BEYOND BREAKDOWN: REASSESSING THE GROUNDS FOR DIVORCE UNDER NIGERIA'S MATRIMONIAL CAUSES ACT

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Abstract

Nigeria's Matrimonial Causes Act ("MCA")[1], *is routinely described, in both judicial and academic commentary, as having replaced an older matrimonial offence regime with a modern, unified "breakdown" principle: a marriage may be dissolved once it has broken down irretrievably. This article argued that the description is only half accurate. Section 15(1) does indeed name irretrievable breakdown as the sole ground for divorce, but section 15(2) then confines proof of that breakdown to eight enumerated facts, nearly all of which require the petitioner to attribute specific fault-like conduct to the respondent. The result is a statute that speaks the language of no-fault divorce while operating, in the overwhelming majority of contested cases, as a fault-based system in substance. The article argued that a Single Statutory Ground, Proved Through Eight Fault-Based Facts, Still Falls Short of a True No-Fault Divorce Law. Drawing on the text of sections 15, 16, 17, 18, and 26 to 30 of the MCA and on the Nigerian case law construing them including Damulak v Damulak, Ibrahim v Ibrahim, Bibilari v Bibilari, and Ekrebe v Ekrebe, this article traces how the statute's closed list of facts channels genuinely no-fault separations into adversarial, fault-narrating litigation, and compares Nigeria's position with England and Wales's move*

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[1] Matrimonial Causes Act, Cap. M5, Laws of the Federation of Nigeria, 2004.

to a true no-fault model under the Divorce, Dissolution and Separation Act 2020, itself a legislative response to the widely criticised Supreme Court decision in Owens v Owens. It closes by proposing statutory reforms that would allow Nigerian couples to prove irretrievable breakdown without first constructing a legal narrative of blame.

Keywords: Divorce, Matrimonial Causes, Irretrievable Breakdown, Marriage, No-Fault Theory

1. INTRODUCTION

Ask most Nigerian lawyers what the ground for divorce is under the Matrimonial Causes Act, and the answer comes quickly: irretrievable breakdown of the marriage. The statute itself supports that answer in the plainest possible terms. Section 15(1) provides that a petition for dissolution "may be presented to the court by either party to the marriage upon the ground that the marriage has broken down irretrievably."[2] Read in isolation, that sentence could belong to a genuinely modern, no-fault statute — one in which a court simply asks whether two adults still have a marriage worth preserving, and dissolves it if the answer is no.

Section 15(1), however, is never read in isolation, because section 15(2) immediately supplies the only route by which a court may reach that conclusion. It provides that the court "shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more"[3] of eight specified facts — wilful and persistent refusal to consummate the marriage, adultery coupled with intolerability, conduct rendering cohabitation unreasonable, desertion of at least one year, two years' separation with the respondent's

[2]It is worthy to note that the Matrimonial Causes Act was enacted in 1970. It is currently in Cap M5, Laws of the Federation of Nigeria, 2004, s 15(1).
[3]ibid, s 15(2).

consent, three years' separation without it, non-compliance with a decree of restitution of conjugal rights, or a seven-year unexplained absence supporting a presumption of death.[4] Nigerian courts have consistently read this list as exhaustive and mandatory: a petitioner who cannot bring the facts of the marriage within one of the eight paragraphs simply has no case, however genuinely and completely the marriage has, in fact, broken down.[5]

This is the gap this article investigates. Nigeria's 1970 reform imported the language of the English breakdown principle without fully importing its logic. The English reform movement of the late 1960s, from which the Nigerian statute borrows heavily, had itself compromised: it retained fact-based proof of breakdown rather than adopting a pure inquiry into whether the marriage was, in truth, over.[6] More than half a century later, England has moved decisively away from that compromise, while Nigeria has not. This article asks what that divergence reveals about whether "irretrievable breakdown", as currently proved under section 15(2) of the MCA, is too narrow a gateway for the range of ways a modern Nigerian marriage can genuinely end.

The argument proceeds in twelve further parts. Part II traces the historical background against which the Act was enacted. Part III sets

[4]ibid, s 15(2)(a)–(h).

[5]See *Ekrebe v Ekrebe* (1999) 3 NWLR (Pt 596) 514, holding that a petitioner must plead and prove one of the facts in s 15(2)(a)–(h) and that failure to do so is fatal to the petition; and Harriman v Harriman (1989) 5 NWLR (Pt 119) 6, treating irretrievable breakdown as the sole ground of dissolution, provable only through the enumerated facts.

[6]Nwogugu's well-known account traces the 1970 Act to the 1966 Archbishop of Canterbury group's report and the resulting English Divorce Reform Act 1969, which combined the breakdown principle with proof through specified facts; see summary in 'An Analysis of the Matrimonial Causes Act (MCA), as a Good Divorce Law in Nigeria' (8 October 2018).

out the statutory architecture of sections 15 and 16. Part IV examines how Nigerian courts have interpreted each of the eight facts, with particular attention to the dominant and most litigated of them, "unreasonable behaviour" under section 15(2)(c). Part V turns to the procedural bars in sections 26 to 30 that can defeat even a well-pleaded fact. Part VI examines the evidentiary framework that surrounds proof of the facts. Part VII considers how a finding of fault carries forward into the financial and custodial consequences of divorce. Part VIII develops the central argument: that the closed, overwhelmingly fault-based list force couples whose marriages have simply run their course into adversarial, blame-allocating litigation. Part IX draws the comparative lesson from England's 2020 reform and the case that provoked it. Part X situates the MCA's rigidity against the comparatively more flexible dissolution routes available under Nigerian customary and Islamic law. Part XI considers the practical costs of the current framework. Part XII proposes reform, and Part XIII concludes.

2. HISTORICAL BACKGROUND: FROM MATRIMONIAL OFFENCE TO BREAKDOWN, WITHOUT FULLY ARRIVING

Before 1970, divorce in the courts of colonial and early post-independence Nigeria was governed largely by English matrimonial law as received and locally adapted, a body of doctrine built squarely on the matrimonial-offence principle: a marriage could be dissolved only where one spouse proved that the other had committed a recognised marital wrong — adultery, cruelty, or desertion chief among them — against an innocent petitioner.[7] Under that model, a court was not asking whether a marriage had, as a matter of shared human reality, ended; it was adjudicating guilt, awarding relief only to

[7]See D A Ijalaye, 'English Matrimonial Cruelty Law in Nigeria: Dead or Alive?', discussing the reception of English matrimonial law, including the cruelty ground, into Nigerian practice before the 1970 reform.

the party who could show clean hands and a guilty spouse. The doctrine of cruelty in particular generated a substantial and often technical body of case law, since "cruelty" itself required careful judicial definition and could not simply be presumed from an unhappy marriage.[8]

The MCA enacted in 1970 was Nigeria's answer to a reform debate that had already played out in England. An Archbishop of Canterbury-convened working group reported in 1966 in favour of replacing pure matrimonial offence with a breakdown principle, on the view that once a marriage had died in fact, the law's proper role was to acknowledge that death rather than to punish whichever spouse could most plausibly be cast as the wrongdoer.[9] That report shaped the English Divorce Reform Act 1969, and Nigeria's MCA — enacted only a year later — imported the same basic architecture: a single ground of breakdown, proved through a defined list of facts that, not coincidentally, still track the old matrimonial-offence categories almost paragraph for paragraph. Adultery survives as paragraph (b). Cruelty survives, unnamed but unmistakable, inside paragraph (c) and section 16(1)(e). Desertion survives as paragraph (d). What genuinely changed in 1970 was not the substance of what a petitioner had to prove, but the conceptual label attached to the exercise: courts were now formally finding "breakdown" rather than "fault", even though, as later Parts of this article demonstrate, they were and remain doing so by finding fault in substance.

