

MATRIMONIAL PROCEEDINGS AND PROPERTY
(AMENDMENT) ACT

Arrangement of Sections

Section

1. Short title and commencement.
2. Insertion of new section 2A in Matrimonial Proceedings and Property Act.
3. Section 16 of the principal Act amended.
4. Section 20 of the principal Act repealed.
5. Section 28 of the principal Act amended.
6. Principal Act amended.
7. Section 62 of the principal Act amended.
8. Insertion of new sections 62A to 62H and heading in the principal Act.
9. Section 64 of the principal Act amended.
10. Addition of Schedule to the principal Act.

First Session Second Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO
Act No. 20 of 1982

[L.S.]

AN ACT to amend the Matrimonial Proceedings and
Property Act, Chap. 45:51.

[Assented to 18th August, 1982]

ENACTED by the Parliament of Trinidad and Tobago as ^{Enactment}
follows:

1. This Act may be cited as the Matrimonial Pro-^{Short title}
ceedings and Property (Amendment) Act, 1982 and ^{and}
shall come into operation on such date as the President ^{commencement}
may appoint by Proclamation.

Section 16 of
the principal
Act amended

- 3. Section 16 of the principal Act is amended—**
 (a) by repealing in subsection (1) the words
 “subject to subsection (2),”; and
 (b) by repealing subsections (2) and (4).

Section 20 of
the principal
Act repealed

- 4. Section 20 of the principal Act is repealed.**

Section 28 of
the principal
Act amended

- 5. Section 28 of the principal Act is amended by
 repealing subsection (2) and replacing it as follows:**

“(2) The Court shall not entertain an appli-
 cation under this section unless—

- (a) the applicant or the respondent is
 domiciled in Trinidad and Tobago on
 the date of the application; or
 (b) the applicant has been habitually
 resident in Trinidad and Tobago
 throughout the period of one year
 ending with that date; or
 (c) the respondent is resident in Trini-
 dad and Tobago on that date.”

Principal Act
amended

- 6. The principal Act is amended by deleting immedi-
 ately after the heading “Part V” the words
 “MISCELLANEOUS AND GENERAL” occurring there-
 after and by substituting therefor the words “OVER-
 SEAS NULLITY DECREES, DIVORCES AND LEGAL
 SEPARATIONS”.**

Section 62 of
the principal
Act amended

- 7. Section 62 of the principal Act is amended as
 follows:**

- (a) by deleting from the second line of sub-
 section (1) thereof the words “divorce
 or dissolution or”;
 (b) by deleting from subsection (1)(b)(i) and
 (ii) thereof the words “in any case,”;
 (c) by repealing subsection (1)(b)(iii) and (iv)
 thereof;
 (d) by deleting from subsection (1)(b)(v)
 thereof the words “in a case of nullity
 of marriage”;
 (e) by deleting from subsection (2) thereof
 the words “divorce or dissolution or”
 and the words “or of any dissolution of
 marriage”; and

- (f) by deleting the marginal note thereof and substituting therefor the following:

“Recognition of overseas nullity decrees.”

8. The principal Act is amended by inserting therein immediately after section 62 the following:

“Recognition of overseas divorces and legal separations

62A. Sections 62B to 62D shall have effect, subject to section 62H as respects the recognition in Trinidad and Tobago of the validity of overseas divorces and legal separations which—

Insertion of new sections 62A to 62H and heading in the principal Act

- (a) have been obtained by means of judicial or other proceedings in any country outside of Trinidad and Tobago, and
- (b) are effective under the law of that country.

Grounds for recognition

62B. (1) The validity of an overseas divorce or legal separation shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained—

- (a) either spouse was habitually resident in that country; or
- (b) either spouse was a national of that country.

(2) In relation to a country the law of which uses the concept of domicile as a ground of jurisdiction in matters of divorce or legal separation, subsection (1)(a) shall have effect as if the reference to habitual residence included a reference to domicile within the meaning of that law.

(3) In relation to a country comprising territories in which different systems of law are in force in matters of divorce or legal separation, the provisions of this section, other than those relating to nationality, shall have effect as if each territory were a separate country.

Cross
proceedings

62c. (1) Where there have been cross proceedings, the validity of an overseas divorce or legal separation obtained either in the original proceedings or in the cross proceedings shall be recognised if the requirements of paragraph (a) or (b) of section 62B are satisfied in relation to the date of the institution either of the original proceedings or of the cross proceedings.

(2) Where a legal separation the validity of which is entitled to recognition under the provisions of section 62B or of subsection (1) of this section is converted, in the country in which it was obtained, into a divorce, the validity of the divorce shall be recognised whether or not it would itself be entitled to recognition by virtue of those provisions.

