

**THE OFFENCE OF BIGAMY IN NIGERIA: A PAPER TIGER?****Josephine Adejoke Adebayo\*****Oluwaniyi Simeon Akinwale\*\*****Toluwalase Toyosi Ajibade\*\*\*****Olamiposi Sarah Kushimo\*\*\*\*****Abstract**

*Marriage is a social and legal relationship which the law protects in order to preserve its sanctity and marital bond. Nigeria is characterized by ethnic, cultural and religious diversity. It is equally a patriarchal society, therefore, bigamy is not generally seen as a profound violation of the marriage institution. Because of these difference, persons have the choice of selecting the type of marriage suitable to their way of life. There are numerous legal frameworks governing bigamy in Nigeria such as statutory provisions and case laws. However, the enforcement mechanism is weak thereby resulting to the persistence in the commission of the offence. The recent decision of court in Mohammed v Mohammed has further added to the confusion as to whether the offence still exist under the Nigerian laws. This paper uses both primary and secondary sources of doctrinal legal research comprising of statutory provisions, case laws, law textbooks, journals, articles and other online materials to analyse information set out. It finds that the rate at which the offence is committed in Nigeria has greatly increased as a result of weak enforcement mechanism. It concludes that commission of bigamy persist in Nigeria due to socio-religious differences and inefficiency of extant laws. It recommends strict application of punishment to the offence, legislative reforms and societal orientation.*

**Keywords:** bigamy, laws, marriage, monogamous, polygamous

**1.0 Introduction**

Across the globe, marriage is acknowledged and referred as a universal institution. The sanctity of marriage is a universally acknowledged concept since it is a social institution that is founded on and regulated by cultural and religious norms.<sup>1</sup> Marriage is a dedicated union between a man and woman in which they become husband and wife. Consequently, it is a commitment. Marriage is seen as a contract between two individuals, because marriage imposes special rights and obligations on each contracting party and fundamentally alters their respective statuses, it is given

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<sup>1</sup> Nwogugu E.I, *Family Law in Nigeria*. (3<sup>rd</sup> edn, HEBN Publishers 2014) 4.

particular legal and social significance. Prior to colonialism in Nigeria, polygamy was widely practiced by various ethnic groups, it was normal for a man to have more than a wife. Colonialism brought about the introduction of monogamy into the Nigerian marriage systems; this gives intending couples the right to select the type of marriage of their choice because they all have different legal implications.<sup>2</sup> Despite this, Nigerians have over the years been combining both monogamous and polygamous styles of marriage such as double-decker marriage because of lack of proper orientation.<sup>3</sup> However, not every party is keeping up to the mandates of monogamous style of marriage because some persons want to have more spouses which is leading to some socio-legal issues.

The Marriage Act 1914 provides for statutory marriage in Nigeria and it is monogamous, while customary marriage laws and Islamic marriage laws regulate polygamy. Monogamous marriage is an agreement between one man and one woman to remain together voluntarily for the rest of their lives.<sup>4</sup> It entails parties' commitment to each other in marriage, to the exclusion of others until death or divorce separates them. This system of marriage only permits one spouse at a given time. A polygamous marriage is a marriage to more than one partner, simultaneously.<sup>5</sup> There are three forms of polygamy which are polygyny, marriage of one man to more than one woman at the same time; polyandry, marriage of one woman to more than one man at the same time; and polygynandry, it is the marriage of multitude i.e., multiple men married to multiple women in order to constitute a large family unit.<sup>6</sup> It is important to note that in countries like Nigeria, polygyny is the only recognized form of polygamy. In the case of *Kpelanya v Tsoka and Anor*,<sup>7</sup> it was held that a woman cannot be lawfully married to several men simultaneously. Thus, in this paper, polygyny will be solely regarded as polygamy. Therefore, polygamous marriages in Nigeria may be defined as a union of a man with one or more women, simultaneously. In this type of marriage a man may not marry several women at once, but this does not take away his right to marry several wives as

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<sup>2</sup>. Nkume Kate 'The Legal Rights of Spouses in Marriage under Nigerian Law' (*LawPavilion*, June 19, 2023) <<https://lawpavilion.com/blog/the-legal-rights-of-spouses-in-marriage-under-nigerian-law/>> accessed 8 June 2025

<sup>3</sup>. Ajuzie C. Osondu, *Modern Nigerian Family Law & Practice : With Full Commentary on the Matrimonial Causes Rules 1983* (1st edn, Printable Publishing Company 2012). 72

<sup>4</sup>. *Hyde v Hyde & Woodmansee* (1886) LR 1 PD 130 at 133.