[8]Ijalaye (n 4), tracing the doctrinal history of matrimonial cruelty as understood by Nigerian courts applying inherited English principles.

[9]'An Analysis of the Matrimonial Causes Act (MCA), as a Good Divorce Law in Nigeria' (8 October 2018), summarising the 1966 report and its influence on the English Divorce Reform Act 1969 and, in turn, on the Nigerian MCA, enacted in 1970.

This history matters because it exposes a design choice, not an oversight. Nigeria's Parliament in 1970 could have adopted a genuinely fact-free breakdown standard; it chose instead, following the English compromise of the same era, to retain fault-shaped proof requirements beneath breakdown language. More than fifty years on, and more than three years after England itself abandoned that same compromise, the case for revisiting the choice is considerably stronger than it was in 1970 — a case this article develops across the parts that follow. It is also worth noting that Nigeria's 1970 reform was, in one respect, more ambitious than its English model: whereas the English Divorce Reform Act 1969 retained five separate facts, Nigeria's drafters trimmed and reorganised the list into the eight paragraphs now found in section 15(2), folding several matters into the supplementary catalogue of section 16(1) rather than the primary list. This reorganisation did not, however, alter the underlying logic; it simply redistributed the same fault-oriented content across two sections instead of one, a structural choice this article's own analysis in Parts III and IV treats as functionally equivalent to the original English model for present purposes.

3. THE STATUTORY ARCHITECTURE: ONE GROUND, EIGHT FACTS

3.1. Section 15(1): The Sole Ground

The MCA applies only to marriages celebrated under the *Marriage Act* — that is, monogamous statutory marriages — and expressly excludes marriages contracted under Islamic rites or customary law from several of its provisions.[10] Within that scope, section 15(1) establishes a single ground of dissolution, expressed without qualification: irretrievable breakdown. Early academic debate over whether the marginal note to section 15 (which once read "grounds", plural)

[10]MCA, s 114(6), excluding non-monogamous marriages and marriages entered into according to Muslim rites or customary law from the Act's operation.

implied multiple grounds has been settled by the removal of that note from the 2004 edition of the Laws of the Federation and by judicial authority applying the ordinary rule that the text of a provision prevails over its marginal note.[11] Nigerian appellate authority is now uniform on the point: there is one ground of divorce under the MCA, and it is irretrievable breakdown.[12]

3.2. Section 15(2): The Eight Facts

What section 15(1) gives with one hand, section 15(2) narrows with the other. A court may hold that a marriage has broken down irretrievably "if, but only if"[13] the petitioner establishes one or more of the following: that the respondent has wilfully and persistently refused to consummate the marriage; that the respondent has committed adultery which the petitioner finds intolerable to live with; that the respondent has behaved in a way that the petitioner cannot reasonably be expected to endure; that the respondent has deserted the petitioner for at least one continuous year; that the parties have lived apart for at least two continuous years and the respondent does not object to a decree; that the parties have lived apart for at least three continuous years, irrespective of the respondent's consent; that the respondent has failed for at least a year to comply with a decree of restitution of conjugal rights; or that the respondent has been absent in circumstances supporting a presumption of death.[14] Nothing in the

[11]See 'An Analysis of the Matrimonial Causes Act (MCA), as a Good Divorce Law in Nigeria' (8 October 2018), discussing the marginal-note debate and the holding in Attorney-General v Prince Ernest that a statute's clear words prevail over its marginal note.

[12]*Harriman v Harriman* (1989) 5 NWLR (Pt 119) 6; *Ojeladi v Ojeladi* (1979) 4–6 CCHCJ 52; *Egbueje v Egbueje* (1972) 2 ECSLR 747.

[13]MCA, s 15(2) (emphasis added by the present author to highlight the mandatory, exhaustive character of the sub-section).

[14]MCA, s 15(2)(a)–(h), paraphrased. For a decree based on presumed death, s 15(3) fixes the treatment of the two- and three-year living-apart periods, and s 16(2) sets out how a seven-year unexplained absence satisfies s 15(2)(h).

section permits a court to dissolve a marriage on the strength of a general finding that it has, in the court's own assessment, plainly ended; the petitioner's case must be built, brick by brick, out of one or more of these eight paragraphs.

3.3. Section 16: Filling Out "Unreasonable Behaviour"

Because paragraph (c) — unreasonable behaviour — is drafted in famously open terms, Parliament supplied section 16(1) as an interpretive aid. Without limiting the generality of paragraph (c), a court is directed to treat that fact as satisfied where the respondent has, since the marriage, committed rape, sodomy, or bestiality; been a habitual drunkard or drug user for at least two years; suffered repeated criminal convictions attracting an aggregate of three years' imprisonment while habitually leaving the petitioner without reasonable support; served a long prison sentence for a grave offence; been convicted, within the year preceding the petition, of attempting to kill or of intentionally inflicting grievous harm on the petitioner; habitually and wilfully defaulted on ordered or agreed maintenance for two years; or been confined for unsoundness of mind for a substantial period and remains unlikely to recover.[15] Section 16(1) is illustrative rather than exhaustive — courts remain free to find unreasonable behaviour on facts falling outside its seven listed categories — but its function is nonetheless telling: it reads as a catalogue of serious marital wrongs (violence, addiction, criminality, abandonment of support obligations, attempted murder) rather than as a gateway for the more diffuse, cumulative incompatibility that ends a great many marriages without any single dramatic wrong ever being committed.

4. JUDICIAL INTERPRETATION OF THE EIGHT FACTS

[15] ibid, s 16(1)(a)–(g), paraphrased; the accompanying restrictions on findings under paragraphs (b), (c) and (g) are set out in ss 22–24.

Statutory text supplies only the outer boundaries of section 15(2); its practical meaning has been filled in, paragraph by paragraph, through decades of careful and sometimes divergent Nigerian appellate practice, much of it drawing on English authority absorbed into Nigerian law well before the MCA itself was enacted. This Part works through each of the eight facts in turn, in the order Parliament placed them, before Part V turns to the further procedural bars that can defeat even a fact that has been fully pleaded and proved on the evidence.