Proof of
facts rele-
vant to
recognition

62d. (1) For the purpose of deciding whether an overseas divorce or legal separation is entitled to recognition under this Part, any finding of fact made (whether expressly or by implication) in the proceedings by means of which the divorce or legal separation was obtained and on the basis of which jurisdiction was assumed in those proceedings shall—

- (a) if both spouses took part in the proceedings be conclusive evidence of the fact found; and
- (b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this section “finding of fact” includes a finding that either spouse was habitually resident or domiciled in, or a national of, the country in which the divorce or legal separation was obtained; and for the purposes of subsection (1)(a) a spouse who has appeared in judicial proceedings shall be treated as having taken part in them.

Existing
common law
and statutory
rules

62E. (1) In this section "the common law rules" means the rules of law relating to the recognition of divorces or legal separations obtained in the country of the spouses' domicile or obtained elsewhere and recognised as valid in that country.

(2) In any circumstances in which the validity of a divorce or legal separation obtained in a country outside Trinidad and Tobago would be recognised by virtue only of the common law rules if either—

(a) the spouses had at the material time both been domiciled in that country; or

(b) the divorce or separation were recognised as valid under the law of the spouses' domicile, its validity shall be recognised if subsection (3) is satisfied in relation to it.

(3) This subsection is satisfied in relation to a divorce or legal separation obtained in a country outside Trinidad and Tobago if either—

(a) one of the spouses was at the material time domiciled in that country and the divorce or separation was recognised as valid under the law of the domicile of the other spouse; or

(b) neither of the spouses having been domiciled in that country at the material time the divorce or separation was recognised as valid under the law of the domicile of each of the spouses respectively.

(4) For any purpose of subsection (2) or subsection (3) "the material time", in relation to a divorce or legal separation, means the time of the institution of proceedings in the country in which it was obtained.

(5) Sections 62A to 62D are without prejudice to the recognition of the validity of divorces and legal separations obtained outside Trinidad and Tobago and recognised by virtue of the common law rules, as extended by this section, or of any written law other than this Act; but subject to this section, no divorce or legal separation so obtained shall be recognised as valid in Trinidad and Tobago except as provided by those sections.

Non-judicial
divorces

Chap. 45:02

62F. (1) No proceeding in Trinidad and Tobago, except a proceeding relating to a dissolution or annulment of a marriage between Muslims which dissolution or annulment is effected or decreed and registered in accordance with the provisions of the Muslim Marriage and Divorce Act, shall be regarded as validly dissolving a marriage unless instituted in the Court.

(2) Notwithstanding anything in section 62E a divorce which—

(a) has been obtained elsewhere than in Trinidad and Tobago and so obtained by means of a proceeding other than a proceeding instituted in a court of law; and

(b) is not required by any of the provisions of sections 62A to 62D to be recognised as valid,

shall not be regarded as validly dissolving a marriage if both parties to the marriage have throughout the period of one year immediately preceding the institution of the proceeding been habitually resident in Trinidad and Tobago.

(3) This section does not affect the validity of any divorce obtained before its coming into operation and recognised as valid under rules of law formerly applicable.

Existing
common law
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rules

62E. (1) In this section “the common law rules” means the rules of law relating to the recognition of divorces or legal separations obtained in the country of the spouses’ domicile or obtained elsewhere and recognised as valid in that country.

(2) In any circumstances in which the validity of a divorce or legal separation obtained in a country outside Trinidad and Tobago would be recognised by virtue only of the common law rules if either—

- (a) the spouses had at the material time both been domiciled in that country; or
- (b) the divorce or separation were recognised as valid under the law of the spouses’ domicile, its validity shall be recognised if subsection (3) is satisfied in relation to it.

(3) This subsection is satisfied in relation to a divorce or legal separation obtained in a country outside Trinidad and Tobago if either—

- (a) one of the spouses was at the material time domiciled in that country and the divorce or separation was recognised as valid under the law of the domicile of the other spouse; or
- (b) neither of the spouses having been domiciled in that country at the material time the divorce or separation was recognised as valid under the law of the domicile of each of the spouses respectively.

(4) For any purpose of subsection (2) or subsection (3) “the material time”, in relation to a divorce or legal separation, means the time of the institution of proceedings in the country in which it was obtained.

(5) Sections 62A to 62D are without prejudice to the recognition of the validity of divorces and legal separations obtained outside Trinidad and Tobago and recognised by virtue of the common law rules, as extended by this section, or of any written law other than this Act; but subject to this section, no divorce or legal separation so obtained shall be recognised as valid in Trinidad and Tobago except as provided by those sections.

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(2) Notwithstanding anything in section 62E a divorce which—

- (a) has been obtained elsewhere than in Trinidad and Tobago and so obtained by means of a proceeding other than a proceeding instituted in a court of law; and
- (b) is not required by any of the provisions of sections 62A to 62D to be recognised as valid,

shall not be regarded as validly dissolving a marriage if both parties to the marriage have throughout the period of one year immediately preceding the institution of the proceeding been habitually resident in Trinidad and Tobago.

