LEGAL SURVEY ON INCESSANT PRACTICE OF DOUBLE-DECKER MARRIAGE IN NIGERIA: RESOLVING THE CONTROVERSIES

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Abstract

In Nigeria, it has become incessant practice for parties who want to contract a statutory marriage to first contract marriage under customary law before the solemnisation of the statutory marriage or sometimes vice versa. Although Western civilisation and culture have influenced Nigerian society, people generally, even the most intellectual ones understandably believe that they are bound by the customary laws of their place of origin, which may justify this practice which prompts certain legal questions. This article adopts doctrinal methodology and placed reliance on both primary and secondary sources, which conducted a legal survey on the concept of double-decker marriage under the Marriage Act and as well its attendant fundamental controversies. The paper found that although spouses are at liberty to contract either a customary or statutory marriage in Nigeria, socio-legal and cultural influences are responsible for contracting dual marriages by same spouses notwithstanding their intellectual capacity. Hence, this work aims at to identifying and resolving the controversies created from subscribing to a double-decker marriage and reconcile both systems of marriage constituting the double-decker marriage. This research concludes with a set of recommendations to improve the legal framework on double-decker marriage in Nigeria which includes public education and awareness about the reality that a customary law marriage is a legal marriage. It is just as significant as the statutory marriage. Overall, this research work will mitigate or completely eradicate the controversies.

Keywords: Double-Decker Marriage, Marriage, Customary Law Marriage, Statutory Marriage, Controversies.

Introduction

The primary legislation enacted to govern marriage ceremonies under the Nigerian legal system is without a doubt the Marriage Act.[1] It is the primary source of reference within Nigerian jurisdiction for the solemnization of a legal union. The Marriage Act 2004, however, makes no mention of double-decker marriage but a close reading of certain provisions of the Act[2] will reveal the approval for the concept known as double-decker marriage. It is a practice whereby the same couple who contracted an earlier marriage under one system of marriage and subsequently contracted another marriage under another system of marriage.[3] This concept can be considered as two legitimate marriages entered into by the same individuals. It entails the simultaneous application of two legal systems where none is

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[1] The Marriage Act, Cap.M6, Laws of Federation of Nigeria, 2004
[2] Sections 33(1), 35, 46 and 47
[3] M. Onokah, *family law* (Ibadan: Spectrum Books Limited 2012)

deficient, namely statutory and customary laws. A double-decker marriage has the traits and attributes of both statutory marriage and customary law marriage, making it a type of union characterized by being opportunistic and chameleonic.[4]

Despite the influence of western civilization and culture on Nigerian society, the majority of individuals, including the most educated and sophisticated ones who contracted statutory marriage, naturally still feel bound by their native law and custom,[5] this provokes the incessant practice of celebrating marriage under native law and custom before holding a statutory marriage ceremony. In other words, people belief that their custom either requires them to contract this system of marriage or that it is customarily accepted.[6] Parties to a double-decker marriage enter into this type of marriage in order to preserve or maintain their traditions and customs.[7]

People often believe that double-decker marriage is necessary by custom and that they are often accepted because there is no legal provision that specifically prohibits such system of marriage. Besides, the need to obtain official certificate for record purpose is another reason people embark on double-decker marriage.[8] To get legal support or security for their earlier traditional marriage, people may engage in double-decker marriage. Some Nigerians inadvertently view customary law marriage as merely a conventional ceremony while viewing marriage performed in accordance with the Marriage Act[9] as having legal standing because customary law marriage is not codified under the federal legislative system. According to Customary law, the institution of such marriage is polygynous in nature or polygynous in disguise and such a wife feels insecure in the marriage until a subsequent statutory marriage is contracted. The misconception among the lay public is that customary law marriage is inferior to statutory marriage.[10] A lot of people contract double-decker marriage because the society gives more significance to statutory marriage than marriage contracted under customary law.[11] In reality however, both are recognized by law, though their implications differ from each other. All these might justify this incessant practice of subscribing to a double-decker marriage which has brought about fundamental controversies.