4.1. Wilful and Persistent Refusal to Consummate

Section 15(2)(a) is narrowly circumscribed by section 21, which prevents a finding of non-consummation unless the court is satisfied that, as at the commencement of the hearing, the marriage genuinely remains unconsummated.[16] In practice this fact is rarely litigated in isolation; it tends to arise, where it arises at all, alongside allegations that more directly engage paragraph (c).

4.2. Adultery and Intolerability

Paragraph (b) demands proof of two separate elements: the fact of adultery, and the petitioner's own subjective intolerability of continued cohabitation as a result of it — a petitioner who proves adultery but continues, on the evidence, to find life with the respondent perfectly tolerable has not made out the fact.[17] Section 32 requires that, where adultery is alleged against a named third party, that person ordinarily be joined to the proceedings, giving them the opportunity to be heard before a court makes a finding that could expose them to a damages claim under section 31.[18] Early Nigerian decisions also established a pleading discipline that has outlasted them: a petitioner must specify,

[16]ibid, s 21.
[17]See discussion of the compound nature of s 15(2)(b) in Ace Juris, 'Dissolution of Marriage and the Proof of Irretrievable Breakdown in Nigeria' (7 November 2017).
[18]MCA, ss 31–32.

in the petition itself, which paragraph of section 15(2) is relied upon, so that the court and the respondent both know precisely what must be met.[19]

4.3. Unreasonable Behaviour: The Litigated Heart of the Statute

If any single paragraph of section 15(2) carries the practical weight of Nigeria's divorce law, it is paragraph (c). Because it is drafted without a fixed content of its own — deriving specific meaning only from the illustrative list in section 16(1) and from case-by-case judicial elaboration — it has become the fact of choice for petitioners whose complaint is a general pattern of marital misery rather than a single, cleanly provable event such as adultery or a year's desertion.

The test Nigerian courts apply is, by consistent authority, an objective one: it is not enough for a petitioner to assert a personal inability to continue living with the respondent; the petitioner must show that a reasonable person, faced with the same conduct, could not fairly be expected to do so.[20] In *Damulak v Damulak*, the Court of Appeal confirmed that although cruelty is not itself named among the eight statutory facts, proven cruelty can nonetheless found a decree where it is pleaded and proved as part of the conduct said to render cohabitation unreasonable under paragraph (c).[21] The Court of Appeal returned to the same fact more recently in *Dr Julius Obahaya v Dr (Mrs) Latifa Obahaya*, holding that a petitioner relying on paragraph (c) must establish, by cogent evidence, that it would genuinely be

[19] *Williams v Williams* (unreported) LD/12/169 of 1 June 1970; *Otunga v Otunga* (unreported) WD/119/70 of 19 April 1971; *Oki v Oki* (unreported) WD/80/70 of 30 July 1971, all cited in Ace Juris (n 9).
[20] *Bibilari v Bibilari* (2011) LPELR-4443(CA), per Nwodo JCA, applying the English authority of *Ash v Ash* [1972] 2 WLR 347 and *Damulak v Damulak* (2004) 8 NWLR (Pt 874) 151 at 166.
[21] Damulak v Damulak (2004) 8 NWLR (Pt 874) 151; see also *Bibilari v Bibilari* (supra) (n 12).

unreasonable to require continued cohabitation — reinforcing that the provision demands more than a bare assertion of dissatisfaction.[22]

Older reported decisions illustrate how broadly, and how narrowly, this objective standard has swung in practice. In *Johnson v Johnson*, conduct amounting to persistent, unreasonable refusal of marital intimacy, chronic nagging, habitual intemperate drinking, and repeated sexual involvement with domestic staff was found sufficient to satisfy paragraph (c).[23] In *Ayangbayi v Ayangbayi*, by contrast, the court reaffirmed that isolated or relatively minor friction, unaccompanied by a pattern sufficiently grave to defeat a reasonable expectation of continued cohabitation, will not do.[24] And in *LT Col Shehu Ibrahim (Rtd) v Mercy Ibrahim*, the Court of Appeal reiterated the broader point that runs through this whole line of authority: whatever fact is pleaded, it must correspond to one of the eight paragraphs of section 15(2), and a petitioner cannot simply invite the court to conclude, at large, that the marriage has broken down.[25]

Nigerian legal scholarship examining this line of authority has itself questioned whether the courts have got the balance right. One detailed case study of the Supreme Court's treatment of paragraph (c) in *Adetule v Adetule* asks directly whether the Court's interpretation of "reasonableness" in that case was correct, reflecting a live and unresolved academic debate about whether the objective standard, as currently applied, sets the evidentiary bar for paragraph (c) too high for petitioners whose marriages have deteriorated through cumulative,

[22]*Dr Julius Obahaya v Dr (Mrs) Latifa Obahaya* (2022) LPELR-57141(CA).
[23]*Johnson v Johnson* (1972) 11 CCCHCJ 94; see 'The Evolution of Divorce Law and Practice in Nigeria', LinkedIn (23 January 2024).
[24]*Ayangbayi v Ayangbayi*, discussed in Ayenakin and Kolade-Faseyi, 'Procedural and Legal Complexities in Matrimonial Proceedings Before Trial Courts in Nigeria' (2021) 3 (3) *IRLJ*, (fn 58 of that article).
[25]*LT Col Shehu Ibrahim (Rtd) v Mercy Ibrahim* (2006) LPELR-7670(CA).

low-grade incompatibility rather than through discrete, dramatic misconduct.[26]

The disagreement is not merely academic hair-splitting. Because section 16(1) supplies an illustrative, non-exhaustive list weighted heavily toward grave misconduct — attempted murder, prolonged imprisonment, habitual addiction, repeated criminal conviction — a court asked to assess a pattern of comparatively mundane but cumulatively corrosive behaviour (chronic emotional withdrawal, persistent public humiliation, financial secrecy, or simple prolonged indifference) has little explicit statutory guidance on how such conduct should be weighed against the illustrative examples Parliament chose to name. The objective standard reaffirmed in *Bibilari* and *Obahaya* asks whether a reasonable person could be expected to endure the conduct in question, but a reasonable person standard calibrated implicitly against section 16(1)'s catalogue of serious wrongs risks setting an unreasonably demanding threshold for the petitioner whose complaint, however genuine, does not resemble attempted murder or habitual drunkenness. This is precisely the interpretive uncertainty this article's reform proposals in Part XII seek to address.

