



LAWS OF KENYA

AFRICAN CHRISTIAN MARRIAGE AND DIVORCE ACT

CHAPTER 151

Revised Edition 2012 [2010]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

CHAPTER 151

AFRICAN CHRISTIAN MARRIAGE AND DIVORCE ACT

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CHAPTER 151

AFRICAN CHRISTIAN MARRIAGE AND DIVORCE ACT

[Date of commencement: 17th December, 1931.]

An Act to provide for the marriage of African Christians and for the dissolution of such marriages

[Act No. 51 of 1931, Cap. 99 of 1948, Act No. 44 of 1955, L.N. 299/1956, L.N. 172/1960, L.N. 462/1963, L.N. 2/1964, Act No. 21 of 1966, Act No. 9 of 1967, Act No. 7 of 1975.]

1. Short title

This Act may be cited as the African Christian Marriage and Divorce Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**licensed minister**” means a minister who has been licensed to celebrate marriages under section 6 of this Act;

“**registrar**” includes a Registrar of marriages appointed under section 5 of the Marriage Act (Cap. 150) and a Registrar appointed under section 11 of this Act.

[Act No. 44 of 1955, s. 2, L.N. 2/1964, s. 2.]

3. Application

(1) This Act shall apply only to the marriages of Africans one or both of whom profess the Christian religion and to the dissolution of such marriages.

(2) Nothing herein contained shall prevent any African marrying under the Marriage Act (Cap. 150), but if one or both parties to a marriage under that Act are Africans professing the Christian religion the provisions of this Act relating to dissolution of marriage shall apply to such marriage as if it were a marriage under this Act.

[L.N. 2/1964, s. 2.]

4. Saving

Except as otherwise provided in this Act, the provisions of the Marriage Act (Cap. 150) shall apply to all marriages celebrated under this Act.

[L.N. 2/1964, s. 2.]

5. Marriage may be in any place of public worship

Notwithstanding any provision to the contrary in the Marriage Act (Cap. 150), a marriage may be celebrated under this Act in any place of public worship, whether or not such place of worship is licensed under section 7 of the Marriage Act.

[Act No. 44 of 1955, s. 3, L.N. 2/1964, s. 2.]

6. Marriages to be performed only by licensed ministers

(1) The Minister may licence any minister to celebrate marriages under this Act, and may at any time cancel such licence; and notice of the granting or cancellation of such licences shall be published in the *Gazette*.

(2) Notwithstanding any provision to the contrary in the Marriage Act (Cap. 150), no minister shall celebrate any marriage under this Act unless licensed by the Minister under subsection (1) of this section.

[Act No. 44 of 1955, s. 3, L.N. 462/1963.]

7. Formalities

The formalities preliminary to marriage, established, usual or customary for African Christians in the denomination to which one or both of the parties belong, shall apply to marriages under this Act, and sections 8 to 18 inclusive of the Marriage Act (Cap. 150) shall not apply, but no minister shall celebrate any marriage under this Act unless he considers that adequate notice has been given of the intended marriage.

[L.N. 2/1964, s. 2.]

8. Consents

(1) Where the consent of any person to the intended marriage is necessary, the minister to celebrate the intended marriage shall be deemed to be a Registrar of marriages for the purpose of such consent; and, if there be no parent or guardian in any particular case capable of consenting, such minister upon being satisfied after due inquiry that the marriage is a proper one may consent in writing to such marriage.

(2) If any person whose consent is required refuses his consent, a magistrate empowered to hold a subordinate court of the first class may, on application being made, consent to the marriage, and the consent of the magistrate empowered to hold a subordinate court of the first class so given shall have the same effect as if it had been given by the person whose consent is so refused.

[L.N. 462/1963.]

9. Marriage before licensed minister or registrar

(1) Whenever any persons already married or professing to be married to each other by native law and custom desire to convert that marriage into a marriage by which they are legally bound to each other as man and wife so long as both shall live, they may, subject to the provisions of sections 7 and 8 of this Act contract a marriage before a licensed minister in a place of worship or before a Registrar in his office, in either case in the presence of two witnesses, with open doors, between the hours of 6 o'clock in the forenoon and 6 o'clock in the afternoon and in the following manner.

(2) The licensed minister or the Registrar shall, either directly or through an interpreter, address the parties thus—

“Do I understand that you, A.B., and you, C.D., have been heretofore married to each other by native law or custom, and that you come here for the purpose of binding yourselves legally to each other as man and wife so long as both of you shall live?”