In order to reconcile or resolve all the fundamental controversies between the two marriages that constitute the double decker marriage, it is imperative to mention some vital issues created or questions raised by the controversies. Such questions are: Does statutory marriage supersede or is it superior to customary law marriage or vice versa due to the silence of the law regarding the concept of double decker marriage? There is an issue of whether the parties' marital status should be monogamous or polygynous, or both at the same time. Can both systems of marriage exist side by side? Does conversion of marriage from customary law marriage to statutory marriage nullify the former? Since both marriages that constitute the double-decker marriage are valid under our systems of law, then what are the rationales or justifications for contracting this type of marriage and the validity of such marriage based on its order of proceedings? Furthermore, when a valid double-decker marriage[12] has broken down irretrievably and formally dissolved in High Court, can it be said that

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[4] O. Omolade, *Family Law and Succession in Nigeria* (Ikeja: Princeton & Associates Publishing Co Ltd. 2021)
[5] E. Nwogugu, *Family Law in Nigeria.* 3rd ed. (Ibadan: Heinemann Educational Books Nigeria Ltd, 2014) 17.
[6] Olokooba, S. M, 'Analysis of Legal Issues involved in Termination of Double-Decker Marriage Under Nigeria Law' (2007-2009), *Nigerian Current Law Review* 37
[7] This is in line with the decision in *Jadesimi v Okotie Eboh* (1996) 2 N. W.L.R. 128 at pp.147-148, Per Uwais,J.
[8] Jennifer Chioma Ogberaha, 'Double-Decker marriage: does marrying more than once do the trick? <https://akinlawoajowo.org> accessed on 10 January 2026
[9] The Marriage Act, op cit.
[10] C. Osondu, *Modern Nigerian Family Law & Practice,* (Lagos: Printable Publishing Company, 2012) 97
[11] Ibid
[12] When contracted in the right order according to The Marriage Act, op cit. S.33(1)

the parties are still married under customary law?

For a proper discussion of the above issues, this paper largely discusses the subject which aims to identify the controversies created from contracting a double-decker marriage and reconcile both systems of marriage constituting the double-decker marriage. Then finally put forward some recommendations to mitigate or completely eradicate these controversies.

The concept and definition of marriage in Nigeria

God created marriage as an institution for the sake of affection, sexual relations, and reproduction.[13] Consequently, matrimony has become a globally acknowledged and esteemed institution. The Nigerian Supreme Court recognised the sacred nature of marriage in the case of *Ezenna v Atta*[14] where Niki Tobi JSC described marriage as a highly sacred institution in our sociology and jurisprudence. Marriage, being a religious and social institution established by God, it is accorded with respect, based on and regulated by both the religious and secular standards put in place by the society.[15] It is defined as the institution which is widely accepted and valued around the world based on and governed by societal norms, both social and religious.[16]

Regardless of socio-economic background, it is reasonable to believe that marriage is almost a need for every adult in our contemporary culture. It is founded through voluntary mutual agreement between the parties to the marriage.[17] This produces a unique and personal status of husband and wife, which later creates another personal status of parent and child.[18] Hence marriage is not just a contract but one that brings about a new status as it was stated in the case of *Fassbender v Attorney General*[19] that the status and nationality of a woman change at marriage.[20] As a result, how it is formed, regulated, and dissolved differ from one country to another. The concept of marriage recognised in Nigeria, must be heterosexual. Same sex marriage is not only prohibited but also criminalised. The Law provided that only marriage contracted between a man and a woman shall be deemed to be a valid marriage in Nigeria.[21] To different people, marriage has varied meanings. Thus, marriage has been described as a socially and legally recognised union between a man and a woman, which is governed by laws, regulations, conventions, beliefs, and attitudes, prescribing the spouses' responsibilities and rights and grant status to their kids (if any).[22]

Forms of Marriage in Nigeria: Marriage is defined as a legal union contracted by persons of opposite sex in accordance with the Marriage Act, Islamic Law and Customary Law[23] hence, three forms of marriage are legally recognised in Nigeria, namely statutory marriage also known as marriage under the Act, Customary Law marriage and Islamic Law Marriage.[24] However, the Statutory Marriage and Customary Law Marriage which constitute the concept of double-decker marriage shall be the focal point of this research. It is imperative and pertinent to state that the principles of law regulating these two systems of marriage vary greatly and generally, they are administered by different systems of law and court. These different systems of law regulating these

[13] The Holy Bible: Genesis 2:24 new International Version, Zomdervan Publishing House
[14] 2004 17 WRL 1.
[15] E. Nwogugu, op cit.
[16] Ibid. xxviii
[17] Ibid.
[18] O. Omolade, op cit.
[19] (1922) 2 CH 850 at 858. The court held that the marriage of the wife is not only a contract, but a contract that changed her status. Since she was married to a German national, she had automatically acquired German nationality.
[20] Maynard v Hill (1888) 125 US 190; Oloba v Akereja (1988) 3 NWLR part 84 p508
[21] See generally the Same-Sex Marriage (Prohibition) Act 2013 of the Federal Republic of Nigeria
[22] Britannica <https://www.britannica.com/topic/marriage> accessed 19 January 2026.
[23] Same-Sex Marriage (Prohibition) Act 2013 of the Federal Republic of Nigeria s7; Constitution of the Federal Republic of Nigeria 1999 (Fifth Alteration) 2023, Second Schedule Item 61.
[24] Section 7, Same-Sex Marriage (Prohibition) Act 2013 of the Federal Republic of Nigeria

marriages and different courts also brought about fundamental issues and controversies in double-decker marriage.[25]