4.4. Desertion, Constructive Desertion, and the One-Year Rule

Paragraph (d) requires proof that the respondent has deserted the petitioner for a continuous period of at least one year immediately preceding the petition.[27] Desertion in this sense means the unjustified withdrawal from cohabitation and marital obligation, with an intention to abandon the relationship, and Nigerian commentary distinguishes "simple" desertion — the deserting party physically leaves — from

[26] I Okoronye and C Okwudiri, 'Interpretation and Application of Section 15(2) of the Matrimonial Causes Act in Adetule v Adetule: Did the Supreme Court Err?' (2023) *African Journal of Law, Ethics and Education,* 3.
[27] MCA, s 15(2)(d).

"constructive" desertion, which section 18 of the Act expressly recognises: a spouse whose conduct gives the other just cause to leave, and who thereby occasions that departure, is deemed to have deserted the other, even though it was the innocent party who physically walked out.[28] Sections 19 and 20 supply further refinements: an unjustified refusal to resume cohabitation following a separation agreement itself constitutes desertion from the date of refusal, and desertion already in progress is not automatically terminated merely because the deserting spouse subsequently becomes mentally incapable of forming an intention to continue it.[29] Section 17(2) further provides that brief resumptions of cohabitation, not exceeding six months in total, do not break the continuity of a period of desertion or of living apart, allowing for realistic reconciliation attempts without penalising the petitioner's ultimate case.[30]

4.5. Living Apart: Consensual and Non-Consensual Separation

Paragraphs (e) and (f) come closest, on their face, to a genuine no-fault route: they ask only whether the parties have lived apart for a specified period, not why. Two years' separation suffices if the respondent does not object to the decree being granted; three years' separation suffices regardless of the respondent's attitude.[31] Even here, however, the apparent neutrality is qualified in two ways that matter for the argument developed in Part VIII below. First, mere cohabitation under one roof is not automatically inconsistent with "living apart" if the parties are not in fact living with each other as husband and wife in the same household — a nuance that itself generates factual disputes about

[28]ibid, s 18; see also the general discussion of desertion doctrine in S Owotomo, 'Living Apart as a Ground for Dissolution of Marriage' (2017) Legal Naija <https://legalnaija.com/living-apart-as-a-ground-for-dissolution-of-marriage>

[29]MCA, ss 19–20.

[30]ibid, s 17(2).

[31]ibid, s 15(2)(e)–(f); s 15(3) defines 'living apart' as not living together in the same household.

the character of the parties' shared accommodation.[32] Second, and more significantly, the two-year route is not truly unilateral: it is available only where the respondent affirmatively does not object, which means that a respondent who wishes to prolong the marriage, whether out of genuine attachment, religious conviction, or simple obstruction, can force the petitioner onto the three-year track, or onto one of the fault-based paragraphs, purely by withholding consent.

4.6. Restitution of Conjugal Rights and Presumption of Death

The remaining two facts are comparatively rarely litigated. Paragraph (g) requires proof that the respondent has, for at least a year, failed to comply with a decree of restitution of conjugal rights previously obtained under the Act — itself an increasingly uncommon form of relief.[33] Paragraph (h) permits dissolution where the respondent's absence and the surrounding circumstances give reasonable grounds to presume death, with section 16(2) providing that seven years of unexplained absence, during which the petitioner has had no reason to believe the respondent still living, is itself sufficient proof.[34]

4.7. Comparing the Eight Facts by Practical Accessibility

Standing back from the detail, the eight facts sort themselves into three practical tiers. The first tier — adultery and unreasonable behaviour — offers the fastest route to a decree, unconstrained by any waiting period beyond the general two-year marriage bar in section 30, but demands proof of specific, often intimate and embarrassing,

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[32]ibid, s 15(3); see also the account of proof difficulties under paragraph (e) in 'FROM DESERTION TO DIVORCE: Ultimate Things to Know' (16 October 2025), noting that mere separation for two years is not, without more, conclusive proof of irretrievable breakdown absent satisfaction of the statutory conditions attached to that fact.

[33]ibid, s 15(2)(g); see s 47 for the underlying ground of a decree of restitution of conjugal rights.

[34]ibid, s 16(2).

misconduct, and exposes the petitioner to the discretionary bars examined in Part V. The second tier — desertion and the consensual two-year separation — offers a comparatively less adversarial route, but only where the respondent either has already left or is willing to cooperate, conditions outside the petitioner's control. The third tier — non-consensual three-year separation, non-compliance with restitution, and presumed death — is available unilaterally and without any finding of wrongdoing, but only after a wait long enough that many petitioners will, in practice, be drawn back toward the first tier simply to avoid it. No tier offers what a genuinely no-fault system would offer: a prompt, unilateral route requiring no cooperation and no allegation of wrongdoing. It is this structural gap — not any single defect in any one paragraph — that Part VIII develops into the article's central argument.

5. PROCEDURAL BARS: HOW A PROVEN FACT CAN STILL FAIL

Even a petitioner who successfully proves one of the eight facts is not guaranteed a decree. Sections 26 to 30 supply a further layer of bars — some absolute, some discretionary — that can defeat an otherwise complete case, and that add materially to the adversarial, fault-oriented character of MCA litigation.

Section 26 imposes an absolute bar where the petitioner has condoned or connived at the very conduct relied upon; section 27 imposes an absolute bar for collusion intended to pervert the course of justice.[35] Section 28 then hands the court a discretionary power to refuse a decree where the petitioner has, since the marriage, committed uncondoned adultery, wilfully deserted the respondent before the matters relied upon arose, or otherwise conducted themselves in a way that contributed to the very facts now relied upon — a residue of the

[35]ibid, ss 26–27.

old matrimonial-offence idea that a petitioner should come to the court with, in the old phrase, "clean hands".[36] The exercise of that discretion is guided by principles the Supreme Court adopted from English authority: in *Enekebe v Enekebe*, the Court applied the framework the House of Lords had set out in *Blunt v Blunt* for weighing the interests of the parties, any children, and the public interest in the stability of marriage against the desirability of allowing the petitioner relief.[37]

Section 30 adds a further, purely temporal bar: proceedings generally cannot be instituted within two years of the marriage without the leave of the court, and such leave is granted only where refusing it would work exceptional hardship on the applicant or where the case involves exceptional depravity on the part of the other party — a standard courts have applied restrictively, precisely because Parliament intended the two-year rule to discourage hasty divorce petitions filed in the heat of early marital conflict.[38] The bar does not apply to petitions founded on wilful non-consummation, adultery-with-intolerability, or the section 16(1)(a) sexual-offence ground, presumably because Parliament judged those wrongs serious enough to justify immediate relief regardless of the marriage's youth.[39] The cumulative effect of sections 26 to 30 is that Nigerian divorce litigation routinely becomes a contest not only over whether one of the eight facts is made out, but over the conduct, motives, and comparative moral standing of both parties — the very inquiry the 1970 reform was, on its own stated terms, meant to leave behind.