<sup>5</sup> Pauls Prine Elizabeth "Polygamy | Polygamy, Multiple Wives, Polygyny" (*Encyclopedia Britannica*, December 26, 2023) <<https://www.britannica.com/topic/polygamy-marriage>> accessed 9 June 2025.

<sup>6</sup>. Natarielle Powel 'Polygamy: Definition, Types & History' (*Study.com*, 21 November 2023) <<https://study.com/academy/lesson/what-is-polygamy-definition-history-lesson.html>> accessed 23 June 2025.

<sup>7</sup>. (1971) NNLR 66

time goes on.<sup>8</sup> This means that it is possible for a couple who contracted polygamous marriage to remain monogamous if they so wish; however, statutory marriage is strictly monogamous.

A customary law marriage is the lifelong partnership of one man and one or more women.<sup>9</sup> The union extends even beyond the life of the man but terminates substantially at the death of the woman.<sup>10</sup> Marrying under the customary law is one of the two ways of practicing polygamy in Nigeria. On the other hand, a person married under customary law is only potentially polygamous in as much as he remains in a one-man, one-woman relationship with his only spouse; he does not actually become polygamous until he marries other women.<sup>11</sup>

Islamic Marriages are an important aspect of Nigeria's Islamic law and culture. They are usually performed in accordance with Maliki School of law. Islamic marriage is the other way of practicing polygamy in Nigeria, it is also potentially polygamous depending on the choice of the man to either practice monogamy or marry more wives. Unlike the customary marriage which has no restriction to the number of wives a man marries at a given time, Islamic marriage only allows the man to marry up to four wives at a time, depending on his capacity.<sup>12</sup>

Therefore, intending couples have to decide on which of the above discussed type of marriage they intend to contract as they all have different legal implications both during their lifetime and beyond, especially when they die intestate.

Bigamy is the act of marrying one person while still legally married to another. It involves the intentional and wilful contract of a second marriage while a previous marriage subsists.<sup>13</sup> In Nigeria, bigamy is only applicable to statutory marriage; therefore, men who have the intention of contracting subsequent marriages in future have the options of other systems of marriage rather than subject themselves to this one in order to avoid later regrets. This paper addresses legal issue such as whether bigamy is still an offence under the Nigerian laws or not, what constitutes the offence of bigamy, whether religious conversion can be an excuse for bigamy, whether there is

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<sup>8</sup>. Linus Onyekeozurule Nwauzi, *General principles of Nigerian Customary Law* (Rivers State University, 2019) 92.

<sup>9</sup>. Nwogugu E.I, *Family Law in Nigeria*. (3<sup>rd</sup> edn, HEBN Publishers 2014) 9.

<sup>10</sup>. Anyebe, A. P, "Customary Law: The War Without Arms" (Fourth Dimension Publishers, Enugu 1985) 45.

<sup>11</sup>. Ajuzie C. Osondu, *Modern Nigerian Family Law & Practice : With Full Commentary on the Matrimonial Causes Rules 1983* (1st edn, Printable Publishing Company 2012) 73.

<sup>12</sup>. Eric Aghadiuno, 'Nigerian Marriages: Islamic Law Marriage' <<https://onlinenigeria.com/marriages-in-nigeria/Islamic-Law-Marriage>> accessed 17 June 2025.

<sup>13</sup>. Olasore, R. E., 'The Extent of Polygamy in Africa, Any Role for the Information Professionals in Curbing Further Spread?' [2016] 6(6) *Information and Knowledge Management*, 7-14.

strict application of the punishments prescribed for the offence by the courts or not? and the remedies available to resolve the issues.

## 2.0 Legal Framework

The following are some statutory provisions regulating the offence of bigamy in Nigeria:

The Constitution of Federal Republic of Nigeria empowers the National Assembly to make laws for the peace, order and good government of the Federation or any part of the country with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule.<sup>14</sup> Item 61 of the Exclusive Legislative List further grants the legislature the power to make laws relating to the formation, annulment, and dissolution of marriage other than marriage under Islamic and Customary Law including matrimonial causes arising from them. This means that the National Assembly only has the power to legislate on relating to statutory marriage. However, customary law and Islamic law marriages fall outside this exclusive domain thereby leading to a lack of uniform legal provisions for marriage.

