Commencement: 15 September 1986

# CHAPTER 192

# MATRIMONIAL CAUSES

Act 13 of 1986

**ARRANGEMENT OF SECTIONS**

**PART 1 – NULLITY OF MARRIAGE**
1. Decree of nullity in respect of void marriages
2. Decree of nullity in respect of voidable marriages
3. Forms of petition Forms A and B

**PART 2 – DISSOLUTION OF MARRIAGE**
4. Dissolution of custom marriage
5. Grounds for petitions
6. Restrictions of petitions for divorce during the first 2 years after marriage
7. Forms of petition Forms C and D
8. Provision as to making adulterer co-respondent
9. Duty of court on presentation of petition
10. Dismissal of co-respondent from proceedings
11. Relief to respondent on petition for divorce
12. Notice of dissolution of marriage Form G
13. Proceedings for decree of presumption of death and dissolution of marriage

**PART 3 – PROVISIONS FOR ALIMONY AND CUSTODY**
14. Alimony and maintenance in case of divorce and nullity of marriage
15. Custody and maintenance of children
16. Restrictions on grant of relief in proceedings for divorce etc. involving welfare of children

**PART 4 – SUPPLEMENTARY PROVISIONS**
17. Damages for adultery
18. Appeals
19. Evidence
20. Consequence of failure to pay moneys ordered
21. Fees

**SCHEDULE 1** – Forms

**SCHEDULE 2** – Fees

# MATRIMONIAL CAUSES

**To provide for the dissolution and nullity of marriages.**

## PART 1 – NULLITY OF MARRIAGE

### 1. Decree of nullity in respect of void marriages

A marriage is void and the Court shall pronounce a decree of nullity in respect thereof if it is proved –

(a) that the marriage was induced by duress or mistake; or

(b) that at the time of the marriage one of the parties was by reason of unsoundness of mind incapable of understanding the nature of the ceremony; or

(c) that the parties were within such prohibited degrees of consanguinity or affinity as the Court after considering such evidence on the matter as has been presented to it may determine to have been applicable to the parties at the time of their marriage; or

(d) that the marriage was not celebrated in due form.

### 2. Decree of nullity in respect of voidable marriages

(1) A marriage is voidable and upon the application of the petitioner the Court shall pronounce a decree of nullity in respect thereof, if it shall be proved –

(a) that the marriage has not been consummated owing to the incapacity or wilful refusal of the respondent to consummate the marriage; or

(b) that either party to the marriage was, at the time of the marriage, of unsound mind, or subject to recurrent fits of insanity or epilepsy; or

(c) that the respondent was, at the time of the marriage, suffering from venereal disease in a communicable form; or

(d) that the respondent was, at the time of her marriage, pregnant by some other person than the petitioner:

Provided that in the cases specified in paragraphs (b), (c) and (d), the Court shall not grant a decree unless it is satisfied –

(i) that the petitioner was, at the time of the marriage, ignorant of the facts alleged;

(ii) that proceedings were instituted within a year of the date of the marriage; and

(iii) that sexual intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of grounds for a decree.

(2) Any child born of a marriage avoided in pursuance of paragraphs (b), (c) and (d) of subsection (1) shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided.

(3) Nothing in this section shall be construed as validating any marriage which is by law void but with respect to which a decree of nullity has not been granted.

**3. Forms of petition Forms A and B**

(1) Every petition for nullity of marriage shall state shortly the material facts relied upon and shall be in the Form A in Schedule 1.

(2) Every such petition shall be verified by declaration in the Form B in Schedule 1.

(3) A copy of the petition shall be served on the respondent personally unless the Court shall otherwise direct and such service shall be verified in such manner as the Court may prescribe.

## PART 2 – DISSOLUTION OF MARRIAGE

**4. Dissolution of custom marriage**

When two persons have been married according to custom, the marriage may be dissolved, annulled or separation ordered only in accordance with custom:

Provided that notification of such dissolution or annulment of the marriage shall be made to the District Registrar in accordance with the provisions of the Civil Status (Registration) Act [Cap. 61] as amended.