[36]ibid, s 28.
[37]*Enekebe v Enekebe*, discussed in National Open University of Nigeria, 'LAW 344 Family Law II' course materials, applying the framework from *Blunt v Blunt* [1943] AC 517 (HL).
[38]MCA, s 30(1) and (3) – (4).
[39]ibid, s 30(2).

It is worth noting how these bars interact with one another in a typical contested case. A respondent resisting a section 15(2)(c) petition has an obvious incentive to raise section 28's discretionary bars defensively, alleging that the petitioner's own adultery, desertion, or contributory conduct should lead the court to withhold relief even if the pleaded unreasonable behaviour is proved — converting what began as a single-sided fault inquiry into a genuinely two-sided one, in which both spouses' conduct over the life of the marriage becomes potentially relevant evidence. The *Enekebe* framework for exercising that discretion requires the court to weigh the interests of any children, the public interest in marital stability, and the comparative conduct of both parties — a multi-factor balancing exercise that, however sensible in principle, necessarily extends the scope, length, and cost of the hearing well beyond what a simple assessment of whether the marriage has ended would require. Few reported Nigerian decisions illustrate a discretionary bar actually defeating an otherwise proved petition, which may suggest that in practice the bars operate less often as outright defences and more as bargaining leverage — a respondent's threat to invoke section 28 can itself extract settlement concessions on maintenance or property from a petitioner anxious to avoid a prolonged, mutually damaging contest over comparative fault.

6. THE EVIDENTIARY FRAMEWORK: HOW THE ACT REINFORCES A FAULT INQUIRY

Part VII of the MCA, governing evidence, supplies a further, less-discussed layer of fault orientation. Section 82 sets a comparatively relaxed general standard of proof — a matter of fact is proved if established to the reasonable satisfaction of the court, a standard courts have treated as something short of the full criminal standard even where the underlying allegation, such as adultery, would in another context carry moral or even criminal weight.[40] But several of the more specific evidentiary provisions are drafted with unmistakably fault-oriented content in mind. Section 83 governs spousal competence and compellability, generally making spouses competent and compellable witnesses against one another, subject to a qualified privilege over marital communications that itself yields where both spouses are parties to the same proceeding.[41] Section 84 permits either spouse to give evidence of non-access — that is, evidence tending to show the parties did not have sexual relations at a given time — a provision whose principal historical use has been to rebut the presumption of legitimacy in adultery-based petitions, again illustrating how the Act's evidentiary machinery remains built around proof of marital wrongdoing rather than around a neutral assessment of whether the relationship has ended.[42]

Section 85 goes further still, compelling a witness — including a party giving evidence on their own behalf — to answer questions tending to show adultery where proof of that adultery is material to the case, subject only to a residual protection against being asked about adultery not material to the proceedings.[43] And section 87 provides that a conviction, in Nigeria or elsewhere, for rape or a comparable sexual offence against a specific person is itself evidence that the convicted party committed adultery with that person, while a conviction for sodomy or bestiality is evidence of the offence itself.[44] These provisions are not incidental; they form a coherent evidentiary apparatus purpose-built to establish marital wrongdoing with precision — an apparatus that would have comparatively little work to do under a genuinely no-fault, self-assessed breakdown standard of the kind

[40]ibid, s 82.
[41]ibid, s 83.
[42]ibid, s 84.
[43]ibid, s 85.
[44]ibid, s 87.

England adopted in 2020, where a party's sworn statement that the marriage has ended is, without more, conclusive. The very richness of Part VII's evidentiary rules is itself indirect evidence of how thoroughly fault remains embedded in the MCA's operative design, notwithstanding the no-fault vocabulary of section 15(1).

The standard of proof itself deserves a further word, because section 82's "reasonable satisfaction" test sits at an unusual point on the spectrum between the civil balance of probabilities and the criminal standard of proof beyond reasonable doubt.[45] Historically, the elevated language of "reasonable satisfaction", inherited from English matrimonial practice of the same era, reflected the gravity with which courts treated a finding of matrimonial fault — particularly adultery, which carried social and reputational consequences extending well beyond the parties to the marriage itself. That heightened evidentiary caution made sense within a matrimonial-offence system in which the court's central task was to adjudicate guilt. It sits less comfortably within a system that officially disclaims any interest in guilt and asks only whether a marriage has broken down; if the ultimate question is simply whether the relationship has ended, an ordinary civil standard of proof, applied to whichever fact is pleaded, would seem the more natural fit. That the MCA instead retains a heightened formulation is one further, comparatively minor, illustration of how the Act's procedural detail continues to assume that something graver than mere relationship breakdown is being proved.

7. DOWNSTREAM CONSEQUENCES: WHY FAULT STILL PAYS

The incentive to plead and prove fault under section 15(2), examined further in Part VIII below, is sharpened by the fact that a fault finding is not merely a gateway to dissolution; it can also shape the financial,

[45] ibid, s 82(1) – (2).

custodial, and reputational consequences that follow. Section 70(1) directs a court determining maintenance for a party to the marriage to have regard to, among other things, the *conduct* of the parties to the marriage, alongside their means and earning capacity — meaning that a spouse whose adultery or unreasonable behaviour has just been formally established under section 15(2) may find that same finding shaping the maintenance order that follows.[46] Section 25 gives the court a related power to refuse a decree altogether, notwithstanding a proven fact, unless the petitioner makes arrangements satisfactory to the court for the respondent's maintenance — a further point at which the substance of the parties' dispute, rather than the bare fact of breakdown, determines the practical outcome.[47]

Where adultery is the fact relied upon, section 31 allows the petitioning spouse to claim damages directly from the third party alleged to have committed adultery with the respondent, provided the claim is brought within three years of the adulterous act and the adultery has not been condoned.[48] No equivalent damages remedy attaches to a purely no-fault dissolution, which means that a petitioner weighing whether to plead adultery under paragraph (b) or simply to wait out a living-apart period under paragraphs (e) or (f) is weighing not only speed of relief but also the availability of a potentially valuable, and separately litigable, claim against a third party — a further structural pull toward the fault-based facts even where a no-fault alternative might eventually be available.

Finally, section 57 ties the welfare of children under sixteen directly to the mechanics of dissolution: a decree nisi cannot become absolute unless the court is satisfied that proper arrangements have been made

[46]ibid, s 70(1).
[47]ibid, s 25.
[48]ibid, s 31.

for those children's welfare, advancement, and education, or is satisfied that special circumstances justify proceeding without such arrangements.[49] This is, on one view, an unambiguously protective provision, and this article does not suggest otherwise. But it does mean that the adversarial, fault-allocating litigation examined in Parts IV and V above — often conducted while the same parties are simultaneously negotiating custody and welfare arrangements for their children — plays out against a backdrop in which the children's own interests are formally, and appropriately, in the room. A statute that reduced the adversarial temperature of the underlying dissolution proceeding would, on this view, carry benefits extending beyond the divorcing spouses themselves.