The Criminal Code defines bigamy as, - where any person who has a living spouse, marries another person, in any case in which such latter marriage is void by the reason of it taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for seven years.<sup>15</sup> In some cases, criminal law restricts duplicity of marriages, especially where the parties are not the same as those who contracted the earlier one because it will constitute the offence of bigamy.<sup>16</sup> Section 35 of the Marriage Act prohibits the marriage of a person who had earlier contracted a valid marriage under the Act to another person under another valid marriage.

Instances such as where a person who is in an existing statutory marriage contracts another marriage statutorily with a different spouse or where he previously contracts marriage under the Marriage Act and then marries another person under the native law and custom. The law will not permit an individual who is married in accordance to the Marriage Act to contract another marriage under customary law or vice-versa.<sup>17</sup> Where any of these is done, they constitute offence of bigamy

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<sup>14</sup>. Constitution of Federal Republic of Nigeria 1999, s4(2).

<sup>15</sup>. Criminal Code Act 1916, s370

<sup>16</sup>. Bamgbose O and Akinbiyi S, *Criminal Law in Nigeria* (Nigeria, Evans Brothers (Publishers) Limited 2015) P. 186

<sup>17</sup>. Okonkwo C.O and Naish M.E, *Okonkwo and Naish: Criminal Law in Nigeria* (3rd edn, Spectrum Books Limited 2018). 302

under sections 46 and 47 of the Marriage Act and punishable with five years' imprisonment.<sup>18</sup> Bigamy therefore involves the intentional and wilful contract of a second marriage while a previous marriage subsists.<sup>19</sup> It is crucial to note that neither a certificate of decree nisi nor a formal separation makes a second marriage lawful. Aside from the possible exclusions stated above, only a divorce with a decree absolute or the death of one spouse can be considered a legal end to a marriage.<sup>20</sup> A married couple may divorce after living two years apart if both parties agree. If one party does not consent, then they may divorce after seven years living apart. Exceptions to this include if a party can prove unreasonable behaviour within the marriage or adultery.<sup>21</sup>

It is noted that bigamy has been decriminalized under the Lagos laws as a result of dearth of prosecution on it.<sup>22</sup> However, it remains an offence under the Marriage Act which applies to Lagos as the issue of statutory marriage is constitutional and it falls under the Exclusive Legislative List.<sup>23</sup> This situation has created more problems of conflict between the Federal and State legislations rather than solve the issue. Hence, it is possible for a Lagos resident offender of bigamy to be tried at the Federal High Court in that jurisdiction under the relevant provisions of the Marriage Act. From the above provisions of law, it is very clear and important to note that bigamy remains a valid offence in Nigeria until the National Assembly deems fit to remove it from the provisions of Marriage Act. In *Kuforiji & Anor v V.Y.B. (Nig) Ltd*,<sup>24</sup> the court held that although bigamy appears to be a dead letter offence, it is still an offence under the Nigerian statute books. It must therefore be given effective enforcement by way of diligent prosecution and the appropriate punishment prescribed by the laws must be strictly imposed.

### 3.0 Prevalence of Bigamy in Nigeria

Bigamy remains a prevalent issue that affects marriages in Nigeria and has significant effects on both society and the individuals. It is important to note that cases persist in spite of the above

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<sup>18</sup>. Marriage Act 1914.

<sup>19</sup>. Olasore, R. E., 'The Extent of Polygamy in Africa, Any Role for the Information Professionals in Curbing Further Spread?' [2016] 6(6) *Information and Knowledge Management*, 7-14.

<sup>20</sup>. Ardens Law, 'Penalties for Bigamy in England and Wales' <<https://www.ardenslaw.com/bigamy-in-england-and-wales/>> accessed 11 March 2025.

<sup>21</sup>. Matrimonial Causes Act 1970, s15(2).

<sup>22</sup>. Criminal Code Law of Lagos State Cap C17, Laws of Lagos State 2004, s370.

<sup>23</sup>. Constitution of the Federal Republic of Nigeria 1999 as amended, Item 61 of the Exclusive Legislative List under Part 1 of the Second Schedule.

<sup>24</sup>. (1981) LPELR-1716(SC) P 31, Para C.

provisions of law prohibiting it which highlights gaps in enforcement and awareness.<sup>25</sup> Despite bigamy being stipulated by law, it can be referred to as a "dead letter law," meaning it is rarely enforced,<sup>26</sup> or better seen as a tiger on a paper as a result of ineffective enforcement. The lack of enforcement of this criminal action is the primary basis for this research study. There are several complex factors which contribute to bigamy's persistence in Nigeria despite express legal prohibitions, such as a lack of public awareness of the legal ramifications, cultural norms that accept or even encourage multiple marriages, and poor implementation of the laws.