**5. Grounds for petitions**

Subject to the provisions of section 6, a petition for divorce may be presented to the Court either by the husband or the wife –

(a) on the ground that the respondent –

(i) has since the celebration of the marriage committed adultery; or

(ii) has deserted the petitioner without just cause for a period of at least 3 years immediately preceding the presentation of the petition; or

(iii) has since the celebration of the marriage treated the petitioner with persistent cruelty; or

(iv) is incurably of unsound mind and has been so continuously for a period of at least 5 years immediately preceding the presentation of the petition; or

(b) upon the grounds provided by subsection (1) of section 13,

and by the wife on the ground that her husband has, since the celebration of the marriage, been convicted of rape or an unnatural offence.

**6. Restrictions of petitions for divorce during the first 2 years after marriage**

(1) No petition for divorce shall be presented to the Court unless at the date of the presentation of the petition 2 years have passed since the date of the marriage:

Provided that the Court may upon application being made to it allow a petition to be presented before 2 years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the said 2 years upon the same or substantially the same facts as those proved in support of the petition so dismissed.

(2) In determining any application under this section for leave to present a petition before the expiration of 2 years from the date of the marriage, the Court shall have regard to the interests of any children of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said 2 years.

(3) Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters which have occurred before the expiration of 2 years from the date of the marriage.

**7. Forms of petition Forms C and D**

(1) A petition shall be in the Form C in Schedule 1, and shall be verified by the petitioner by declaration in the Form D in the said Schedule.

(2) A copy of the petition shall be served personally on the respondent and co-respondent (if any) unless the Court shall otherwise direct and such service shall be verified in such manner as the Court may prescribe.

**8. Provision as to making adulterer co-respondent**

Where adultery is alleged in a petition or by a respondent, the petitioner or respondent as the case may be shall make the alleged adulterer a co-respondent unless he or she is excused by the Court on special grounds from doing so.

**9. Duty of court on presentation of petition**

(1) Before hearing any petition for divorce (other than a petition based upon the provisions of subsection (1) of section 13) the Magistrate shall make such enquiries as he shall see fit to determine whether the parties may be reconciled and shall not proceed with the hearing unless and until he is satisfied that reconciliation is impossible. He may appoint any person to act as a conciliator and may adjourn the proceedings for the purpose of conciliation.

(2) On the hearing of a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties, and also to inquire into any countercharge which is made against the petitioner.

(3) If the Court is satisfied on the evidence that –

(a) the case for the petitioner has been proved; and

(b) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at, or condoned the adultery, or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and

(c) the petition is not presented or prosecuted in collusion with the respondent or either of the respondents,

the Court shall pronounce a decree of divorce, but if the Court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the petition.

**10. Dismissal of co-respondent from proceedings**

In any case in which, on a petition for divorce on the ground of adultery, the alleged adulterer is made a co-respondent, the Court may, after the close of the evidence on the part of the petitioner, direct the co-respondent to be dismissed from the proceedings if the Court is of the opinion that there is not sufficient evidence against him or her.

**11. Relief to respondent on petition for divorce**

If in any proceedings for divorce the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the Court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.

**12. Notice of dissolution of marriage Form G**

Three months after any marriage has been declared by the Court to be dissolved, and subject to any appeal if any made under the provisions of section 18 having been determined in favour of the petitioner, the Court shall without any further proceedings issue a notice in the Form G in Schedule 1, whereupon the marriage shall be absolutely dissolved.

**13. Proceedings for decree of presumption of death and dissolution of marriage**

(1) When any married person has been continually absent from the other spouse for a period of 7 years or more and such other spouse has throughout such period received no information directly or indirectly concerning the whereabouts or existence of the absent spouse, such other spouse may petition the Court for a decree of presumption of death and dissolution of the marriage.

(2) In any case where the Court has granted a decree of dissolution of marriage under the provisions of subsection (1) and the spouse on whose petition such decree was granted has not subsequently married any other person or has not entered lawfully into another marriage, the party upon whose absence for 7 years or more the petition was based shall be entitled subsequently to petition the Court in the Form E in Schedule 1 verified by declaration in the Form F thereof to re-hear the case and to review its decision thereon and the Court may in its discretion, after considering all the facts and in particular the reasons for the petitioner's absence and failure to communicate with the respondent and the welfare of any dependent children of the marriage confirm or rescind the decree for dissolution of the marriage.