Statutory Marriage (Marriage Under the Act): A statutory marriage, commonly referred to as marriage under the Act, is one that is celebrated in accordance with the provisions of the Marriage Act,[26] one of the laws that regulates such union. An additional law that governs statutory marriage is the Matrimonial Causes Act[27] which comprises provisions pertaining to issues arising from such matrimony. Therefore, the Matrimonial Causes Act and the Marriage Act co-exist to govern marriage contracted under the Act.

In the case of ***Hyde v Hyde,***[28] marriage was defined by Lord Penzance as a voluntary union for life of one man and one woman to the exclusion of all others. Flowing from this definition, statutory marriage is monogamous in nature. It does not permit parties married under it to contract other forms of marriage with other third parties during the subsistence of such marriage, it must be voluntary without any form of coercion, it is expected to be forever except it is terminated by divorce or death of one the spouses and must be between a man and a woman.[29] Consequently, marriage is a partnership that unites a man and a woman to become one individual.[30] In Nigeria, statutory marriage has gained popularity, possibly as a result of its incorporation into Federal legislation through the introduction of the English Legal System into Nigeria[31] and people erroneously believe that it is superior to customary law marriage**.**

Customary Law Marriage: Nigerian law is influenced by customary law. It is the indigenous legal system in numerous communities around Nigeria. It is unwritten, a mirror of accepted usage in the place where it is applicable, and its rules vary with time[32]. Nigeria does not have a single body of customary law that governs the whole country. Instead, customary law varies from society to society. Nonetheless, a number of customary legal systems share certain similar ideas.**[33]** There are several sources of customary law that apply to marriages. The unwritten aspect of customary law is an inherent feature. However, customary law standards are increasingly appearing in writing. A number of state legislatures have enacted laws governing different aspects of customary marriage, incorporating the duties and rights of customary law couples, the bride price, and child betrothal.[34]

Customary law marriage is a system whereby one man and one or more women contract marriage in accordance with native law and custom. The man's capacity to contract marriage with more than one woman at once or during the lifetime of the man, is its primary characteristic.[35] Because of this, a marriage with only one wife is nevertheless considered valid under customary law, provided the male has not forfeited the rights to marry other wives over the course of the union. There is no limit on the number of wives that can be taken under customary law. This is required by the man's situation.[36] It is imperative to mention that customary law in Nigeria does not recognise polyandry, or a woman having several spouses. As a result, in the case of *Kpelanya v Tsoka and Anor,*[37] it was decided that a woman could not lawfully marry two men at the same time under TIV customary law. In fact, having marriages with more than a man is against Idoma traditional law.[38]

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[25] O. Omolade, op cit.
[26] Chapter M6 Laws of the Federation of Nigeria 2004
[27] Chapter M7 Laws of the Federation of Nigeria 2004
[28] (1860) L.R. 1 P & D 130
[29] O. Omolade, op cit.
[30] C. Osondu, op cit
[31] O. Omolade, op cit.
[32] Osborne. C. J. in *Lewis v. Bankole* (1909) NLR 81. 101; *Oyewunmi v Ogunsesan* (1990) 3 NWLR (Pt 137) 137
[33] S. Abdulmalik, 'The land use Act, 1978: A reformative and revolutionary property legislation in Nigeria' (2016) 2(1) *Journal of Faculty of Law Lead City* 24
[34] Customary Marriages (Miscellaneous Provisions Law, Cap. 39 Laws of Anambra State 1999; Customary Marriages (Miscellaneous Provisions Law. cap. 33 Laws of Enugu State 2004.
[35] C. Osondu, op cit
[36] Ibid
[37] (1971) NNLR 66.
[38] O. Omolade, op cit.

Basically, customary law marriage is polygynous in nature, which is not peculiar to Nigeria alone but also to other African states. It is a well-known system of marriage in some communities beyond Africa and has been part of the lifestyles of our forefathers from time immemorial[39]which originated in a way of informal marital union through capture, slavery and purchase. Though these barbaric practices of irregular unions have since paved way for the acceptable form of voluntary marriage under customary law.[40] Therefore, the partners' voluntary consent is a crucial factor in forming a customary law marriage.