8. IS IRRETRIEVABLE BREAKDOWN TOO NARROW? THE CENTRAL ARGUMENT

It is now possible to state the article's central claim precisely. Section 15(1) of the MCA promises a single, dignified inquiry: has this marriage broken down beyond repair? Section 15(2), as consistently construed by Nigerian courts, converts that inquiry into a closed list of eight specific factual patterns, six of which require the petitioner to prove some form of wrongdoing, breach, or unilateral abandonment by the respondent, and the remaining two of which — the living-apart facts — are hedged by a consent requirement (at two years) or a lengthy waiting period (three years) that itself invites strategic use of the fault-based facts as a faster alternative.

The consequence, visible across the case law surveyed in Part IV, is that Nigerian divorce practice gravitates overwhelmingly toward adultery and, above all, unreasonable behaviour, because these are the only facts capable of producing a prompt decree without either the respondent's cooperation or a multi-year wait. A couple whose

[49]ibid, s 57.

marriage has simply become incompatible — no violence, no addiction, no infidelity, no desertion, merely two people who have grown apart and wish to part as adults — has, in strict terms, no statutory fact available to them unless they are willing either to wait out a lengthy separation period while hoping the other party does not withhold consent, or to construct, plead, and prove a narrative of unreasonable behaviour sufficiently serious to satisfy the objective standard reaffirmed in *Damulak* and *Obahaya*. In practice, many such couples do the latter: allegations are drafted, sometimes generously embellished, to fit the shape the statute demands, producing exactly the kind of adversarial, blame-allocating litigation that the introduction of a breakdown principle in 1970 was meant to replace.

This is not merely a drafting curiosity; it has three distinct, practical costs, each developed further in Part XI below. It lengthens and embitters proceedings that could otherwise be resolved by simple, mutual acknowledgment that a marriage has ended. It creates a structural incentive toward exaggeration or fabrication of unreasonable behaviour allegations, since the objective standard set by the case law rewards the petitioner who can plead the most serious-sounding conduct. And it leaves a narrow category of petitioners — those in genuinely fault-free, incompatible marriages, unable or unwilling to wait out a three-year separation and unable to secure the respondent's consent to a two-year one — with no realistic route to dissolution at all, notwithstanding that their marriage has, by any ordinary understanding of the phrase, broken down irretrievably.

It is worth being precise about what this article does, and does not, claim. It does not claim that the eight facts are individually unreasonable, or that Nigerian courts have misapplied them; the case law surveyed in Part IV shows judges applying section 15(2) with evident care, and the objective standard for unreasonable behaviour is a defensible response to the risk that a purely subjective standard would allow any petitioner to end any marriage by simple assertion of discontent. Nor does it claim that fault should disappear from Nigerian family law entirely — the discussion of section 70(1) in Part VII shows that conduct can carry legitimate weight in the separate exercise of allocating financial consequences, whatever route was used to dissolve the marriage itself. The narrower claim is structural: that the *list* of facts through which breakdown must be proved is too short, and too heavily weighted toward wrongdoing, to accommodate the category of marriage that ends not because either spouse did anything wrong, but because two people have simply, mutually, and without recrimination concluded that their marriage is over. It is that category — not the adulterer, not the deserter, not the violent spouse, all of whom the existing facts serve reasonably well — for whom section 15(2) currently has no comfortable home.

It is worth adding that this category is unlikely to be a small one. Marriages end for an enormous range of reasons, and the reasons that make for a compelling section 15(2)(c) pleading — misconduct serious enough to satisfy an objective reasonableness standard — are, almost by definition, a subset of the full range of reasons real marriages actually end. Growing apart, diverging life goals, the simple erosion of affection over years of otherwise unremarkable cohabitation, incompatible responses to family pressure or financial strain: none of these need involve any wrongdoing by either spouse, and all of them are entirely capable of rendering a marriage as irretrievably broken, in fact, as one ended by adultery or violence. A statute that can accommodate only the latter category comfortably is, on any fair reading, addressing a narrower slice of marital breakdown than the phrase "irretrievable breakdown" in section 15(1) was surely meant to cover.

9. THE COMPARATIVE LESSON: ENGLAND'S MOVE TO TRUE NO-FAULT DIVORCE

Nigeria's 1970 statute was modelled closely on the English breakdown principle developed in the late 1960s, and it is therefore instructive that England and Wales have since concluded that the very compromise Nigeria's drafters borrowed — proof of breakdown only through a closed list of facts — did not work, and have legislated it out of existence.

The catalyst was the 2018 Supreme Court decision in *Owens v Owens*. Mrs Owens petitioned for divorce after a marriage of some four decades, relying on her husband's behaviour; the trial judge found that the marriage had, as a matter of plain fact, ended, but concluded that the specific incidents pleaded did not, individually or cumulatively, meet the statutory threshold for unreasonable behaviour, and Mr Owens successfully defended the petition.[50] The Court of Appeal and the Supreme Court both dismissed her further appeals, each expressing open discomfort with the outcome the law compelled them to reach; the result was that Mrs Owens remained legally married to a husband she had left, with no route to dissolution except to wait out a five-year separation period under the then-applicable law.[51]

The public and professional reaction to *Owens* supplied the final push behind a reform that family lawyers and the Law Commission had urged for decades: the Divorce, Dissolution and Separation Act 2020, which came into force on 6 April 2022.[52] The Act removed the

[50]*Owens v Owens* [2018] UKSC 41; see also Wikipedia, 'Owens v Owens', summarising the procedural history.
[51]ibid; see also Kingsley Napley, 'Divorce, Dissolution and Separation Act 2020 — The End of Fault-Based Divorce Is in Sight' (10 May 2025).
[52]Divorce, Dissolution and Separation Act 2020 (UK); see The Law Society, 'No-Fault Divorce' (resource page); International Family Law Group, "England's New Divorce Law from April 2022" (25 July 2023).

requirement to prove any fact at all: a party (or both parties jointly) need now only file a statement asserting that the marriage has broken down irretrievably, and that statement is, by the Act's own terms, to be treated as conclusive proof of the fact it asserts — a court can no longer, as it did to Mrs Owens, look behind the petitioner's own assessment of the marriage and find it wanting.[53] The reform also abolished the possibility of a respondent defending the petition on the merits, removing the very mechanism that had allowed Mr Owens to keep his wife legally bound to him for years beyond the point at which, on the trial judge's own finding, the marriage had ended.[54]

The English experience is instructive for Nigeria in a precise and limited way. It does not suggest that fact-based proof of breakdown is inherently unworkable — the English system operated, with periodic controversy, for over half a century. It suggests instead that a fact-based system inevitably produces cases at the margin — genuinely broken marriages that do not fit neatly within any of the available facts — and that as those marginal cases accumulate and become visible, as *Owens* made visible, the pressure for a cleaner, purely self-assessed breakdown standard becomes difficult to resist. Nigeria's section 15(2), considered in Part VIII above, generates precisely the same category of marginal case — the fault-free, incompatible marriage that fits none of the eight paragraphs comfortably — but Nigeria has not yet had its own *Owens* moment, in the sense of a single, high-profile case capable of galvanising legislative attention. This article suggests that Nigerian reformers need not wait for one.