## PART 3 – PROVISIONS FOR ALIMONY AND CUSTODY

**14. Alimony and maintenance in case of divorce and nullity of marriage**

(1) On any petition for divorce or nullity of marriage, the Court may make such interim orders for the payment of alimony to the wife as the Court thinks just.

(2) On any decree for divorce or nullity of marriage, the Court may, if it thinks fit, by order direct the husband to pay to the wife, during such period or until her re-marriage, such weekly, monthly or annual sum for the maintenance and support of the wife as the Court may think reasonable.

(3) Where the Court has made an order under subsection (2), the Court shall upon the application of either party have the power to discharge or vary the order or to suspend any provision thereof temporarily and to revive the operation of any provisions so suspended upon the grounds that the circumstances affecting the parties or either of them have materially changed since the making of the order.

**15. Custody and maintenance of children**

(1) In any proceedings for divorce or nullity of marriage the Court may, from time to time, either before or after the final decree, make such provision as appears just with respect to the custody, maintenance and education of the children of the marriage.

(2) For the purpose of this Act the expression "children of the marriage" shall include any child of one party of the marriage (including any illegitimate or adopted child) who has been accepted as one of the family by the other party.

**16. Restrictions on grant of relief in proceedings for divorce etc. involving welfare of children**

(1) Subject to the provisions of this section, in any proceedings for divorce or nullity of marriage where the Court has jurisdiction in relation to any child of the marriage, the Court shall not make any decree for divorce or nullity of the marriage unless and until the Court is satisfied, with respect to every such child who has not attained the age of 16 years, that –

(a) arrangements have been made for the care and upbringing of the child, and that these arrangements are satisfactory or are the best that can be devised in the circumstances; or

(b) it is impracticable for the party or parties before the Court to make any such arrangements.

(2) The Court may, if it thinks fit, proceed without observing the requirements of subsection (1) if it appears that there are circumstances making it desirable that the decree should be made, and if the Court has obtained a satisfactory undertaking from either or both of the parties to bring the question of arrangements for the children before the Court within a specified time.

## PART 4 – SUPPLEMENTARY PROVISIONS

### 17. Damages for adultery

(1) A petitioner may on a petition for divorce claim damages from any person on the ground of adultery with the respondent.

(2) The Court may direct in what manner the damages recovered on any such petition are to be paid or applied.

### 18. Appeals

(1) Either the husband or the wife may within 21 days appeal to the Supreme Court against the decision of the Court granting or refusing to grant a decree of divorce or nullity as the case may be on the ground that the Court misdirected itself as to any question of law or mixed fact and law.

(2) Any person in whose favour or against whom, as the case may be, the Court has made an order or orders under sections 13, 14, 15, 16 or 17 may within 21 days appeal to the Supreme Court.

### 19. Evidence

(1) Notwithstanding any rule of law, the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) Notwithstanding anything in this section or any rule of law, a husband or wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.

(3) The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings, but no witness in any such proceedings, whether a party thereto or not shall be liable to be asked, or be bound to answer, any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery.

(4) Any medical evidence in proceedings under this Act may be admitted in the form of a certificate signed by the medical practitioner giving the same:

Provided that upon the application of any opposing party, the Court shall direct such medical practitioner to attend the hearing of the proceedings in person for the purpose of giving *viva voce* evidence.

(5) In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard *in camera* unless in any case the Magistrate is satisfied that in the interests of justice any such evidence ought to be heard in open Court.

**20. Consequence of failure to pay moneys ordered**

Where any person ordered to pay alimony under section 14, maintenance under section 15 or damages under section 17 fails to pay the same at the time or in the manner ordered by the Court, the Court may commit that person to prison for such period of imprisonment not exceeding 6 months as it may think fit. Such imprisonment shall not have the effect of excusing the payment of the alimony, maintenance or damages, as the case may be.

**21. Fees**

The fees contained in Schedule 2 shall be the prescribed fees to be paid under this Act until altered, amended, revoked or added to by the Minister responsible for finance by Order.