The concept of double-decker marriage

Three forms of marriage exist under the Nigerian Legal system, namely the customary law marriage, Islamic law marriage and the statutory marriage.[41] It is prevalent that most couples celebrate two of the systems of marriage; that is, customary or traditional marriage and statutory marriage one after the other. When this is done, both marriages will result in a double-decker union. Double-decker[42] has been described as something that has two decks, levels, tiers or layers. When applying this description to marriage, two legitimate unions entered into by the same individuals would be considered a double-decker marriage. The expression *"double-decker marriage"* was invented by Margaret Onokah[43] to characterise the situation perfectly. She claims that the same pair celebrates one method for their first marriage and another system for their second marriage.

There is no clear definition for the concept of double-decker marriage in the Marriage Act. However, double-decker marriage connotes the celebration of two different marriages at two different periods through different celebrations by the same couple.[44] The earlier marriage being customary law marriage, is potentially polygynous in nature and, the latter, essentially a monogamous marriage. The latter statutory marriage, however, alters the traits or potentiality of polygyny and replaces same with its own inherent traits; that is, the monogamy's incidents and nature.[45] A double-decker marriage lacks the capacity to sustain the existing propensity towards polygyny by reason of superimposition of restraints during the continuance of the latter marriage. It is strictly monogamous and, where the husband intends marrying another wife during the subsistence of the marriage, he must necessarily seek an outright dissolution of the double-decker marriage at the High Court in Nigeria;[46] he cannot reconvert the marriage to a polygynous marriage by just importing another wife as that would constitute bigamy as proscribed by the Nigerian Criminal code.[47]

Couple of a double-decker marriage will either contract the one that is permitted by the Marriage Act[48] or the one proscribed or prohibited by the Marriage Act.[49] In essence, it is a common practice in Nigeria for parties who intend to contract a statutory marriage to marry first under the customary law before the solemnization of the statutory marriage, this is the one permitted by Marriage Act or vice versa which is prohibited by the Marriage Act. In other words, a double deck marriage has its order of proceedings which comes in two different forms where one is valid while the other form is prohibited. A couple can choose to either deck a statutory marriage by first contracting marriage under the customary law and then marrying again the same party under the Act (this order is valid)[50] or the couple can form a statutory marriage first and then marry under customary

[39] Tsoaledi,D and Takayindisa,F 'An Exploration of Polygamous Marriages of A worldview' (2014) 5(27) *Mediterranean Journal of social sciences* 1058
[40] Nwachinemeleu Okonkwo v Lucky Okagbue & Ors. (1994) 9 NWLR (pt. 368) 301 at 346
[41] Same-Sex Marriage (Prohibition) Act 2013 of the Federal Republic of Nigeria s7
[42] Merriam Webster Dictionary <https://www.merriam-webster.com/dictionary/double-deck> Accessed on 10 January 2026
[43] M. Onokah, op cit.
[44] O. Omolade, op cit.
[45] Ibid
[46] Ibid
[47] Criminal Code (Cap C38) LFN 2004(as applicable to southern part of Nigeria) s370
[48] The Marriage Act, op cit. Ss.33(1) & 46
[49] Ibid. Ss35 & 47
[50] Ibid. S.33(1)

law (this is prohibited).[51] In this case, the issues of validity, legitimacy, and superiority become clear as it is expressly stated in Section 33 (1) of The Marriage Act[52], that a marriage under the Act shall not be regarded as valid in Nigeria if either of the parties at the time of contracting the marriage, is married to some other person under customary law other than the person with whom such marriage is celebrated. This provision expressly allows the validity of both the customary law marriage earlier conducted by the parties and the statutory marriage subsequently contracted by the same couple. It is apparent from this statutory provision, that the Act allows the practice of double-decker marriage because it recognizes a previous customary marriage between the same parties followed by a subsequent marriage under the Act. Further to this, the provision of Section 46[53] serves as punitive measures for contracting marriage under the act with another person while the marriage under the native law and custom is still subsisting. It provides that anyone who is married under the native law and custom shall not be capable of contracting a valid statutory marriage with another person during the subsistence of the customary law marriage. Anyone who contravenes this provision shall be liable to five years imprisonment. Notwithstanding the above legal protection for the practice of double-decker marriage, an acceptable double-decker marriage has its order of proceedings as stated earlier. The correct order states that the customary marriage must take place before the subsequent statutory marriage by virtue of section 33(1).[54]

The order which is not valid is by virtue of section 35[55] which states that any person who is married under the Act, or whose marriage is declared by the Act to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under Customary law. Upon examination of Section 35 of the Act**,** it is apparent that once parties are married under the Act, they are rendered incapable of marrying each other or third parties under customary law. Section 47[56] then prescribes the penalty where the above is breached or disregarded. It provides that anyone who has contracted a statutory marriage, has no right during the continuance of such marriage to contract a marriage in accordance with customary law with anyone including the present spouse. Such person who fails to adhere to the provision shall be liable to imprisonment for five years. It is apparent that section 47[57] outlaws or prohibits the subsequent contracting of customary law marriage to any person either between the parties to a marriage or any other person. The section prescribes the punishment of five year-imprisonment. The adverse effect of double-decker marriage in Nigeria is that about 30 per cent of double-decker marriages contracted constitutes an offence by reason of the order of proceedings of such marriages being wrongly contracted.[58] Also, irrespective of whether double decker marriage is validly or wrongly contracted, several controversies abound.

