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BREACH OF PROMISE TO MARRY (A SHORT LEGAL BREAK DOWN)

INSIGHTS

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Background

In 2019, during an annual Program held by a reputable Church in Nigeria tagged ‘Shiloh’, the internet was engulfed with captions such as “I will take your picture to Shiloh” as meaningless as it may sound, the Nigerian connotation of the phrase means that you have been summoned before a higher authority and as a result, in no distant time, one expects to hear the sound of wedding bells or a marriage proposal.

In the event that the trip to Shiloh results in a marriage proposal which is subsequently called off, one can only imagine the disappointment the other party will feel. Question is, can this be regarded as a “Breach of Promise to Marry”? What counts as a promise to marry and what will be considered as a breach of such promise?

We share a brief insight into the concept of Breach of Promise to marry and the position under Nigerian Law in this article.

According to Lexico dictionary, a promise is defined as “a declaration or assurance that one will do something or that a particular thing will happen”.¹

A Promise can also mean “a legally binding declaration that gives the person to whom it is made a right to expect or to claim the performance or forbearance of a specified act”²

To “Marry” on the other hand means to become the legally accepted husband or wife of someone in an official or religious ceremony³. See Section 21` of the Marriage Act⁴

In view of the definitions above, a promise to marry is an agreement between two consenting adults to marry each other. This agreement could either be made orally or reduced into writing. A mere romantic relationship is not enough to establish a promise to marry however, actions of the parties could constitute a promise to marry in certain situations. This could be used as proof by a party alleging such breach especially when such actions are so strong and suggest the joining of the parties in marriage. In the case of *Aiyede vs Norman* –William the court held that “the promise to marry need not take the oral or written exchanges of mutual promise”⁵.

Breach of Promise Under The Law

Breach is an act of breaking the terms set out by parties to a contract. Such terms could either be

1 Lexico Dictionary. <https://www.lexico.com/definition/promise> Accessed on February 24, 2020

2 Merriam Webster Dictionary. <https://www.merriam-webster.com/dictionary/promise> Accessed on February 24, 2020

3 Cambridge Dictionary. <https://dictionary.cambridge.org/dictionary/english/marry> Accessed on February 25, 2020

4 Marriage Act CAP M6 LFN,2004

5 (1960) LLR 253

express or implied. The court in the case of *Cole v. Cottingham*⁶ defined Promise to marry as a binding contract; it can be breached in either of the following ways;

(a) Non-performance or

(b) In anticipation also known as Anticipatory Breach of promise to marry⁷.

Non-Performance implies that a party is refusing to go ahead with the promise as of when due or not taking steps in the actualization of the said promise thus resulting in extremely long ‘engagements’.

Anticipatory Breach on the other hand occurs when a party announces his/her intention not to perform the obligation as promised on the due date or by such conduct which makes the performance of such obligation impossible on the agreed date.

Claims

Promise to marry is regulated by the principles guiding contracts. A plaintiff claiming under a breach of promise to marry may apply to the court for the award of damages occasioned as a result of such breach. These damages may either be;

- a. General damages
- b. Special damages
- c. Wounded pride (in rare circumstances):⁸.

It is useful to note that the quantum of the damages is calculated subject to the rule of remoteness⁹; that is to say that such damages claimed should be such which flowed directly as a result of the breach¹⁰. In essence, a person cannot bring a claim damages for breach of promise to marry if such breach does not directly cause them injury or other valid disadvantage in the eyes of the law.

Defence

The defence applicable to contracts applies to a breach of promise to marry. This includes but is not limited to plea of fraud, duress, misrepresentation, etc. Where a promise to marry is made due to misrepresentation of facts or fraud, then a defendant may plead fraud or misrepresentation.¹¹

Conclusion

6 (1837) 8 CAR, P. 75, 173 ER 406

7 *Uso V Iketunbosin* (1975) WRNLR, 187.

8 “damages should not be limited to mere pecuniary loss which the plaintiff has sustained, but to take into account the injured feelings and wounded pride” *Berry V Da Costa* (1866) LR 1 CP 331, 333

9 **remoteness** is a set of **rules** in both tort and contract, which limits the amount of compensatory damages for a wrong.

10 *Hadley v Baxendale* (1854) 9 Exch 341

11 *Wharton V Lewis* (1824) I C & P 529, 171 ER 1303

The Supreme Court of Nigeria in the case of *Ezennah vs Atta* further expanded the concept of breach of promise to marry where it posited that two vital elements lead or constitute a breach of promise to marry;

- a. The party asserting must prove to the satisfaction of the court that there was indeed a promise to marry under the Matrimonial Causes Act, 1990, Islamic law or Customary law of Nigeria and;
- b. The defendant is in actual breach of that promise.¹²

The legal concept of breach of promise to marry was adopted from England. The English jurisprudence is gradually moving away from the norm considering the societal changes and advancement of law round the globe. This however is not the case in Nigeria as evidence by the suits decided by the Honourable Justices of the Supreme Court on the Breach of Promise to marry in recent years¹³

The above legal positions suggest that where your partner promises to marry you and he or she fails to do the needful, Nigerian courts are ready to enforce your rights subject to the provisions of the law and judicial precedence.

12 (2004) 2 S.C.(Pt II) pg 75

13 *Mabamije vs Otto* (2016) LPELR 26058(SC)

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