

CHAPTER 170

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CHAPTER 170 ISLANDERS' DIVORCE

AN ACT TO REGULATE THE PROCEDURE FOR DIVORCE AMONG ISLANDERS IN SOLOMON ISLANDS

[26th July 1960]

9 of 1960
6 of 1967
8 of 1967
4 of 1968
8 of 1974
LN 68 of 1975
LN 18 of 1976
9 of 1976
LN 46A of 1978
LN 88 of 1978

PART I PRELIMINARY

1. This Act may be cited as the Islanders' Divorce Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation
6 of 1967, s. 84
8 of 1967, Sched

"Court" means the High Court;

"District Registrar" means the Magistrate of a district constituted under the provisions of the Magistrates' Courts Act or other person performing the duties of District Registrar under the Islanders' Marriage Act

Cap. 20
Cap. 171

3. This Act shall apply only to marriages between two Islanders who have been married by a minister of religion, or by a District Registrar, or under the provisions of the Pacific Islands Civil Marriages Order in Council, 1907, or where a marriage by the custom of Islanders has been registered in accordance with section 18 of the Islanders' Marriage Act, and where the husband is an Islander domiciled in Solomon Islands and in such cases the marriage may only be dissolved, annulled or judicial separation ordered by the Court as hereinafter provided.

Application
8 of 1974, Sched
LN 88 of 1978
SI 1907, No 543

4. When two Islanders have been married by the custom of Islanders, and such marriage has not been registered in accordance with section 18 of the Islanders' Marriage Act, the marriage may only be dissolved, annulled or separation ordered in accordance with the custom of Islanders.

Dissolution of custom
marriage
8 of 1974, Sched

PART II

DIVORCE

5.-(1) A petition for divorce may be presented to the Court, either by the husband or the wife on the ground that the respondent-

Grounds for divorce

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

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

(c) has, since the celebration of the marriage, treated the petitioner with cruelty;
or

(d) is incurably of unsound mind and has continuously been under care and treatment for a period of at least five years immediately preceding the presentation of the petition;

and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.

(2) For the purposes of this section a person of unsound mind shall be deemed to be under care and treatment only while he is detained in pursuance of any order under the Mental Treatment Act.

Cap. 103

6.-(1) A petition shall be in the Form A in the First Schedule, and shall be verified by the petitioner by affidavit in the Form B in the said Schedule.

Form of petition
First Schedule
Form A
Form B

(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 by affidavit in the Form C in the First Schedule.

Affidavit of service of
petition
Form C

7. 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 is excused by the Court on special grounds from so doing.

Adulterers to be made
co-respondents

8.-(1) On a petition for divorce it shall be the duty of the Court to enquire, 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 enquire into any counter-charge which is made against the petitioner.

Duty of Court on
presentation of petition
for divorce

(2) If the Court is satisfied on the evidence that-

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

(ii) 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

(iii) 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, declaring that the marriage shall be dissolved upon the expiration of the period specified in and the issue of the notice in Form D as provided by section 11, but if the Court is not satisfied with respect to any of the aforesaid matters it shall dismiss the petition:

Provided that the Court shall not be bound to pronounce a decree of divorce and

may dismiss the petition if it finds that the petitioner has during the marriage been guilty of adultery or if, in the opinion of the Court, the petitioner has been guilty-

(a) of unreasonable delay in presenting or prosecuting the petition; or

(b) of cruelty towards the other party to the marriage; or

(c) where the ground of the petition is adultery or cruelty, of having without reasonable excuse deserted, or having without reasonable excuse wilfully separated himself or herself from the other party before the adultery or cruelty complained of; or

(d) where the ground of the petition is adultery or unsoundness of mind, or desertion, of such wilful neglect or misconduct as has conduced to the adultery or unsoundness of mind or desertion.

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

Dismissal of respondent
or co-respondent from
the proceedings

10. If in any proceedings for divorce the respondent opposes the relief sought the Court may give to the respondent the same relief to which he would have been entitled if he had presented a petition seeking such relief.

Relief to respondent on
petition for divorce

11. Three months after any marriage has been declared by the Court to be dissolved, and subject to an appeal, if any, having terminated in favour of the petitioner, the Court, without any further proceedings, shall issue a notice in the Form D in the First Schedule hereto, whereupon the parties to the marriage may again marry as if the prior marriage had been dissolved by death.