The practice of polygamy and having multiple spouses is supported or even encouraged by some cultures and religion which makes it more difficult to enforce bigamy laws. This acceptance complicates the enforcement of provisions of laws that prohibit bigamy particularly in areas where customary laws are deeply rooted and where polygamy is widely accepted. Women in a patriarchal society like Nigeria are mostly the victims of bigamous relationships and are usually forced to keep silent as a result of societal norm.<sup>27</sup> Although bigamy is a felony, it is not treated seriously within the legal system, and it receives little enforcement and attention.<sup>28</sup> Several questions have arisen regarding whether the offence of bigamy should be retained in our statute. In *Awobudu v Awobudu & Ors*,<sup>29</sup> the deceased married a woman under the Marriage Act in 1944, and later married the plaintiff under Ijebu customary law in 1961 while still married to the first woman. After the husband's death, the plaintiff sought to be recognized as one of his wives and to participate in the administration of his estate. The court ruled against the plaintiff, stating that the customary law marriage was invalid under Section 35 of the Marriage Act. This section prohibits a person married under the Marriage Act from contracting a subsequent customary law marriage. However, just like other offences bigamy has some defences which may be relied upon if validly proved. Where a person who has been accused of committing bigamy successfully proves that the other spouse has been absent for a period of seven years with no form of communication taking place between both parties and the accused presumes the other party as dead, it will be regarded

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<sup>25</sup>. AbdulWasiu Kuforiji, 'Is Bigamy Legal in Nigeria?' (*Nigerian Finder*, 5 April 2023) <[https://nigerianfinder.com/is-bigamy-legal-in-nigeria/#google\\_vignette](https://nigerianfinder.com/is-bigamy-legal-in-nigeria/#google_vignette)> accessed 14 June 2025.

<sup>26</sup>. Oludolapo Okunniga, 'Is bigamy a dead law' (*Tribune Online*, 13 April 2019) <<https://tribuneonline.ng.com/is-bigamy-a-dead-law/>> accessed 15 June 2025.

<sup>27</sup>. 'A Brief Overview of Bigamy and Adultery under Nigerian Law' Resolution Law Firm < <https://www.resolutionlawng.com/a-brief-overview-of-bigamy-and-adultery-under-nigerian-law/> > accessed 16 June 2025.

<sup>28</sup>. Ochem, C.E. & Emejuru, C.T., 'Bigamy in a Polygamous Society: A Critical Appraisal of the Law of Bigamy in Nigeria' [2017] 5(2), *Journal of Law and Criminal Justice*, 96-102.

<sup>29</sup>. (1979)21 RN 339.

as a good defence.<sup>30</sup> Another defence is that the accused based on reasonable grounds believed that the marriage is not valid.<sup>31</sup>

### 3.1 Disposition of Nigerian Courts to Bigamy

While there are clear statutory provisions that criminalize bigamy, their enforcement is significantly compromised by the socio-cultural acceptance of polygamy within the country. Under Section 370 of the Criminal Code Act, anyone who is convicted of bigamy is liable to serve 7 years imprisonment; however, in most cases, the Court usually impose a lesser and ridiculous punishment different from the mandates of the law.

In *R v Princewill*,<sup>32</sup> the man married another woman during the subsistence of his marriage under the Act with his wife, the court found him guilty of the offence but only sentence him to one month imprisonment. Clearly, the defendant was rightly convicted for the offence; however, this sentencing is ridiculous and it constitutes one of the instances of under-punishment of a bigamy offender. Similarly, in *R v Inyang*,<sup>33</sup> Mr. Inyang married one Evelyn in 1923 in the registry office at Hammersmith, London. While this marriage subsisted, he went through another marriage under the Act in 1938 at the United Free Church, Duke Town, Calabar with one Esien. The Court held that the prosecution failed to prove bigamy when it relied solely on the marriage certificate from the first alleged marriage and evidence of the second marriage's celebration; it was concluded that no substantial case had been established to prove the fact that the wife of the initial marriage was alive as at the date of the subsequent marriage ceremony. Before a case of bigamy can be successfully proved before the court, the prosecution must establish that initial marriage was valid and subsisting and that the previous spouse is still alive.<sup>34</sup> Evidence of celebration of marriage alone without more will not suffice.

