

A time for healing

Procedures
Of the
Office of the
Marriage Tribunal

Archdiocese of Kampala

INTRODUCTION

Divorce is unique among life experiences. There is no precedent that can prepare an individual for its trauma. Divorce is a process; not an event. Legal divorce can be pinpointed to a moment in time, to the signing of a court decision; not so the experience divorce. This experience is the result of a series of incidents which eventually erode the relationship between a husband and a wife. The ending of any marriage that has endured long enough for the two partners to invest portions of their lives, money, emotions and a dream is a traumatic experience. The adjustment which follows can be either positive or negative; it is always difficult.

The Catholic is aware of the stress involved with divorce. The Church addresses this issue through its ministry, bearing in mind the needs of divorced individuals while supporting the permanence of a valid, Sacramental union.

The Office of the Marriage Tribunal of the Archdiocese of Kampala is an agency designed to help the divorced and the remarried person, the divorced person seeking another marriage, and the divorced Catholic seeking a clarification of his or her standing in the Church. Information, assistance and recommendations are available from the personnel of the Tribunal, who are present to help you.

You may contact the Tribunal Office Monday through Thursday on appointment Tel-0712480165 or 0772954092 and Friday from 9.am to 12 pm., at Lubaga. Archdiocesan offices

Please ask to speak with a tribunal staff member.

TRIBUNAL OFFICIALS

Judicial Vicar- Rev Dr. Kasirye Kato Andrew aj.

Associate Judicial Vicar- Rev Dr. Barnabas Mukibi

Defenders of the Bond- Msgr. Charles Kimbowa and Fr. Godfrey Kawuki

Promoters of Justice- Rev Dr. C. Sempala.

Judges- Rev. Frs, C. Kasigwa, John Mpoza, P. Soonko, A. Ssemakula For Kasana Luwero Diocese and Serwadda J.C., Kibowa, For Lugazi Diocese

1. WHAT IS A FORMAL DECLARATION OF NULLITY?

A formal declaration of nullity is a statement by the Church that the parties are not bound to a specific marital relationship after proving that the marriage in question was not a binding, (sacramental) union. It is important to understand the meaning of such declaration of nullity. It does not deny that there was a semblance of marriage, nor does it imply that the relationship was entered with ill will or moral fault. Rather, a formal declaration of nullity is a statement by the Church that a relationship fell short of at least one of the elements seen as essential for a valid marriage according to the teachings of the Catholic Church. Therefore, the union in question cannot be seen by the Roman Catholic as source of continuing, marital rights and obligations.

2. DOES A FORMAL OF DECLARATION OF NULLITY HAVE EFFECT UNDER CIVIL LAW?

In the Ugandan Church declarations of nullity have no civil effects. Therefore, a civil divorce must be obtained before or after one may petition the Church for a declaration of nullity.

3. WHO MAY APPLY FOR A FORMAL DACLARATION OF NULLITY?

Any legitimately interested person has the right to apply an investigation regarding the probable invalidity of his or her own previous marriage. This application must be made to a Tribunal which has proper jurisdiction: i.e., the Tribunal of the diocese in which the marriage in question took place, the Tribunal of the diocese in which the former spouse is domiciled, or with the consent of the judicial Vicar of the former spouse's current diocese, the Tribunal of the diocese in which the petitioner has established a domicile. Under Church law, a diocesan domicile is defined as the diocese where one has had actual and continuous residence for at least five years, or the diocese where one intends to live a permanent basis within the foreseeable future.

4. HOW IS A FORMAL DECLARATION OF NULLITY PROCEDURE STARTED?

An application must be completed by the petitioner with the assistance of a pastoral minister. All questions should be carefully answered with current, legal names indicated where requested. Of special importance is supplying an address for contacting the former spouse. If a formal declaration of nullity procedure is indicated, a member of the Tribunal will return the application to the petition along with a packet containing a pertinent questionnaire and various forms for signature. Normally

the petition completes the questionnaire without assistance. However, in some cases a pastoral minister may be asked to assist the petitioner with this task. The pastoral minister will ordinarily notarize any signed forms. After all the data have been completed, the **petitioner** is to return the packet to the Tribunal. A member of the Tribunal will acknowledge receipt of the complete packet. Soon afterwards, an appointment will be scheduled with a Field Advocate, who is a tribunal staff member.