Genesis of the controversies

Nigeria's cultural foundation has never been the same since its encounter with Britain that imposed English laws and practices on the locals of the occupied area. The British's contact with Nigeria served as an advertisement of western civilization's superiority over indigenous culture.[59] This has shown that colonialism caused the indiscriminate eradication of indigenous cultures and their replacement with European cultures.[60] The colonialists' superiority complex and disdainful

[51] Ibid. S35
[52] Ibid.
[53] Ibid. S.46
[54] Ibid. S.33(1)
[55] Ibid. S.35
[56] Ibid. S.47
[57] Ibid
[58] Jennifer Chioma Ogberaha, 'Double-Decker marriage: does marrying more than once do the trick? <https://akinlawoajowo.org> accessed on 10 January, 2026
[59] Y. Olomojobi, "Marriage In Nigeria Across Ages: Problems and Prospects". (24 September 2016) < Olomojobi, Yinka, Marriage in Nigeria Across Ages: Problems and Prospects. Available at < http://dx.doi.org/10.2139/ssrn.2858618 >Accessed on 30 January, 2026.
[60] U Nwala, *Igbo Philosophy: The Philosophy of Igbo Speaking Peoples of Nigeria*. 4th ed. (NewYork: Triatlantic Books, 2010) 68

attitude towards indigenous customary laws especially in relation to indigenous marriage laws and customs, resulted in their refusal to accord them the same recognition with their own laws, which, due to the existence of English conventions and practices.[61] In the famous case of *De la Vega v. Vianna,*[62] Tenterden CJ emphasised that a foreigner in England wishing to contract marriage under the English matrimonial laws, must accept the English law on marriage as it is and not to import any foreign ideas about marriage into England.

They perceived indigenous customary marriage law in Nigeria as inferior and insisted that a foreigner must accept their marriage law as he or she finds it, with all of its drawbacks and advantages. As a result, the colonialists not only imposed their marriage law on the nation but also instituted the validity test to cleanse indigenous customary law of its perceived inferiority.[63] In *Ugo v. Obiekwe*[64] Nnaemeka Agu JSC, criticised the systemic denigration of Nigerian customary law inspired by colonisation pointing out that customary law in Nigeria is nevertheless hindered by the troublesome legacy of colonisation. As a result, more than six decades after our independence from colonial domination, our customary law is still considered as foreign law in our own country. One of the practises that has contributed to Nigeria's cultural deterioration is the functioning of the double-decker marriage system.

The primary consequence of the introduction of British rule in Africa was the creation of a legal dualism. The concept of legal dualism is visible in Nigeria in the institution of marriage.[65] Consequently, it has been revealed that the advent of English law has brought about this dualism between marriage under the English law and marriage in accordance with indigenous law.[66] The current double-decker marriage system is the outcome of the introduction of two systems of marriage laws (statutory and customary) in the same jurisdiction. In other words, the concept of a double-decker marriage allows for the simultaneous application of both customary and statutory laws.[67] The fact that these marriages are founded on different legal orders presents a conflict of laws scenario and has generated several fundamental controversies.

The Fundamental Controversies*:* There are fundamental controversies, issues or questions arising from contracting a double decker marriage such as superiority complex, theories of conversion and co-existence, status of the marriage, legal pluralism or termination of double-decker marriage.

The Controversies and Reconciliation*:* The proponents of co-existence theory maintain that statutory marriage and customary marriage do co-exist. They contend that the idea that a marriage under the Act transforms from one governed by customary law into monogamy is absurd.[68] Agbakoba J. expressed this opinion in the case of *Akparanta v Akparanta,*[69] asserting that customary marriage is not assimilated into the marriage under the Act, rather both marital systems co-exist side by side, that it is absurd to claim that a statutory marriage converts a customary law marriage into a monogamous one. While under the conversion theory, a couple's first marriage which is customary law marriage, is transformed into statutory marriage when the parties contract a second marriage, statutory marriage.[70] According to this theory, a couple's customary law marriage immediately loses its legal character and becomes the latter statutory marriage if they subscribe to a statutory marriage

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[61] De la Vega v. Vianna 109 E.R. 792

[62] Ibid

[63] Y. Olomojobi, "Marriage in Nigeria Across Ages: Problems and Prospects". (24 September 2016) < Olomojobi, Yinka, Marriage in Nigeria Across Ages: Problems and Prospects. Available at < http://dx.doi.org/10.2139/ssrn.2858618 > Accessed on 30 January, 2026.