In an interesting case of *State v Ezeagbo Nweke*,<sup>35</sup> the accused entered into a customary law marriage with a man when she was young. Subsequently, she contracted a second customary law

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<sup>30</sup>. *R v Tolson* [1889] 23 QBD 168.

<sup>31</sup>. *R v King* [1963] 3 All ER 561.

<sup>32</sup>. (1963) N.L.N.L.R 54.

<sup>33</sup>. (1931) 10 N.L.R 33.

<sup>34</sup>. Ibid.,

<sup>35</sup>. Charge No. O/IIC/1971 (High Court, Onitsha—unreported);

Charles Emeka and C T Emejuru, 'Bigamy in a Polygamous Society: A Critical Appraisal of the Law of Bigamy in Nigeria' [2017], *Journal of Law and Criminal Justice* <[https://www.researchgate.net/profile/CtEmejuru/publication/333784200\\_Bigamy\\_in\\_a\\_Polygamous\\_Society\\_A\\_Critical\\_Appraisal\\_of\\_the\\_Law\\_of\\_Bigamy\\_in\\_Nigeria/links/5](https://www.researchgate.net/profile/CtEmejuru/publication/333784200_Bigamy_in_a_Polygamous_Society_A_Critical_Appraisal_of_the_Law_of_Bigamy_in_Nigeria/links/5)

marriage with another man without formally dissolving the first. While both marriages were still purportedly in effect, she yet married the third man under the Marriage Act of 1950 and cohabited with him for two decades before facing charges of bigamy. The charges comprised four charges: bigamy under Section 370 of the Criminal Code Act, violation of Section 47 of the Marriage Act, false declaration of marital status in a marriage affidavit in contravention of Section 41 of the Marriage Act, and engaging in a statutory marriage ceremony with the third man, knowing it was null and void because of her subsisting marriage to the first man thereby contravening Section 46 of the Marriage Act. Court held that the circumstances of the case did not fall within the provisions of section 370 of the Criminal Code Act as she has entered two customary marriages before contracting a marriage under the Act, that the scenario does not depict a bigamous relationship but a marriage that is *void ab initio*.<sup>36</sup>

With due respect to the court, this holden is wrong as it contradicts the said provision of Criminal Code and the clear provisions of section 46 of Marriage Act which prevents a person who is already married under the native law and custom to contract a subsequent statutory marriage with another person. The Supreme Court held in the case of *Ademola v Aina* that a bigamous marriage is *void ab initio* and must be treated as if it never existed. The Court also held that the children of a bigamous marriage are illegitimate and cannot inherit from their father.<sup>37</sup> However, the Constitution has provided a shield over such children, they can no longer be discriminated against on ground of the circumstances surrounding their birth because they are innocent.<sup>38</sup> In *Adeoye v Adeoye & Anor*,<sup>39</sup> the court held that getting married as a result of adultery while a contract of marriage with another person constitutes the offence of bigamy.

The rate at which Nigeria men commit bigamy with flagrant disregard to the position of law is alarming and corroborates how the society have been condoning the offence including the law enforcement agencies. Among many others, Yul Edoche, a Nollywood actor, politician and social media influencer married one Judy and have a child with her after contracting a statutory marriage with May Edoche. Like other Nigerian offenders to bigamy, he was also boastful about it on social

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d03cda6458515b055d0c764/Bigamy-in-a-Polygamous-Society-A-Critical-Appraisal-of-the-Law-of-Bigamy-in-Nigeria.pdf> accessed 10 June 2025.

<sup>36</sup>. Charge No. O/IIC/1971 (High Court, Onitsha—unreported).

<sup>37</sup>. (1958) 31 ALL NLR 31.

<sup>38</sup>. Constitution of Federal Republic of Nigeria 1999, s42(2).

<sup>39</sup>. (2024) LPELR-62221(CA) P 71 Para D.



media platforms.<sup>40</sup> Sadly, the law enforcement agencies are yet to arrest and prosecute him for the offence. This further supports the nonchalant attitude of Nigerians towards the offence; however, they were quick to arrest and prosecute the likes of Funke Akindele, a Nollywood actress and producer for violating Covid-19 restriction Order;<sup>41</sup> BobRisky,<sup>42</sup> a cross-dresser and social media influencer for Naira mutilation and many other celebrities for other offences.