5. WHAT IS THE ROLE OF A FIELD ADVOCATE?

Field Advocates are specially trained and appointed priests, deacons, and lay persons throughout the Archdiocese who assist petitioners in presenting a case to the Tribunal. The Field Advocate conducts an initial, personal interview with the petitioner. The Field Advocate also helps in the preparation of the petitioner's formal petition and scrutinizes the responses to the questionnaire, forms, and other data to see that they are as complete as possible

6. WHEN IS A CASE FORMALLY ACCEPTED?

AFTER THE Field Advocate has returned the completed packet to the Tribunal Office, the case will be assigned to one of the Judges chosen on a rotation basis. The Judge will scrutinize the data to determine whether there are plausible grounds on which to accept the case, and whether the Tribunal has the required jurisdiction or needs consent to conduct the investigation. After all the legal requirements have been met, the Judge will accept petition and notify the parties that the formal investigation has begun. Any procedure prior to this time is strictly **preliminary** preparation of a case.

7. WILL THE FORMER SPOUSE BE CONTACTED?

The Judge will inform the former spouse that the investigation has been initiated and will offer him or her an opportunity to participate. The non-cooperation of the former spouse usually does not hinder the progress of the case. However, the cooperation of the former spouse is invariably helpful to the Judge and should be encouraged whenever possible.

8. WHAT IF THE ADDRESS OF THE FORMER SPOUSE IS UNKNOWN?

If the former spouse's address of the residence is unknown, it must be established that the petitioner has used reasonable means to ascertain his or specific place of residence. It is left to the discretion of the Presiding Judge to determine the adequacy of the petitioner's efforts on a case-to-case basis. At times, the current mailing address of a close relative of the former spouse may suffice. If the former spouse's whereabouts remains unknown, the Presiding Judge will appoint a Curator to act on his or her behalf.

9. IS TESTIMONY KEPT IN CONFIDENCE?

Because of the sensitive nature of the gathered in this process, and because the Tribunal wishes to promote the spirit of charity, all the information gathered in the course of an investigation is considered confidential. This information is never made available except as may be authorized by Church law. Under Church law the

presiding Judge has authority to determine whether the petitioner or former spouse should be permitted access to certain information. The presiding Judge's determination is final and may be reviewed only by a higher Church court in the established, appellate process. The information is not made available to the witness or to anyone acting on their behalf or to any civil court. A witness may ask that his or her testimony be withheld from the petitioner and/or the former spouse for a serious reason. It is the policy of the Tribunal to disclose this information to those duly authorized, ecclesiastical officials or Tribunals when necessary for the resolution of the case.

10. WHO DECIDES IF A FORMAL DECLARATION OF NULLITY SHOULD BE GRANTED?

In the court of first Instance most cases are decided by the Judge, but its possible to have three Judges assigned to a case. In the Court of Second Instance (Court of Appeal) a case is always reviewed by three additional Judges (cf.q.15).

11. WHAT ARE SOME OF THE PROCEDURES THAT THE JUDGE FOLLOWS IN A NORMAL INVESTIGATION?

At the time the Judge notifies the parties that a case has been accepted, he or she will also send a questionnaire to prove each party with an opportunity to comment on or object to a certain procedural aspects of the case. Likewise, the names of the Judge(s) and Defender of the Bond will be indicated.

In some instances the Judge will ask the petitioner and/or the former spouse, each at different times, to appear at the Tribunal Office for an interview. The Judge may also ask one or both parties to come to the Tribunal Office for a psychological evaluation. This is done when the Judge thinks it would be helpful to have a better understanding of the personality makeup of an individual. In all cases the Judge will always offer both parties an opportunity to submit further testimony, either in writing or in person. A **case** number is assigned to each case. It is to be used in all correspondence or other contact with the Tribunal Office since case are filed **by number** rather than by name.

12. WHO CAN QUALIFY TO SERVE AS WITNESSES?

Most persons, including family members, are eligible witnesses. Specifically **excluded** by Church law are confessors. Young children, the insane, a current civil spouse or a prospective spouse of either of the parties, and anyone informed of the circumstances of the marriage after the Tribunal proceedings have started are considered **unsuitable**. In general, the Tribunal does not request adolescent or adult children of the parties to offer testimony unless there is some special reason. The Judge will contact witnesses by mail. They are not required to appear at the Tribunal Office. In most situations written, corroborative testimony is required from at least two witnesses.

It is important that the petitioner makes sure that the witnesses have agreed to cooperate prior to submitting their names to the Tribunal. In addition, the petitioner should encourage the witnesses to return their testimonies to the Tribunal Office in a

reasonable amount of time (i.e., two weeks). Failure of the witness to cooperate in due time is one of the main reasons for a delay in the processing of a case.

13. WHAT OTHER DATA DOES THE JUDGE COLLECT?

The Judge may attempt to collect any other data which might be helpful in preparing a case, such as statements from clinicians hospitals, institutions, law enforcement agencies, etc. in order to obtain this information legitimately, the Tribunal will provide proper release forms to be signed by the petitioner at the time of the Field Advocate's interview. When necessary, the former spouse of the petitioner may also be asked to sign such forms.