[53]The Conversation, 'No Fault Divorce: How the New Law Will Reduce Family Conflict' (15 December 2025); K Moynihan, 'No Fault Divorce', University of Staffordshire Law Blog.
[54]R Ali, 'Divorce Dissolution and Separation Act 2020', University of Staffordshire Law Blog.

It is worth acknowledging, in fairness, that England's reform has itself attracted criticism, and that Nigeria should weigh that criticism before assuming the English model can simply be transplanted wholesale. Removing the possibility of a defended divorce, as the 2020 Act did, also removes whatever limited protective function a defence once served for a respondent facing a false or exaggerated petition — a protection Mr Owens successfully invoked, however unsympathetically, and that a small number of respondents in any system might have a legitimate interest in retaining. Family law commentators have also noted that a purely self-assessed breakdown standard shifts disputes that once occurred within the divorce petition itself — over whether the marriage really has ended — into the separate, and often more consequential, financial remedies proceedings that follow, meaning that adversarial contest is not eliminated so much as relocated. Nigeria's own reform, if it follows the English model, should anticipate this relocation and ensure that its financial and custodial provisions under sections 70 to 75 of the MCA are equipped to absorb disputes that a no-fault dissolution track would no longer resolve at the petition stage.

10. A DOMESTIC COMPARATOR: CUSTOMARY AND ISLAMIC DISSOLUTION

The rigidity of the MCA's fact-based regime is thrown into sharper relief by contrast with the dissolution routes already available, within Nigeria itself, to couples married under customary law or Islamic rites — marriages the MCA expressly does not govern.[55] Under both systems, in broad and necessarily generalised terms, dissolution is typically negotiated within the family or community structure, or pronounced according to religious formula, without requiring the aggrieved party to plead and prove a specific statutory fact of the kind section 15(2) demands of statutory-marriage petitioners; the emphasis

[55]MCA, s 114(6).

in many customary and Islamic dissolution processes falls on reconciliation efforts, the return of bridewealth, and communal or religious sanction, rather than on adversarial proof of a codified wrong.

The comparison should not be overstated: customary and Islamic dissolution processes raise their own, well-documented concerns, particularly around the relative bargaining power of wives seeking to initiate dissolution and the financial and custodial consequences that can follow. But for present purposes, the comparison makes a narrower point. Nigeria does not lack a legal imagination capable of dissolving a marriage without a formal, adversarial finding of fault — that capacity exists, and operates daily, just outside the MCA's jurisdiction. The question this article poses is why couples who chose to marry under the Marriage Act should, on divorce, be offered a comparatively more rigid, fault-oriented process than couples who married under custom or Islamic law, when the underlying human reality — two people whose marriage has ended — is identical.

This comparison also carries a practical, forward-looking implication for reform design. Because section 114(6) of the MCA already excludes non-monogamous and customary or Islamic marriages from its scope, any legislative reform introducing a genuinely no-fault track for statutory marriages would not need to reconcile itself with, or displace, the existing customary and Islamic dissolution frameworks; the two systems can continue to operate in parallel, exactly as they do today, each governing the category of marriage its parties chose to enter. The reform proposed in Part XII is therefore modest in scope: it asks Nigeria to bring the statutory-marriage regime somewhat closer to the flexibility Nigerian couples already enjoy, as a matter of everyday legal practice, under the customary and Islamic systems operating alongside it — not to import an entirely foreign model into Nigerian family law for the first time.

11. The Practical Costs of the Current Framework

11.1. Delay and Litigation Cost

Contested proceedings under section 15(2)(c) in particular can extend over years, as the parties dispute not merely whether the marriage has ended but whose conduct is to blame for its ending — an inquiry section 15(1) was drafted to make unnecessary. Nigerian family law commentary has repeatedly flagged the procedural and substantive complexity this generates, and has called for reform to reduce the burden this placed on parties who, whatever the state of their marriage, are typically also managing shared children, property, and, often, ongoing financial interdependence during the litigation.[56]

11.2. Incentives Toward Exaggeration

Because the objective standard for unreasonable behaviour rewards the petitioner who can plead conduct serious enough to persuade a court, and because that is, for many couples, the only realistic fault-free-adjacent route to a prompt decree, the incentive structure of section 15(2)(c) tends toward inflation of grievances rather than candid acknowledgment of mutual incompatibility. A petitioner whose honest complaint is that the marriage has simply grown stale has every incentive, under the current law, to reach instead for the most serious available characterisation of the respondent's conduct — precisely the dynamic that produced the "clean hands" defence in *Owens v Owens* and that England's reformers concluded was doing more harm than good.

[56]See generally Ayenakin and Kolade-Faseyi, (n.24), arguing for a reduction of substantive and procedural complexity in Nigerian matrimonial litigation.

11.3. The Fault-Free Petitioner With No Statutory Home

Most consequentially, the current framework leaves a residual category of Nigerian couples without any comfortable statutory route to divorce at all: those in marriages that have ended amicably, without adultery, violence, addiction, or desertion, where the respondent nonetheless declines whether from religious conviction, financial calculation, or simple inertia — to consent to a two-year separation decree. For that couple, the MCA offers only a three-year wait or the discomfort of manufacturing a section 15(2)(c) case neither party may believe to be true. This is the clearest instance of "irretrievable breakdown" being, in the terms of this article's title, too narrow: the marriage has broken down by any ordinary measure, but the statute simply does not have a box for it to be ticked without either delay or invented blame. It is worth pausing on how this category of petitioner is likely to be experienced in practice, since the abstract description understates the real difficulty involved. Such a petitioner typically approaches counsel already resolved that the marriage is over, often after years of quiet drift rather than any single precipitating event, and is then told — correctly, on the current state of the law that resolve alone is not enough, and that a legally cognisable story of fault will need to be constructed before a court can act. The petitioner is thereby placed in the position of having to search their own marriage for grievances substantial enough to plead, an exercise that can itself manufacture the very acrimony the parties had, until that point, largely avoided.

11.4. Effects on Children and on Public Confidence in the Courts

The costs identified above do not fall on the divorcing spouses alone. Where, as section 57 requires, the welfare of children under sixteen must be addressed before a decree nisi can become absolute, an unnecessarily protracted and acrimonious fault contest delays the very point at which those children's welfare arrangements can be settled with legal certainty, prolonging a period of household instability that child-welfare research consistently associates with poorer outcomes for children caught in parental separation. There is also a broader, less tangible cost to public confidence in the family justice system: a legal process that requires two people who have already agreed, in substance, that their marriage is over to nonetheless conduct a formal contest over blame risks teaching litigants and the wider public who hear about their experiences that Nigerian family law is preoccupied with assigning fault rather than with resolving the practical and human consequences of a marriage's end. Neither of these costs is easily quantified, but both are real, and both would be reduced by the reforms proposed in Part XII.