It is to be noted that law enforcement agencies need no permission of anybody before they prosecute this offence because crimes are offences against the state, not individuals. Therefore, whether the affected party reports the case or consents to prosecution or otherwise, they are to swiftly perform their statutory duties the moment there are evidence of commission of the offence as in Yul Edoche's instance who made public boast of his crime.<sup>43</sup>

### 3.2 Bigamy by Conversion

Another legal and constitutional issue is whether a change of way of life or religion affects a validly contracted marriage under the Act. This issue has generated controversies as to whether the change nullifies the legal implications of his previous marriage such that it gives him the opportunity to start afresh.

In *R v Princewill*,<sup>44</sup> one Bartholomew Princewill married one woman in 1950 under the Marriage Act in a church. At the time he contracted the first marriage under the Act, he was still a Christian. When he became a Muslim, he equally contracted another marriage with a woman named Fatima and this took place in 1960. The Court, while examining the case brought before it stated that there must be the existence of a yet-to-be-terminated marriage for the crime to be committed, that is to say, that there must be two marriages in existence. The court though convicted him for the offence, only sentence him to one month imprisonment. Recently, the Court of Appeal decided the case in

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<sup>40</sup>. Jerry Obanyero, 'Yul Edoche: Polygamy or Crime of Bigamy' (The Cable, 29 April 2022) <<https://www.thecable.ng/yul-edochie-polygamy-or-the-crime-of-bigamy/>> accessed 16 June 2025.

<sup>41</sup>. 'Court Sentence Funke Akindele, Husband to 14 Days Community Service' (*Lagos State Ministry of Justice*, 23 December 2020) <<https://lagosstatemoj.org/2020/12/23/court-sentences-funke-akindele-husband-to-14-days-community-service/>> accessed 24 June 2025.

<sup>42</sup>. 'Naira Abuse: Lagos Court Convicts Bobrisky, Defers Sentence Till April 9' (*Economic and Financial Crimes Commission*, 5 April 2004) <<https://www.efcc.gov.ng/efcc/news-and-information/news-release/9953-naira-abuse-lagos-court-convicts-bobrisky-defers-sentence-till-april-9>> accessed 23 June 2024.

<sup>43</sup>. Jerry Obanyero, 'Yul Edoche: Polygamy or Crime of Bigamy' (The Cable, 29 April 2022) <<https://www.thecable.ng/yul-edochie-polygamy-or-the-crime-of-bigamy/>> accessed 16 June 2025.

<sup>44</sup>. (1963) N.L.N.L.R 54.

*Mohammed & Ors v Mohammed & Anor*.<sup>45</sup> The facts are that a Muslim Army Major, married the 2<sup>nd</sup> Appellant under the Act, he subsequently married two other women under Islamic law and later died intestate. Upon his death, the other wives sought to be recognized as legal co-wives with the first woman. The Court of Appeal held that the deceased's subsequent marriages under Islamic law were valid because a Moslem can marry up to four women at a time and that Islamic marriage is constitutionally recognized in Nigeria. With all due respect to the court, this decision does not represent the true principle of law on bigamy which is that any person who contracts a valid statutory marriage with a person and goes ahead to contract subsequent marriage with other person commits a criminal offence of bigamy as decided in *Ademola v Aina*.<sup>46</sup> This principle is also in tandem with the statutory provisions in both Criminal Code and Marriage Act which criminalise the act.<sup>47</sup> The court ought to have treated the subsequent marriages as bigamous and illegal as in the case of *Awobudu v Awobudu & Ors*,<sup>48</sup> and *R v King* where the court rejected the defendants excuse for bigamy on ground of religion.<sup>49</sup> The decision has altered the said principle and may give people the opportunity to keep violating the law.

The question that pokes the mind is why would a devout Muslim who subjected himself to Islamic law went to contract a statutory marriage initially, knowing fully well that he would not be able to keep up to a monogamous style of marriage that is opposite to his belief and practice? It is an example of an inconsistent way of life and practice which is capable of creating problems for their dependents and families if they die intestate as in this instance.

It is to be noted that statutory marriage is a choice; therefore, anyone who intends to practice polygamy is not expected to contract it. This decision may also open room for statutory marriage couples to pursue subsequent marriages with other persons under native law and custom which may lead to many broken homes. To avoid this chaos which is already created, the final decision of the apex court on this issue will be of great relevance.

From the above, it is clear that judicial precedents regarding bigamy are limited, not because of any uncertainty in the law, but rather due to the law's practical inaction within a legal system that infrequently initiates prosecutions for this crime. This raises concerns about the true efficacy of

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<sup>45</sup>. [2024] LPELR-62831(CA)

<sup>46</sup>. (1958) 31 ALL NLR 31.