14. WITH WHOM DOES THE JUDGE CONSULT IN REACHING A DECISION?

After an adequate amount of testimony has been presented, the presiding Judge will usually consult tribunal psychologist for his or her professional opinion about the merits of the case. After wards, the Judge will inform both parties that they have two weeks to submit any other evidence. Before the case is decided, it is submitted to the Defender of the Bond for his or her observations. The Defender of the Bond is charged with the task of upholding the validity of the marriage and making sure the Church law has been observed during the investigation.

15. MUST EVERY AFFIRMATIVE DECISION BE REVIEWED BY THE COURT OF APPEAL?

Yes. Church law requires that every case which has received an affirmative decision in the Court of First Instance must be reviewed by a legitimately designed Court of Appeal before the affirmative decision becomes effective. Therefore, the Court of First Instance will notify both parties of its decision. If either party is aggrieved by the decision/ each may add his or personal appeal in writing within a reasonable period of time. At that time each party is also given an opportunity to provide any additional evidence.

The Court of Appeal for the Province of Kampala will assign each case to a panel of three Judges. This panel may either confirm the decision of the Court of First Instance or open up the case to a full investigation. The Court of Appeal may also impose a prohibition on one or both parties regarding the future celebration of marriage in the Roman Catholic Church (cf.q.17).

After the Court of Appeal has concluded its work, it will inform the Court of First Instance of its decision. Thereupon, the presiding Judge of the Court of First Instance will inform both parties of the decision given by the Court of Appeal. It is with this notification hat a **confirmed**, affirmative decision takes effect.

16. DOES THE KAMPALA TRIBUNAL EVER GIVE A NEGATIVE DECISION?

Yes. Whenever the alleged validity of marriage on the proposed grounds has not been proven beyond a reasonable doubt according to established procedures, the Tribunal must give a **negative** decision. Since the Catholic Church presumes that all marriages properly celebrated are valid, the **petitioner** must overturn this presumption by offering convincing evidence to the contrary. The legally proved invalidity of a

marriage is based on factual data and **not** on the personal opinions of one or both parties concerning its nullity.

An aggrieved party has a right to appeal a negative decision within a reasonable period of time to the Court of Appeal, Province of Kampala. That party should contact the presiding Judge of the Kampala Tribunal and make known **in writing** his or her decision to appeal the case. Afterwards, the Judge or Advocate (if assigned) will inform that person of the procedures required for processing an appeal.

In the event that the Court of Appeal has reversed a prior, negative decision, that decision must also be confirmed by another Tribunal on the appellate level before it becomes effective. This may entail a very lengthy process, especially if the case must be referred to the Roman Rota, the ordinary Court of Appeal for two non-concordant (split) decisions.

If the Court of Appeal has sustained a negative to the proposed grounds for nullity, the case will be closed to further scrutiny. However, it may be reopened or newly proposed grounds for nullity become evident.

17. ARE THERE AT TIMES ANY FURTHER REQUIREMENTS FOLLOWING A CONFIRMED, AFFIRMATIVE DECISION BEFORE A MARRIAGE MAY BE CELEBRATED WITH THE APPROVAL OF THE CATHOLIC CHURCH?

The presiding Judge of the Court of First Instance at times may make a recommendation for counseling for or both parties. The pastoral minister will consider this recommendation in preparing the couple for the celebration of marriage. A recommendation is based on the hope that the person will pursue adequate counseling for the well-being of all parties concerned in the subsequent, marital relationship. The Tribunal has a list of certified agencies and therapists in private practice to whom people are referred. Usually the referral is made in consultation with one of the tribunal psychologists.

A **prohibition** is given by the Court of Appeal in those cases where there is serious doubt whether a person is currently capable of entering into a binding marriage or has the proper attitudes concerning the essential obligations of marriage. This restriction requires consultation between a pastoral minister and a representative of the Tribunal before another marriage may be celebrated in the Church.

18. WHEN MAY A DATE BE SET TO CELEBRATE MARRIAGE IN THE CHURCH?

A pastoral minister is **not** free to schedule a date for a subsequent wedding celebration in the Church until after **confirmed**, affirmative decision has been met.

The parties are therefore strongly urged to refrain from setting a definite wedding date until it is clear that no other obstacles will prevent a future celebration of marriage in the Catholic Church.

19. IS THERE A FEE?

There is no pre-set fee. We ask the petitioner to assume as much of the cost as possible. The amount will be discussed at a meeting with a Field Advocate after the written testimony has been submitted. It will be requested only after the case has been

formally accepted by the assigned Judge (cf. q. 6). If anyone requests a reduction or total waiver of the fee, a written explanation should be included, and the Judge will consider the situation. No one will be refused because of an inability to pay all or part of the cost of the case. More information on this subject is available on request.

