the matrimonial house and household contents if the other party did not leave a will.
15. Married people have freedom of testation over their property and can disinherit each other through wills. This means married people can sell their own property during their lifetime or bequeath it to whomever they want through a will and this can include the matrimonial home. Married people/ surviving spouses have no automatic right to inherit their deceased spouse's property.

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