## SCHEDULE 1

### MATRIMONIAL CAUSES ACT CAP. 192

### FORM A

(section 3)

In the Magistrates' Court for ……..... District.

Matrimonial Jurisdiction

Petition for Nullity of Marriage

To the Magistrate:

The Magistrates' Court for ……..... District.

The petition of .....……

of .....…….. shows:

1. That on the …….. day of ……. 20….. a ceremony of marriage was in fact celebrated between the petitioner and ..... (hereinafter called the respondent) at .....

2. That after the said ceremony the petitioner lived and cohabited with the respondent at .....……..

3. That the petitioner resides at ..... and is domiciled in Vanuatu, and that the respondent resides at ..... and is domiciled in .....……

4. That no previous proceedings with reference to the said marriage have taken place before this Court or any other court by or on behalf of either party to the said marriage save and except .....……
.....……
…….....

5. (State here the ground upon which the petition is brought)

   The petitioner therefore prays that the Court will be pleased to decree -

   (a) that the marriage in fact celebrated between the petitioner and the respondent be declared null and void;

(b) that the petitioner may have such further and other relief as may be just.

Dated the …….. day of …… 20……

.....
Petitioner

(L.S.)

In the Magistrates' Court for ..... District.

To .....……..... of ..... respondent.

Take notice that the above petition has been set down for hearing at the Court at ..... on the ..... day of ..... 20..... at ..... o'clock in the ..... noon, and you are required to appear at the Court on the day and at the hour aforesaid for the hearing of the petition, otherwise the hearing of the said petition may be proceeded with and judgment given in your absence.

Dated the ..... day of ..... 20.....

Magistrate

**MATRIMONIAL CAUSES ACT CAP. 192**

**FORM B**

(section 3)

In the Magistrates' Court for ..... District.

Matrimonial Jurisdiction

In the matter of the petition of ..... for a decree for nullity of marriage.

I, ..... of ..... in Vanuatu, solemnly and sincerely declare that the statements set forth in my petition dated the ..... day of ..... 20..... are true.

DECLARED by the said .....……..... this .....…….. day of ..... 20..... before me: .....

*Magistrate*

**MATRIMONIAL CAUSES ACT CAP. 192**

**FORM C**

(section 7)

In the Magistrates' Court for ..... District.

Matrimonial Jurisdiction

Petition for Dissolution of Marriage

To the Magistrate

The Magistrates' Court for ..... District.

The ……..... day of ..... 20.....

The Petition of ..... shows -

1. That the said petitioner was on the ..... day of ..... 20..... at ..... lawfully married to .....

2. That after the said marriage the petitioner lived and cohabited with the said .....….. at ..... and that there are the following children of the said marriage now living -

3. That there have been no previous proceedings in this Court or any other court with reference to the petitioner's said marriage either by or on behalf of the petitioner or the respondent. (If any proceedings have taken place set them out with the statement "save and except as aforesaid there have been no previous proceedings" etc.)

4. That the respondent has committed adultery with ..... at .....:..... (or as the case may be, setting out the matrimonial offence relied on).

5. That the petitioner claims from the said ..... damages in respect of the adultery of the said ..... with the respondent.

6. That the petitioner and the respondent are both domiciled in Vanuatu. The petitioner therefore prays that the Court will be pleased to decree -

   (a) that the marriage between the petitioner and the respondent be dissolved;

   (b) that the petitioner may have the custody of the child(ren) of the said marriage;

   (c) that the said .....co-respondent, do pay the petitioner the sum of VT ..... damages in respect of his/her adultery with the respondent;

   (d) that the petitioner may have such further and other relief as may be just.

Dated the ..... day of ..... 20.....

.....
Petitioner

(L.S.)

The Magistrates' Court for ..... District.

To ..... of ..... respondent (and to ..... of ..... co-respondent).

Take notice that the above petition has been set down for hearing at the Court at ..... on the ..... day of ..... 20..... at ..... o'clock in the ..... noon and you are required to appear at the Court on the day and at the hour aforesaid for the hearing of the petition otherwise the hearing of the said petition may be proceeded with and judgment given in your absence.

Dated the ..... day of ..... 20.....