Re-marriage of divorced
persons
First Schedule
Form D

PART III

NULLITY OF MARRIAGE

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

Decree of nullity in
respect of void marriage

(a) that at the time of the ceremony of marriage one of the parties was already married and the earlier marriage was still subsisting; or

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

(c) that at the time of the marriage one of the parties had been certified as insane under the Mental Treatment Act and no order for the discharge of such person under that Act has thereafter been made; or that such party, though not so certified as aforesaid, was by reason of unsoundness of mind incapable of understanding the nature of the ceremony; or

Cap. 103

(d) that the parties were within the prohibited degrees of consanguinity or affinity; or

(e) that subject to the provisions of section 8 of the Births, Marriages and Deaths Registration Act, the marriage was not celebrated in due form.

Cap. 171

13.-(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-

Decree of nullity in
respect of voidable
marriage
4 of 1968, Sched

(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, a person of unsound mind within the meaning of the Mental Treatment Act, 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 the last foregoing subsection 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.

14.-(1) Every petition for nullity of marriage shall state shortly the material facts relied upon and shall be in the Form E in the First Schedule hereto.

Facts to be stated in
petition First
Schedule
Form E

(2) Every such petition shall be verified by affidavit in the Form F in the First Schedule hereto.

Form F

(3) A copy of the petition shall be served upon the respondent personally unless the Court shall otherwise direct and such service shall be verified by affidavit in Form G in the First Schedule hereto.

Form G

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

Evidence in nullity
proceedings

PART IV

JUDICIAL SEPARATION

16.-(1) A petition for judicial separation may be presented to the Court either by the husband or the wife on any grounds on which a petition for divorce might have been presented under the provisions of this Act and the procedure to be followed and the duty of the Court on the presentation of a petition for divorce, and the circumstances in which such a petition shall or may be granted or dismissed shall apply in like manner to a petition for judicial separation.

Decree for judicial
separation

(2) Where the Court in accordance with the provisions of this section grants a decree for judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(3) The Court may, on the application by petition of the husband or wife against whom a decree for judicial separation has been made, and on being satisfied that the allegations contained in the petition are true, reverse the decree at any time after the making thereof, on the ground that it was obtained in the absence of the person making the application, or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.

(4) The Forms A, B and C in the First Schedule hereto required to be used in relation to the presentation of a petition for divorce shall be used in relation to the presentation of a petition for judicial separation with such modifications as the context requires.

Form A
Form B
Form C
First Schedule

17.-(1) A person shall not be prevented from presenting a petition for divorce, or the Court from pronouncing a decree of divorce by reason only that the petitioner has at any time been granted a judicial separation upon the same or substantially the same facts as those proved in support of the petition for divorce.

Divorce proceedings after
grant of judicial
separation

(2) On any such petition for divorce, the Court may treat the decree of judicial separation as sufficient proof of the adultery, desertion, or other ground on which it was granted, but the Court shall not pronounce a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of any such petition for divorce, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation shall, if the parties have not resumed cohabitation and the decree has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce.

PART V

GENERAL

18.-(1) A husband may, on a petition for divorce, or judicial separation claim damages from any person on the ground of adultery with the wife of the petitioner.

Damages

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

- 19.** Where any person condemned in damages under the preceding section fails to pay at the time or in the manner ordered by the Court, whether execution has been issued or not, the Court may commit that person to prison for such period of imprisonment not exceeding six months as it may think fit.
- Court may commit for non-payment
- 20.** In any proceedings taken pursuant to this Act, for divorce, nullity or judicial separation, the Court may make such orders as to the payment of costs as it thinks fit.
- Costs
- 21.** In any proceedings for divorce, nullity or judicial separation, the Court may make such orders as appear just and necessary with respect to the custody, maintenance and education of the children, the marriage of whose parents is the subject of the proceedings, and the maintenance of the wife.
- Custody and maintenance of children and maintenance of wife
- 22.** The Court shall not in the absence of a respondent or corespondent proceed to hear any evidence in proof of the grounds of a petition until proof of service of such petition is first given to the Court.
- Proof of service in absence of party
- 23.** The fees contained in the Second Schedule hereto shall be the prescribed fees to be paid under this Act until altered, amended, revoked or added to by notice by the Minister with the assent of the Chief Justice
- Fees
4 of 1968, Sched
9 of 1976, s. 2
LN 46A of 1978
Second Schedule
- 24.** The Minister with the assent of the Chief Justice may make such rules as may be necessary for carrying out the purposes of this Act.
- Rules
4 of 1968, Sched
LN 46A of 1978

FIRST SCHEDULE

ISLANDERS' DIVORCE ACT

FORM A

(Section 6)

In the High Court of Solomon Islands.