<sup>47</sup>. Criminal Code Act 1916, s 370 and Marriage Act 1914, ss 46 & 47.

<sup>48</sup>. (1979)21 RN 339.

<sup>49</sup>. (1964) 1 QB 285.

bigamy laws in Nigeria and their capacity to act as a deterrent. Bigamy, although less frequently addressed in legal discussions compared to other criminal offences, constitutes a vital element of family law in Nigeria. The scarcity of reported bigamy cases does not undermine the importance of the judicial decisions that have been arrived at and the case laws established as they provide essential insights into the interpretation and application of relevant laws. Even with a limited number of cases, the established judicial precedents have been pivotal in defining the legal implications of bigamy and in shaping the expectations of matrimonial conducts in Nigeria.

#### **4.0 Bigamy in the United Kingdom (UK)**

Many of the laws in effect in Nigeria were either handed to us by the British colonial masters or copied from them, especially the marriage laws. Therefore, there is need to enquire into the UK marriage system whether bigamy is still an offence and to ascertain the disposition of courts towards the offence. In England, bigamy carried a death penalty a few centuries ago by virtue of the Bigamy Act of 1604 which made it a criminal offence to marry someone while still married to someone else.<sup>50</sup> Since 1861, the punishment to the offence has been reduced to a maximum of seven years imprisonment and or a fine under Section 57 of the Offences Against the Person Act. The law states that a person who is married in England or Ireland, or elsewhere, is not permitted to enter into a new marriage while their former spouse is still living. The law also provided some exceptions as defences to the offence, such as if a person has had no contact with their spouse for a period of seven years or more and has no knowledge of their whereabouts or their state of health, or if they genuinely believed that their marriage had been dissolved.<sup>51</sup> Therefore, it is possible to remarry without facing consequences if a person hasn't spoken to their spouse for seven years or longer and does not know where they are or how they're doing. If an individual has married more than one person in a nation where having many spouses is lawful, they are often not arrested if they come to England until they remarry.

The case of *R v Tolson*,<sup>52</sup> which is one of the most significant cases in bigamy law as it established the principle of "honest and reasonable mistake." In this case, the defendant remarried in good faith after believing that her first husband had died in a shipwreck as he had been absent for over

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<sup>50</sup>. Ardens Law, 'Penalties for Bigamy in England and Wales' <<https://www.ardenslaw.com/bigamy-in-england-and-wales/>> accessed 11 May 2025.

<sup>51</sup>. Cox David, 'Trying To Get A Good One' Bigamy Offences in England and Wales, 1850-1950' (2012) 4 The Plymouth Law & Criminal Justice Review 1

<sup>52</sup>. (1889) 23 QBD 168.

five years. The Court ruled that since she had a reasonable belief in her first husband's death, she lacked criminal intent, leading to her acquittal. This case set a precedent for how bigamy is interpreted when a spouse is genuinely believed to be deceased.

The law also recognises void marriages, which are marriages that are considered invalid from the beginning due to bigamy. In order for a bigamy case to be successfully prosecuted, it must be proven that both marriages were legally valid and that the accused knowingly entered into a second marriage while still legally bound to their first spouse.<sup>53</sup> The legal framework aims to protect the sanctity of marriage and ensure individuals do not deceive or harm their spouses through multiple marriages. Additionally, individuals found guilty of bigamy may also be liable to fines and other legal repercussions. The severity of the punishment can be influenced by factors such as the number of marriages involved, the intent to deceive, and the impact on the parties involved. The aim of these punishments is to deter individuals from committing bigamy and to uphold the institution of marriage as defined by the law.

In the United Kingdom, the case of *Hyde v Hyde & Woodmansee* established that a subsequent marriage entered into while a previous valid marriage is still in effect is void.<sup>54</sup> This case set a precedent for determining the validity of marriages in cases involving bigamy. In *R v King*,<sup>55</sup> this case involved a man who married a second wife under an Islamic ceremony while still legally married to his first wife under the UK Law. His defense was that the second marriage was religious rather than legally recognized. However, the Court ruled that it constituted bigamy because it had been conducted with the intention of forming a marital relationship. King was sentenced to a suspended prison term, demonstrating how cultural and religious factors can intersect with legal principles. The court rightly convicted the Defendant for committing bigamy unlike the position of the Nigerian court in *Mohammed & Ors v Mohammed & Anor* where the subsequent marriages were held valid.<sup>56</sup>

In *R v Gould*,<sup>57</sup> the defendant remarried after believing his first marriage was invalid. He was convicted of bigamy but appealed on the grounds that he had an honest belief that his first marriage

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<sup>53</sup>. Luke Horton, 'Divine Suppressors: Bigamy in the Eighteenth-century Criminal Justice System' (2020) 10(2) Armstrong Undergraduate Journal of History 31

<sup>54</sup>. (1866) LR 1 PD 130.