*Magistrate*

## MATRIMONIAL CAUSES ACT CAP. 192

### FORM D

(section 7)

In the Magistrates' Court for ..... District.

Matrimonial Jurisdiction

In the matter of the petition of ..... for a decree for dissolution of marriage.

I, ..... of ..... the petitioner in this cause, solemnly and sincerely declare as follows -

1. That the statements contained in paragraphs ..... of my petition dated ..... are true.

2. That the statements contained in paragraphs ..... of my said petition are true and correct to the best of my knowledge, information and belief.

3. That no collusion or connivance exists between me and the respondent in any way whatever.

DECLARED by the said .....……
this .....…. day of ..... 20.....
before me: .....

*Magistrate*

## MATRIMONIAL CAUSES ACT CAP. 192

### FORM E

(section 13)

In the Magistrates' Court for ..... District.

Matrimonial Jurisdiction

In the matter of the petition of ..... for rehearing of a decree for dissolution of marriage.

To the Magistrate:

The Magistrates' Court for ..... District.

The petition of ..... of ..... shows -

1. That on the ..... day of ..... 20..... a ceremony of marriage was in fact celebrated between the petitioner and ..... (hereinafter called the respondent) at .....……..

2. That on the ..... day of ..... 20..... this Court sitting at ....., granted to the respondent a decree for dissolution of the said marriage upon the grounds that I had been absent from the respondent for 7 years or more and that the respondent had received throughout such period no information of my whereabouts or existence.

3. That the following children of the said marriage are now living –
.....……
…….....
.....

4. That subsequently to the said decree for dissolution of marriage the respondent has not married any other person or has not entered lawfully into another marriage.

5. That I have now returned to my former place of residence and am desirous of resuming cohabitation with the respondent.

The petitioner therefore prays that the Court will decree -

(a) that the decree for dissolution of marriage referred to in paragraph 2 of this petition be rescinded;

(b) that the petitioner may have such other or further relief as may be just.

Dated the ..... day of ..... 20.....

.....
Petitioner

(L.S.)

The Magistrates' Court for ..... District.

To ..... of ..... Respondent.

Take notice that the above petition has been set down for hearing at the Court at ..... on the ..... day of ..... 20..... at ..... o'clock in the ..... noon and you are required to appear at the Court on the day and at the hour aforesaid for the hearing of the petition otherwise the hearing of the said petition may be proceeded with and judgment given in your absence.

Dated the ..... day of ..... 20.....

*Magistrate*

**MATRIMONIAL CAUSES ACT CAP. 192**

**FORM F**

(section 13)

In the Magistrates' Court for ..... District.

Matrimonial Jurisdiction

In the matter of the petition of ..... for rehearing of a decree for dissolution of marriage.

I, ..... of ..... the petitioner in this cause, solemnly and sincerely declare as follows -

1. The statements contained in paragraphs ..... of my petition dated ..... are true.

2. The statements contained in paragraphs ..... of my said petition are true and correct to the best of my knowledge, information and belief.

3. No collusion or connivance exists between me and the respondent in any way whatever.

DECLARED by the said .....……
this .....…... day of ..... 20.....
before me: .....

*Magistrate*

## MATRIMONIAL CAUSES ACT CAP. 192

### FORM G

(section 12)

In the Magistrates' Court for ..... District.

Matrimonial Jurisdiction

Notice of Dissolution of Marriage

To and

Petitioner Respondent

Notice is hereby given to you and each of you that no appeal having been lodged against the decree of this Court pronounced on the ..... day of ..... 20..... (or an appeal against the decree of this Court pronounced on the ..... day of ..... 20..... having been determined in favour of the petitioner), the marriage solemnised at ..... on the ..... day of ..... between ..... (the above-named petitioner) and ..... (the above-named respondent) is declared by this Court to be, and is hereby absolutely dissolved.

Dated at ..... this ..... day of ..... 20.....

*Magistrate*

## SCHEDULE 2

(Section 21)

### FEES

| | |
|---|---|
| Filing and presenting petition (Dissolution of Marriage or Nullity) | VT 5,000 |
| Hearing fee | VT 2,000 |
| Decree | VT 1,000 |