[64] (1989)1 NWLR (Pt. 566) 583

[65] A. Allot, *Discussing African Law Integration of Customary and Modern Legal Systems in Africa* (Ife: University of Ife Press 1971) 19

[66] T. Elias, *British Colonial Law*. (Oxford: Oxford University Press, 1962) 12

[67] Ibid. S.33(1) has given validity to this practice by enabling persons who are married under customary law to marry each other under the statute.

[68] Jennifer Chioma Ogberaha, 'Double-Decker marriage: does marrying more than once do the trick? <https://akinlawoajowo.org> Accessed on 30 January, 2026

[69] (1972) 2 E.C.S.L.R. 779.

[70] The Marriage Act, op cit. S.33(1)

after their customary law marriage. The customary law marriage becomes statutory marriage and loses all of its unique qualities, legal occurrences, and consequences as a result.[71] Thus, the two marriages cannot coexist. The customary law marriage is superseded by the statutory marriage. Only the parties who contract marriage under the Act are entitled to the privileges and responsibilities associated with it. Any rights they might have had under the previous marriage in accordance to customary law are immediately supplanted by the newly formed marriage under the Act.[72] In other words, a statutory marriage that follows the traditional relationship takes precedence. Dosunmu J. held in *Oseni v Oseni Ohadiya*[73] that customary law marriage becomes a statutory marriage when the statutory marriage absorbs the customary law marriage and gets rid of all of its incidents, replacing the traditional union with its own incidents from the statutory marriage. In the same vein, Professor Sagay**[74]** stated that the overwhelming body of evidence supports the theory that a customary marriage is transformed into a statutory marriage, which implies that the statutory marriage absorbs the customary marriage, does away with all of its episodes, and replaces them with new ones. It is imperative to state that the statutory marriage completely replaces the prior customary law marriage once the marriage is converted.

More so since both customary and statutory laws are recognized in Nigeria, there is no basis saying that one law is more significant than or superior to the other.[75] In *Jadesimi v Okotie Eboh,*[76] the Supreme Court held that the status of being married under Islamic Law or Customary law is well recognized in this country and such marriages should not be accorded any status that is inferior to that of marriage under the Marriage Act. In addition, the combined effects of Sections 35 and 47 of the Marriage Act[77] do not provide explicit or implicit support for the idea that a statutory marriage is superior to a customary law marriage, so this is not definitive. Section 35 of the Marriage Act states that a customary marriage cannot be contracted after a statutory marriage. While Section 47 of the Marriage Act only forbids someone from entering into a customary marriage after a statutory marriage. Nothing suggests that statutory marriage is better than or superior to customary marriage. In submission, the argument over whether one marriage is more significant than the other may have finally come to an end with the decision made by the Supreme Court of Nigeria in the case of *Jadesimi v Okotie Eboh and Ors.*[78]

From the definition of conversion in the dictionary, which is change in character, nature, form or function,[79] a marriage that has been converted loses its unique characteristics. The later occurrences must take precedence over the earlier one, therefore, a customary law marriage has automatically become a statutory marriage. As a result, this has resolved the controversy in respect of the double-decker marriage which raises the question of whether the parties' marital status should be monogamous or polygynous, or both at the same time. Respectively, once both parties to the customary law marriage contract subsequent marriage under the Act, such marriage is converted to monogamous marriage absolutely, which is irreversible or cannot be reconverted to customary law marriage. Thus, the man has forfeited his right to marry as many wives as possible.[80]

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[71] Jennifer Chioma Ogberaha, 'Double-Decker marriage: does marrying more than once do the trick? <https://akinlawoajowo.org> Accessed on 30 January, 2026

[72] E. Nwogugu, op cit.

[73] Unreported judgment of the High Court of Lagos, per Dosunmu J. reported in Sagay I, *Nigerian Family Law, Principles, Cases, Statutes and Commentaries.* (Ikeja: Malthouse Press Limited, 1999). 831

[74] Sagay I, *Nigerian Family Law, Principles, Cases, Statutes and Commentaries.* (Ikeja: Malthouse Press Limited, 1999). 831

[75] Titi Kehinde 'Divorce Law in Nigeria: A Legal Practitioners view point' in Olawale Ajai and Toyin Ipade (eds), *Right of Women and Children in Divorce* (Lagos: Friedrich Ebert Foundation, Franke publishers1997) 191.