To His Lordship,

The Judge, High Court,

Solomon Islands

The day of 19 .

The petition of shows:-

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

2. That after the said marriage your petitioner lived and cohabited with the said at
and that there is (no) issue of the said marriage now living.

3. That there have been no previous proceedings in this Honourable Court with reference to your
petitioner's said marriage either by or on behalf of your 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. The respondent has frequently committed adultery with at (or
as the case may be, setting out the matrimonial offence relied on).

5. That your petitioner (if he be the husband) claims from the said damages in
respect of the adultery of the said committed.

6. The petitioner and the respondent are both domiciled in Solomon Islands.

Your petitioner therefore humbly prays that the Court will be pleased to decree:-

(1) That his marriage with the respondent be dissolved.

- (2) That he may have the custody of the child(ren) of the said marriage.
- (3) That the said do pay your petitioner the sum of . in respect of his adultery with the wife of your petitioner.
- (4) That your petitioner may have such further and other relief as may be just.

Dated the day of 19 .

Petitioner

By the Court

(L.S.)

Judge

In the High Court of Solomon Islands.

Matrimonial Jurisdiction

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 _____ at _____ of the 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 19 .

L.S.)

Judge

ISLANDERS' DIVORCE ACT

FORM B

(Section 6)

In the High Court of Solomon Islands.

Matrimonial Jurisdiction

In the matter of the
petition of
for dissolution of marriage

I, _____ of _____ the petitioner in this cause,
make oath and say 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.

Signed and sworn by the said
this _____
day of _____ 19____
before me:

Magistrate

ISLANDERS' DIVORCE ACT

FORM C

(Section 6)

In the High Court of Solomon Islands.

Matrimonial Jurisdiction

In the matter of the
petition of
for dissolution of marriage

I, _____ of _____ make oath and say that I did on
the _____ day of _____ 19 _____ serve a copy of the petition in this matter on
the respondent (or co-respondent) by delivering the same to _____ at
at _____

Sworn this _____ day
of _____ 19 _____
before me:

Magistrate

ISLANDERS' DIVORCE ACT

FORM D

(Section 11)

In the High Court of Solomon Islands.

Matrimonial Jurisdiction

Notice of Dissolution of Marriage

To *Petitioner* and *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 19 (or an appeal against the decree of this Court pronounced on the day of 19 having terminated 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 19 .

(L.S.)

Judge

ISLANDERS' DIVORCE ACT

FORM E

(Section 14)

In the High Court of Solomon Islands.

Petition for Nullity of Marriage

To His Lordship,

The Judge.

The humble petition of
of shows:-

1. That on the day of 19 , a ceremony of marriage was in fact celebrated between your petitioner and (hereinafter called the respondent) at .

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

3. That your petitioner resides at and is domiciled in Solomon Islands, 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 Honourable 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.)

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

- (1) that the marriage in fact celebrated between your petitioner and the respondent be declared null and void;
- (2) that your petitioner may have such further and other relief as may be just.

Dated the day of 19 .

Petitioner

By the Court

(L.S.)

Judge

ISLANDERS' DIVORCE ACT

FORM F

(Section 14)

In the High Court of Solomon Islands.

Affidavit Verifying Petition for Nullity of Marriage

I, _____ of _____ in Solomon Islands, make oath
and say:-

That the statements set forth in my petition dated the _____ day of _____ 19____, are true.

Sworn at _____
this _____ day of _____ 19____, before me:

Magistrate

In the High Court of Solomon Islands.

To _____
of _____

Respondent.

Take notice that the above petition has been set down for hearing at the Court at _____ on the _____ day of _____ 19____ at _____ of the 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 _____ 19____.

(L.S.)

Judge

ISLANDERS' DIVORCE ACT

FORM G

(Section 14)

In the High Court of Solomon Islands.

Affidavit of Service

Matrimonial Jurisdiction

In the matter of the petition of for nullity of marriage

I, _____ of _____ make oath and say that I did on
the _____ day of _____ 19 _____ serve a copy of the petition in this matter on
the respondent by delivering the same to _____ at _____.

Sworn this _____ day of _____
19 _____
before me:

Magistrate

SECOND SCHEDULE

LN 68 of 1975
LN 18 of 1976

FEES

(Section 23)

		\$
Filing and presenting petition (Dissolution of Marriage, Nullity or Judicial Separation)	...	25.00
Setting down petition for hearing	...	4.00
Hearing fee	...	12.00
Decree	...	4.00

(No Subsidiary Legislation.)