

WHOM GOD HAS JOINED TOGETHER - (Rita Keevil, Family Law)

A young couple was married according to religious rites. The celebrant was a priest who was not a registered marriage officer. A document was issued to the couple as a record of their marriage that was not a civil marriage certificate. Neither the husband nor the wife registered the marriage with the Registrar of Marriages.

When irreconcilable differences arose in the marriage a Summons for Divorce was issued out of the High Court.

An issue was raised as to whether the couple, not having been married according to civil law and not having registered their marriage according to civil law, could approach the Court for the untying of their religious knot.

Recent High Court judgments have clarified the position of the Courts with regard to its jurisdiction over marriages solemnised by religious rites when the religious marriage has not been registered as required under the Marriage Act.

The Marriage Act sets out the formalities required for a valid civil marriage. It also sets out the requirements for a person to be a licensed marriage officer. It requires that a marriage under Customary, Muslim, Hindu or other religious marriages be registered.

The conundrum has been the effect of a marriage conducted by a religious leader who is not a marriage officer, and, the effect of failure to register the marriage. Does such a marriage fall within the ambit of the civil law?

These questions have been solved.

Section 95 (1) of our Constitution provides:

"There shall be for Botswana a High Court which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers may be conferred on it by this Constitution or any other law."

The constitutional nature of this provision requires that it be broadly interpreted, rather than restrictively, in order to give effect to its meaning and purpose.

From this it is apparent that our High Court has unrestricted jurisdiction. This means that it may not shut its door to any person who brings a dispute under "any law" to it. The Constitution, in establishing the High Court, sought to protect the rights of all people within Botswana, and thus, its jurisdiction should not be limited in any way.

In a decision made last month the High Court found that the non-registration of a religious marriage does not invalidate the marriage.

The procedure for dissolution of a marriage is by way of an action brought by a Summons in terms of the Matrimonial Causes Act. It has been settled that the procedure is available to persons married by religious rites only and to persons married according to Customary Law.

So, *man may put asunder...*