(3) If the parties answer in the affirmative he shall proceed thus—

“Whereas you, A.B., and you, C.D., profess that you have been heretofore married to each other by native law or custom, and whereas that marriage does not bind you by law to each other as man and wife so long as both of you shall live, and whereas you

desire to bind yourselves legally each to the other as man and wife so long as both of you shall live: know ye that by the public taking of each other as man and wife so long as both of you shall live, in my presence and in the presence of the persons now here. and by the subsequent attestation thereof by signing your names to that effect, you become legally bound to each other as man and wife so long as both of you shall live although no other rite of a civil or religious nature shall now take place, and that hereafter your marriage cannot be dissolved during your lifetime, except by a valid judgment of divorce; and if either of you before the death of the other shall illegally contract another marriage while your marriage to each other remains undissolved, you will be thereby guilty of bigamy, and liable to punishment for that offence.”

(4) Each of the parties shall then say to the other—

“I call upon all persons here present to witness that I, A.B., do take thee, C.D., to be my lawful wife (or husband) so long as both of us shall live.”

(5) A licensed minister (whether or not he has been appointed a Registrar under section 11 of this Act) may in his absolute discretion refuse to witness a contract of marriage under this section.

[Act No. 44 of 1955, s. 4.]

10. Marriage certificate

(1) The Minister may prescribe the forms of marriage certificates for marriages celebrated under this Act.

(2) The Registrar-General shall cause to be printed, and to be issued to each licensed minister and to each Registrar, books of marriage certificates in such form as may be prescribed.

[Act No. 44 of 1955, s. 5, L.N. 299/1956, L.N. 172/1960, L.N. 2/1964, s. 2.]

11. Ministers to be registrars

(1) For the purposes of this Act, the Minister may appoint ministers to be Registrars; and they shall be deemed to be Registrars of marriages within the meaning of the Marriage Act, except that it shall not be necessary for them to transmit to the Registrar-General a certified copy of the entries made by them in any marriage register book more than once in three months.

(2) The Registrar-General may instruct a licensed minister to send any duplicate marriage certificate required by him to be transmitted to a Registrar of marriages under section 28 of the Marriage Act (Cap. 150) to any Registrar appointed under subsection (1) of this section; and if so instructed the licensed minister shall send the duplicate marriage certificate to such Registrar instead of to the Registrar of marriages appointed under section 5 of the said Act for the district in which the marriage takes place, but in default of any such instruction the licensed minister shall send the duplicate marriage certificate to the Registrar of marriages appointed under section 5 of the said Act for the district in which the marriage takes place.

[Act No. 44 of 1955, s. 6, L.N. 462/1963, L.N. 2/1964, s. 2, Act No. 21 of 1966, First Sch.]

12. Fees

Notwithstanding anything contained in the Marriage Act (Cap. 150), there shall be chargeable in respect of marriages under this Act, the fees set out in the Schedule to this Act.

[L.N. 2/1964, s. 2.]

13. Status of African Christian widows

(1) Any African woman married in accordance with the provisions of this Act or of the Marriage Act (Cap. 150) or of the Native Christian Marriage Act (Cap. 168 of 1926 now repealed), whether before or after the commencement of this Act shall be deemed to have attained her majority on widowhood, and shall not be bound to cohabit with the brother or any other relative of her deceased husband or any other person or to be at the disposal of such brother or other relative or other person, but she shall have the same right to support for herself and her children of such marriage from such brother or other relative as she would have had if she had not been married as aforesaid.

(2) Any such woman shall upon the death of her husband become the guardian of any children of the marriage, and shall, so long as she remains a Christian, continue to be the guardian of such children until such children, if males, attain the age of sixteen years, or, if females, attain the age of sixteen years or marry, and shall be competent to dispose of such children in marriage, but in such event the customary bride price shall on demand be paid to such person as is entitled thereto by native law and custom.

14. Jurisdiction of subordinate courts of the first class

Subordinate courts of the first class shall have the same jurisdiction, in the case of marriages solemnised or contracted under this Act or the Native Christian Marriage Act (Cap. 168 of 1926 now repealed), as is vested in the High Court by virtue of the Matrimonial Causes Act (Cap. 152).

15. Appeals

An appeal shall lie from the decrees or from any part of the decrees, and from the orders, of subordinate courts under section 14 of this Act to the High Court.

African Christian Marriage and Divorce

SCHEDULE

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[Section 12, Act No. 7 of 1975, Sch]

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SUBSIDIARY LEGISLATION

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FORM OF MARRIAGE CERTIFICATE PRESCRIBED UNDER SECTION 10

[Cap. 99 (1948), Sub. Leg.]

The form of marriage certificate prescribed by the Marriage Act (Cap. 150).