(3) This section does not affect the validity of any divorce obtained before its coming into operation and recognised as valid under rules of law formerly applicable.

Non-
recognition
of divorce
by third
country
no bar to
remarriage

62G. Where the validity of a divorce obtained in any country is entitled to recognition by virtue of sections 62A to 62D or section 62E(2) or by virtue of any rule or written law preserved by section 62E(5) neither spouse shall be precluded from re-marrying in Trinidad and Tobago on the ground that the validity of the divorce would not be recognised in any other country.

Exceptions
from
recognition

62H. (1) The validity of a decree of divorce or judicial separation obtained outside Trinidad and Tobago shall not be recognised in Trinidad and Tobago if it was obtained at a time when, according to the law of Trinidad and Tobago, there was no subsisting marriage between the parties.

(2) Subject to subsection (1), recognition by virtue of sections 62A to 62D or section 62E(2) or of any rule preserved by section 62E(5) of the validity of a divorce or legal separation obtained outside Trinidad and Tobago may be refused if (and only if)—

(a) it was obtained by one spouse—

(i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or

(ii) without the other spouse having been given, for any reason other than lack of notice, such opportunity to take part in the proceedings as,

having regard to the matters aforesaid, he should reasonably have been given; or

(b) its recognition would manifestly be contrary to public policy.

(3) Nothing in sections 62A to 62H shall be construed as requiring the recognition of any findings of fault made in any proceedings for divorce or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

PART VI

SAVINGS AND TRANSITIONAL PROVISIONS

9. Section 64 of the principal Act is amended:

- (a) by re-numbering the section as section 64(1); and
- (b) by adding the following subsection thereafter:

“(2) The provisions of the Matrimonial Proceedings and Property (Amendment) Act relating to overseas divorces and legal separations and other divorces and legal separations obtained outside Trinidad and Tobago apply to a divorce or legal separation obtained before the date of commencement of those provisions in the said Act as well as to one obtained on or after that date and, in the case of a divorce or legal separation obtained before that date—

- (a) require, or, as the case may be, preclude the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time; but

Section 64
of the
principal
Act amended

(b) do not affect any property rights to which any person became entitled before that date."

10. After section 64 the following Schedule shall be added to the principal Act:

Addition of
Schedule to
the principal Act

"SCHEDULE

STAYING OF MATRIMONIAL PROCEEDINGS

Interpretation

1. (1) In this Schedule—

"another jurisdiction" means any country outside of Trinidad and Tobago;

"matrimonial proceedings" means any proceedings so far as they are one or more of the five following kinds, namely, proceedings for:

divorce,

judicial separation,

nullity of marriage,

a declaration as to the validity of a marriage of the petitioner, and

a declaration as to the subsistence of such a marriage;

"prescribed" means prescribed by rules of court.

(2) References to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.

(3) For purposes of this Schedule, proceedings in the Court are continuing if they are pending and not stayed.

(4) Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a Court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this subparagraph; and provision may be made by rules of court as to when proceedings of any description in another jurisdiction are continuing for the purpose of this Schedule.

*Duty to Furnish Particulars of Concurrent Proceedings
in Another Jurisdiction*

2. While matrimonial proceedings are pending in the Court in respect of a marriage and the trial or first trial in those proceedings has not begun, it shall be the duty of any person who is a petitioner in the proceedings, or is a respondent and has in his answer included a prayer for relief, to furnish, in such

a manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which—

- (a) he knows to be continuing in another jurisdiction; and
- (b) are in respect of that marriage or capable of affecting its validity or subsistence.

Discretionary Stays

3. (1) Where before the beginning of the trial or first trial in any matrimonial proceedings which are continuing in the Court it appears to the Court—

- (a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
- (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the Court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,

the Court may then, if it thinks fit, order that the proceedings in the Court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

(2) In considering the balance of fairness and convenience for the purposes of subparagraph (1)(b), the Court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

(3) If, at any time after the beginning of the trial or first trial in any matrimonial proceedings which are pending in the Court, the Court declares by order that it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 2, subparagraph (1) of this paragraph shall have effect in relation to those proceedings and to the other proceedings by reference to which the declaration is made as if the words "before the beginning of the trial or first trial" were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

Supplementary

4. Where an order staying any proceedings is in force in pursuance of paragraph 3 the Court may, if it thinks fit, on the application of a party to the proceedings, discharge the order if it appears to the Court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them."

Passed in the House of Representatives this 2nd day of July, 1982.

J. E. CARTER
Clerk of the House

Passed in the Senate this 13th day of July, 1982.

E. WILLIAMS
Acting Clerk of the Senate