[76] (1996) 2 N.W.L.R. Pt. 429. 128

[77] The Marriage Act, op cit.

[78] (1996) 2 N.L.R. Pt. 429.p128

[79] The Oxford English Dictionary, 2nd (ed), (Oxford: Clarendon Press 1989) Vol.111

[80] Jennifer Chioma Ogberaha, 'Double-Decker marriage: does marrying more than once do the trick? <https://akinlawoajowo.org> Accessed on 30 January, 2026

In other words, a couple whose marriage constitutes double decker marriage could not have two different marital statuses, one based on the statute and the other on customary law. The reason behind this is that, it is extremely difficult to understand how two marriages between the same people may exist concurrently or how two systems of laws would govern a marriage between same parties. One is regarded as a union between the parties to the exclusion of others, whilst the other extends beyond the parties alone to include their families; one is monogamous, while the other may be polygynous.[81] Nonetheless, the courts have maintained in a number of cases[82] that a statutory marriage supersedes a customary marriage or that a customary marriage dissolves and merges with a statutory marriage. Dosunmu J. held in *Oseni v Oseni Ohadiya*[83] that customary law marriage becomes a statutory marriage when the statutory marriage absorbs the customary law marriage and gets rid of all of its incidents, replacing the traditional union with its own incidents from the statutory marriage.

After being married under customary law, the parties in *Jadesinmi v Okotie Eboh*[84] remarried in accordance with the Marriage Act. The court concluded that when the same people first marry under customary law and then remarry under the Marriage Act, the second marriage which turns the polygynous marriage into a monogamous union is recognised as such. This response has addressed the question of whether a statutory marriage renders a customary marriage void. In the same vein, the Court reasoned in *Odive v Nweke Obor & anor*,[85] that the customary marriage merges with the statutory marriage, losing all of its own traits, occurrences, and legal ramifications, thus the two marriages do not coexist. As a result, an individual cannot be bound by both the customary law marriage and the statutory marriage's legal rights and duties at the same time.

The prevalence of double-decker marriage is a factor influencing Nigeria's legal diversity, therefore it is imperative to state that all fundamental issues or controversies mentioned or not mentioned in relation to incessant practice of contracting double decker marriage will automatically be resolved or determined immediately the marriage contracted under the system of customary law is converted to statutory union.[86] In *Teriba v Teriba and Rickett*,[87] the marriage was dissolved by the court upon declaring that the actual state of affairs is that the statutory marriage effectively replaces the customary marriage and according to the conversion theory, the couple's customary law marriage ended a few years after they were married under the Act, meaning that the marriage under the Act now stands and takes precedence over the customary law marriage. Flowing from this, a double-decker marriage can be terminated through dissolution or death of a spouse. In the event of occurrence of any of these, the double-decker marriage has absolutely ended and the customary marriage cannot revive.[88]

The return of the bride price is important when a customary law marriage in Nigeria is terminated. The married lady would still be acknowledged as a wife under native law and traditions until the bride price is returned.[89] However, this is not applicable when the initial customary law marriage is terminated by its conversion to the later statutory marriage, hence the issue of bride price is irrelevant.[90]

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[81] Ibid

[82] Jadesimi v Okotie Eboh (1996) 2 N.W.L.R. Pt. 429. 128; Odive v Nweke Obor & Anor. (1996) 2 E.C.S.N.L.R. 733 @ P. 735

[83] Unreported judgment of the High Court of Lagos, per Dosunmu J. reported in Sagay I, *Nigerian Family Law, Principles, Cases, Statutes and Commentaries.* (Ikeja: Malthouse Press Limited, 1999). 831

[84] (1996) 2 N.W.L.R. Pt. 429. 128

[85] (1973) E.C.S.N.L.R 733 at p. 735

[86] M. Onokah, op cit.

[87] Suit no. 1/211/67 of 2/7/69, (unreported) Ibadan High court.

[88] Jennifer Chioma Ogberaha, 'Double-Decker marriage: does marrying more than once do the trick? <https://akinlawoajowo.org> Accessed on 30 January, 2026

[89] *Eze v Omeke* (1977) IANSLR 138.

