

ASHLEY SLAMAT
— ATTORNEYS AT LAW —
Success. Understood.

DIVORCE ACT 70 OF 1979

To amend the law relating to divorce and to provide for incidental matters.

Section 1 deals with definitions –

“Divorce Action” means an action by which a decree of divorce or other relief in connection thereto is applied for, and includes an application *pendente lite* for an interdict, interim maintenance order, access to minor child or payment of maintenance. It can also include an application made for a contribution towards the costs of such an application.

For the purposes of the Act a divorce action shall be deemed to be instituted on the date on which the summons is issued or the notice of motion is filed or the notice is delivered in terms of the rules of court.

Section 2 deals with the jurisdiction of courts in divorce actions. A court will have jurisdiction over a matter if the parties are domiciled or ordinarily resident for a period not less than one year in the area of jurisdiction of the court on the date on which the action is instituted.

Section 3 sets out the grounds on which a marriage can be dissolved –

- The irretrievable break-down of the marriage(Section 4)

This is when the marriage relationship has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them.

The court will accept evidence hereof that –

- i. The parties has not lived together as husband and wife for at least 1 year
or
- ii. That one of the parties has committed adultery or
- iii. That one of the parties has been declared a habitual criminal and is undergoing imprisonment as a result of such a sentence.

The court will not order a decree of divorce if there is a reasonable possibility that the parties can become reconciled through marriage counseling, treatment or reconciliation.

- The mental illness or the continuous unconsciousness of a party to the marriage(Section 5).

The court will order a decree of divorce if such party is in terms of the Mental Health Care Act 1973 –

- i. admitted as a patient to a institution,
- ii. is detained as a state patient in an institution or
- iii. is detained as a mentally ill convicted prisoner at an institution.

The party must have been detained for at least two years prior to instituting of the proceedings and two psychologists, one appointed by the court, must have given evidence that there's no reasonable prospect for recovery.

- The court can also grant a decree of divorce when a party to a marriage is in a state of unconsciousness due to a physical disorder for at least 6 months prior to the proceedings and after evidence from two medical practitioners , one which must be a neurologist or neurosurgeon appointed by the court.

Except for the above, a court can also provide legal representation for either party to divorce proceedings and make an order with regard to providing security in respect of patrimonial benefits to which the party may be entitled to as a result of the dissolution of the marriage.

Section 5 ends by stating that a court will not dissolve a marriage if either or both of the parties will not be able to remarry because of religious reasons or barriers.