12. TOWARD REFORM

12.1. A Genuine No-Fault Track

The clearest lesson from Part IX is that Nigeria should consider introducing a facts-free route to dissolution modelled on the post-2022 English position: a sworn statement by one or both parties that the marriage has broken down irretrievably, treated by statute as conclusive of that fact, without requiring proof of any of the matters presently listed in section 15(2). This would not repeal the existing eight facts a petitioner with a genuine, provable grievance involving adultery, violence, or desertion should remain free to plead it, not least because such findings can carry consequences for damages, maintenance, or custody that a purely no-fault route may not, but it would supply the missing option for the fault-free, incompatible marriage identified in Part VIII(C).

12.2. Removing the Respondent's Veto Over the Two-Year Route

Short of a full no-fault track, a narrower reform would remove the requirement, currently found in section 15(2)(e), that the respondent must not object before two years' separation can found a decree, aligning that paragraph with the unilateral three-year route already available under paragraph (f). This alone would meaningfully shorten the wait for couples who agree, or at least do not actively contest, that their marriage has ended, without touching the fault-based facts at all.

12.3. Clarifying the Objective Standard Under Section 15(2)(c)

Given the continuing academic debate over whether decisions such as *Adetule v Adetule* have set the evidentiary bar for unreasonable behaviour appropriately, the National Assembly or the Supreme Court would do well to clarify whether cumulative, lower-intensity incompatibility as opposed to the graver forms of misconduct catalogued in section 16(1) can itself satisfy paragraph (c), so that petitioners and courts are not left to guess, case by case, how serious a pattern of conduct must be before it qualifies. A statutory note appended to section 16, expressly confirming that persistent, mutual emotional estrangement or incompatibility of temperament may in appropriate cases satisfy paragraph (c) without requiring proof of conduct resembling the graver wrongs listed in section 16(1)(a)–(g), would go a considerable distance toward closing the gap identified in Part VIII without requiring wholesale legislative redesign of the Act.

12.4. A Non-Adversarial Procedural Track

Regardless of what happens to the substantive facts, Nigeria's family courts would benefit from a dedicated, less adversarial procedural track for undefended or jointly presented petitions — mirroring, in spirit, the administrative rather than courtroom-centred process England adopted alongside its 2020 substantive reform — freeing judicial time currently absorbed by contested unreasonable-behaviour litigation for the smaller number of genuinely disputed cases that will always require a full hearing. Such a track might, for instance, permit a jointly signed petition asserting irretrievable breakdown to proceed to a decree nisi on the papers, without a substantive hearing, wherever both parties confirm in writing that they do not intend to contest either the fact of breakdown or the arrangements proposed for any children of the marriage reserving the courtroom, and the fuller evidentiary apparatus discussed in Part VI, for the genuinely contested minority of cases where a full hearing remains necessary and appropriate.

12.5. Reconciling Section 70(1) With a No-Fault Track

Any move toward a genuine no-fault track, as proposed in Part XII(A), would need to be accompanied by a corresponding look at section 70(1)'s direction that maintenance orders have regard to the *conduct* of the parties. If a couple can dissolve their marriage without any finding of fault, but a court assessing maintenance under Part IV of the Act may still inquire into conduct as part of that separate exercise, litigants may simply relocate the adversarial fault contest from the dissolution petition to the maintenance proceedings that follow it, reproducing, in a different procedural location, precisely the problem a no-fault reform is meant to solve. Nigerian legislators considering reform along the lines proposed here should therefore treat sections 15, 16, and 70 as a single interconnected package, rather than amending the dissolution provisions in isolation and leaving the financial consequences provisions to generate the same fault-finding incentives by another route.

13. CONCLUSION

This article has traced the gap between the promise of section 15(1) of the Matrimonial Causes Act 1970 and the practical operation of section 15(2), from the statute's historical roots in the matrimonial-offence doctrine it was meant to displace, through the case law that has construed each of the eight facts, the procedural bars and evidentiary rules that surround them, and the financial and custodial consequences that follow a fault finding, before turning to England's own, more recent abandonment of the same fact-based compromise Nigeria adopted in 1970.

Section 15(1) of the Matrimonial Causes Act 1970 tells Nigerians that their marriages may be dissolved once they have broken down irretrievably. Section 15(2) then tells them that the court will only believe them if they can fit their story into one of eight specific boxes, six of which require proof of some form of fault, and the other two of which demand either the respondent's cooperation or years of patience. The result, traced through the case law examined in this article. *Ekrebe*, *Damulak*, *Bibilari*, *Obahaya*, and *Adetule* among them is a statute that speaks the modern language of breakdown while, in its operative machinery, still asking Nigerian couples the old question the reform was meant to retire: whose fault was it? England's answer, arrived at only after the very public discomfort of *Owens v Owens*, was to stop asking that question altogether. Nigeria need not adopt the English answer wholesale, and there are respectable reasons evidentiary, cultural, and practical for retaining some version of fact-based proof alongside any reform. But the case examined in this article suggests, at minimum, that the current list is too narrow, that its narrowness has a real and measurable cost in delay, expense, and manufactured acrimony, and that a Nigerian couple whose marriage has quietly and mutually ended deserves a statutory route to say so, without having to invent a villain first.

There is a wider point here about how reform statutes age. The drafters of the MCA in 1970 were not naive; they were importing, in good faith, the most progressive family law thinking available to them at the time, from a jurisdiction whose legal tradition Nigeria's own courts and legislature had long looked to for guidance. What neither they nor their English counterparts could fully anticipate was how durable the underlying instinct toward fault-finding would prove to be, even once dressed in the neutral vocabulary of breakdown an instinct sturdy enough to survive fifty years of a statute explicitly designed to displace it, and sturdy enough that England itself needed a further half-century, and one particularly hard case, to finish the job its own 1969 reform had left incomplete. Nigeria's Matrimonial Causes Act is not a failed statute; it succeeded in retiring the old, explicit matrimonial-offence doctrine and replacing it with a more humane governing principle. But success in 1970 is not the same as completion, and this article's central claim is simply that the unfinished part of that project closing the gap between what section 15(1) promises and what section 15(2) actually delivers — remains worth finishing.

For the individual Nigerian petitioner, none of this is abstract. It is the difference between walking into a lawyer's office and saying, simply and honestly, that a marriage has ended, and being told instead that the law needs a story a story about wrongdoing, about who left whom, about whose fault it truly was before it will listen. Fifty-five years after Parliament promised, in section 15(1), to ask only whether the marriage had broken down, that is still, for a great many Nigerian couples, the price of admission to their own divorce.