20. DOES A FORMAL DECLARATION OF NULLITY AFFECT THE LEGITIMACY OF CHILDREN?

No. in such case Church law specifically states that children born of a marriage which has been declared invalid are legitimate and remain legitimate. Further-more, this decision has no effect on civil norms which govern the legitimacy of children.

21. HOW LONG DOES THE FORMAL DECLARATION OF NULLITY PROCEDURE TAKE?

Each petition is dealt individually. Because of the large number of cases and other factors, as well as the mandatory review, it is impossible to specify how long it will take to obtain a confirmed, affirmative decision. However, usually a petition will be informed of the formal acceptance of a case by the Presiding Judge (cf. q. 6). **Nevertheless, in no case can a confirmed, affirmative decision or its date of issue be guaranteed.**

22. ARE THER TYPES OF DECLARATIONS OF NULLITY OTHER THAN FORMAL CASES?

Besides the formal declaration of nullity procedure, there other procedures which the Church observes in dealing with previous marriage. These generally fall under two headings: “Documentary Cases” and “Privilege Cases”. Because the procedures involved in these types of cases are different, the preliminary application will not be returned petitioner. Rather, the petitioner will receive a letter from a Tribunal staff member, who will request pertinent information and/or a personal interview with the petitioner at the Tribunal Office.

23. WHAT IS A COMMON DOCUMENTARY CASE?

The most typical documentary case is known as a “Ligamen” (i.e., a prior valid marriage) case. This refers to a situation involving one party who had been validly married before and whose prior marriage had not been terminated by death before that same person entered a subsequent union, which also failed at a later date. The second marriage would be considered invalid because of the presumed validity of the first marriage.

Certain documents and testimony are required in these cases. A petitioner will be informed by a tribunal staff member of what type of evidence will be needed.

24. ARE THERE ANY OTHER TYPE OF DOCUMENTARY CASES?

Yes. These cases generally involve invalidating impediments to marriage. If such an impediment is present at the time of the marriage, the marriage is invalid. Some of the common impediments are: lack of required age; physical impotence (not sterility); marriage of a Catholic to a non-baptized person; sacred orders; relationships; certain legal relationships because of adoption; and certain relationships with in-laws.

Other circumstances may also invalidate the marriages of Roman Catholic or Orthodox Christians. For example, if a Roman Catholic without a dispensation celebrates a wedding ceremony without the active presence of a proper priest or deacon, the marriage will be usually invalid. Orthodox Christians are also bound by similar norms. Like wise, if the officiating priest or deacon lacked the required two witnesses were not present, such a marriage of a Roman Catholic is also considered invalid.

25. IS THERE A FEE?

There is a fee for the processing a Documentary Case. If there is an inability to pay all or part of this fee. An explanation should be provided. No one will be refused because of an inability to pay all or part of the fee.

26. IS A PAULINE PRIVILEGE CASE?

The Pauline Privilege case deals with the dissolution of a non-sacramental marriage in which neither party to a particular marriage was baptized at the time of the wedding celebration. In addition, the petitioner must sincerely desire to receive Christian baptism. Such cases are usually processed with the intervention of the local bishop.

Other requirements will be made known to the petitioner at the time made known to the petitioner at the interview with a tribunal staff member.

27. IS THERE A FEE?

There is a fee for processing a Pauline Privilege case. No one will be refused because of an inability to pay part or all of the fee.

28. WHAT IS A PRIVILEGE OF FAITH CASE?

A privilege of faith involves a special petition made to the Holy Father in which there is a request that a non-sacramental marriage be dissolved for a serious favoring of faith. It is necessary that at least one of the parties not be baptized during the entire common life of the marriage. A “serious favoring of faith” means that the petitioner sincerely wishes to become a Roman Catholic, **or** that the petitioner does not wish to convert to Catholicism but desires to marry a Catholic who wishes to continue to live his or her baptismal commitment, **or** that a Catholic who was in a previous, valid but non-sacramental marriage now wishes to enter into a sacramental marriage.

Other requirements will be known to the petitioner at the time of the interview with a tribunal staff member.

29. IS THERE A FEE?

There is a fee for processing a Privilege of the Faith Case. No one will be refused because of an inability to pay all part of the fee.

30. DOES A DIVORCED NON-CATHOLIC ALSO HAVE TO OBTAIN A CATHOLIC DECLARATION OF NULLITY OR DISSOLUTION BEFORE MARRYING A ROMAN CATHOLIC?

Yes. Since the Roman Catholic Church considers a marriage between non-Catholics as presumably valid, a divorced non-Catholic must have his or her former marriage dissolved or declared null according to **Roman Catholic norms** before such a person may marry a Roman Catholic.