<sup>55</sup>. (1964) 1 QB 285.

<sup>56</sup>. [2024] LPELR-62831(CA)

<sup>57</sup>. *R v Gould* (1968) 2 QB 65.

was not legally binding. The Court of Appeal ruled that an honest belief in the invalidity of the first marriage could be a defense to bigamy, reinforcing the need for criminal intent in such cases. Despite clear legal prohibitions, bigamy still occurs in the UK, often involving individuals who marry abroad or in religious ceremonies not officially registered with the State. The rise of digital marriage records and cross-border legal cooperation has made it more difficult for offenders to evade detection.<sup>58</sup> However, cases such as *R v King* sparked legal debates about religious and cultural practices that do not align with UK Civil Law.<sup>59</sup> Therefore, bigamy remains a criminal offense in the UK but its prosecution depends on intent, evidence, and circumstances surrounding the alleged offense.

## 5.0 Conclusion and Recommendations

Marriage is a beautiful relationship parties entered freely. Therefore, it should not be ended on a bad note or used as a medium to deceive or hurt the emotions of another person. The reality in Nigeria is that a statutory marriage often coexists with a subsequent marriage, which contravenes the clear provisions of law. Unlike other offences, the legal implications of bigamy are not well-known to the public which is basically as a result of the widespread practice of polygamy in many cultural settings. Bigamy is an offshoot of polygamy but it is criminalized when it is practiced in a statutory marriage due to its strict monogamous nature hence, the necessity to carefully and wisely select the appropriate system of marriage that suits one's lifestyle. This study finds and concludes that the commission of bigamy persist in Nigeria as a result of the polygamous nature of the society coupled with the lack of will to prosecute, convict or sentence offenders to the crime appropriately. It therefore recommends as follows:

That, there is need for a quick legislative action in harmonizing the punishment stipulated for the offence of bigamy in the Criminal Code Act and the Marriage Act. There should be a uniform and precise punishment in the laws for the same offence. This will reduce confusion of courts and prosecution as to which statute to apply.

That, in order to effectively reduced and control the prevalence of the crime, there is a serious need to carry out public awareness in respect of the existence of the offence to Nigerians by the

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<sup>58</sup>. Radina, S., 'Digital evidence: Unaddressed threats to fairness and the presumption of innocence' [2021]42 *Computer Law & Security Review*, 1-20.

<sup>59</sup>. (1964) 1 QB 285.

government, legal practitioners and other civil society groups. This is particularly important because the act of celebrating a subsequent marriage is acceptable in other systems of marriage as a result of which the society will continue to tolerate it if necessary action is not taken. Bringing this the consciousness of the public will reduce the impact of the offence on the sanctity of marriage and the sanity of the society.

That, the courts also need to start imposing the applicable punishment to the offence as stipulated by the laws. This is because bigamy is still a valid offence in Nigeria until it is so expunged from the criminal laws. Excuses for not imposing the appropriate punishment to the offence has to stop being made such as in the case of *State v Ezeagbo Nweke*,<sup>60</sup> where the court imposed a ridiculous 2 month imprisonment on the defendant with an option of fine on the ground that Nigeria is a polygamous society by nature and people are ignorant of the offence.

That, the legislature must take a decisive action as to whether to retain the offence in the Nigerian laws or not. The situation created by the Lagos State House of Assembly is confusing as decriminalization of it under the state criminal laws conflicts with the provisions of the Marriage Act because the said Act is applicable in Lagos, especially at the Federal High Court.<sup>61</sup> For there to be a valid decriminalisation of bigamy, both the Criminal Code and the Marriage Act must be amended to that effect. That, the parties to *Mohammed & Ors v Mohammed & Anor.*,<sup>62</sup> are encouraged to further appeal the matter to the Supreme Court for a final clarification on the issue whether or not the act of marrying another person after validly contracting a statutory marriage constitute bigamy.

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<sup>60</sup>. Charge No. O/IIC/1971 (High Court, Onitsha—unreported).

<sup>61</sup>. Criminal Code Law of Lagos State Cap C17, Laws of Lagos State 2004, s 370.

<sup>62</sup>. [2024] LPELR-62831(CA)