[90] Jennifer Chioma Ogberaha, 'Double-Decker marriage: does marrying more than once do the trick? <https://akinlawoajowo.org> Accessed on 30 January, 2026

Departing from above issue, it is imperative and pertinent to mention an issue in respect of Section 33(1)[91] which states that the customary law marriage must take place before contracting a subsequent statutory marriage. Then section 35[92] provides that a subsequent customary law marriage cannot be contracted after a statutory marriage has taken place. In other words, it is only customary law marriage that can be converted to statutory marriage while statutory marriage cannot be converted. Therefore, the close reading of both Sections 33(1) and 35 of the Marriage Act indicates that there is discrimination between customary law marriage and statutory marriage. This has raised a fundamental question which says, if customary law marriage can be converted to statutory marriage, then why is it not possible for statutory marriage to be converted to customary law marriage? This has downplayed the significance of customary law marriage and also raises the issue of one system of marriage being superior while the other is inferior. This is an important issue to be resolved through an amendment of the Marriage Act.[93] This has legal repercussions, necessitating a revisit to Nigeria's present legal framework governing the concept of marriage in Nigeria. Be it as it may, however, the current state as approved statutorily, imputes priority or precedent on statutory marriage.

Conclusion

In Nigeria, the majority of couples validly celebrate both customary law marriage and statutory marriage simultaneously. This act constitutes a double-decker union. Within the Nigerian legal system, the principal legislation governing the procedural aspects of marriage is undeniably the Marriage Act. It takes precedence as the primary reference point for the solemnization of a legally recognized and valid union within the jurisdiction of Nigeria. However, regarding the concept of double decker marriage, the Marriage Act is silent. The silence has brought about several controversies. An average couple typically performs the traditional marriage ceremony, notwithstanding the western education and the much-heralded liberation of women from social servitude and a single valid marriage in any of the systems is sufficient, despite the misconception held by the general public that statutory marriage is superior to customary law marriage. Both systems of marriage are valid and recognized by law, though having different implications. In order to clear the controversies associated with double decker marriage, the Marriage Act needs to be tinkered with, by clearly providing that couples must choose which of the systems of marriage they would enter into in order to avoid the issues associated with double-decker marriage. The enactment of such a regulation will prevent couples from spending unnecessarily and extravagantly on re-contracting another marriage while a valid marriage still subsists between the couple. The reform will ensure couples to choose between subscribing to either statutory marriage or a customary law marriage. Permitting a double-decker marriage with explicit clauses regarding the implications of such a union would be an alternative. To dissuade couples from investing their money on a re-celebration of a marriage that has already been celebrated in a traditional way, the Registry needs to launch a thorough education campaign. It is important to inform couples that re-celebrating their marriage will not elevate their position and that in Nigeria, customary law marriage is a legal marriage, a marriage recognised by customary law. This will eliminate, or at least diminish, the myth that a marriage needs to be a double-decker marriage in order for a matrimony to be secure, recognised, and protected. In essence, the re-celebration of marriage will not bring about any further validity to their status. Since Native law and custom are equally considered as enforceable laws in this country, being married under customary law is frequently accepted. Communities ought to mandate that couples get certificates as evidence of their marriage from a Customary law Court or Area Court, relieving

[91] The Marriage Act, op cit. S.33(1)
[92] Ibid. S.35
[93] Ibid

married couples' fears over the legality of their union. It is imperative for couples to decide with clarity. They should either contract a statutory marriage or a customary law marriage, since both unions are recognised in Nigeria. The Supreme Court affirmed that *"the status of being married under Islamic law or Customary Law is fully accepted in our nation"* in the case of *Jadesimi v Okotie-Eboh* mentioned herein. Educating the citizenry is necessary in Nigeria on the fact that a marriage governed by traditions is, in fact, valid and legal. It is just as significant as the marriage under the Act. They will be able to comprehend that there are three types of legally recognized marriages in Nigeria, and that statutory marriage is just one of them. In order to create awareness, it is important to expand the Social Studies course content in Nigeria's primary, secondary, and tertiary education systems. This awareness can be raised through print, broadcast, and social media. Establishing family education and counselling centers in schools, churches, and youth recreation centers is vital in order to provide sufficient opportunities for individuals requiring clarification and guidance on Nigerian marriage laws as needed. It is also vital to regularly provide talks and workshops on the foundational ideas of families and marriages for young people who are eligible to be married. This will lead to the possibility of deducing the order in which double-decker marriage occurs. It is also suggested that the Evidence and Criminal Code Acts be modified to allow customary marriage couples to enjoy all of the benefits and rights presently available only to statutory marriage couples. In this sense, the law increases public acceptance of customary law marriage.[94] It is hoped, that all these would promote the realisation of a healthy voluntariness of marital unions in Nigeria.

[94] Especially as regards the issues of competence and compellability of couples in evidence against one another and other related issues as outlined in sections, 161,162 and 164 of Evidence Act CAP 112 Laws of the Federation of Nigeria (1990), and section 34 and 36 Criminal Code Act CAP 77 Laws of the Federation of Nigeria (1990).