

Before ‘I Do’: Examining the Legality and Enforceability of Pre-Nuptial Agreements in Nigeria

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doi: <https://doi.org/10.37745/gjplr.2013/vol14n41528>

Published August 03, 2026

Citation: Umuze E.E., and Itsuelli P. (2026) Before ‘I Do’: Examining the Legality and Enforceability of Pre-Nuptial Agreements in Nigeria, *Global Journal of Politics and Law Research*, 14(4),15-28

Abstract: *Marriage is a contractual union between two consenting persons, traditionally intended to endure for life without contemplation of separation or dissolution. However, contemporary social and economic realities have made it increasingly necessary for couples to protect assets owned prior to marriage as well as those acquired during the subsistence of the marriage. This development has led to the growing use of prenuptial agreements, which provide for the ownership and distribution of assets in the event of marital breakdown or dissolution. This study adopts a doctrinal research methodology to undertake a comparative analysis of the legal framework governing prenuptial agreements in Nigeria and other African countries. The study reveals that Nigeria presently lacks a comprehensive statutory framework regulating prenuptial agreements, whereas South Africa has a well-established legal regime that expressly recognizes and governs such agreements. The study concludes that prenuptial agreements should not be viewed as an indication or anticipation of marital failure, but rather as a practical legal mechanism for asset protection, certainty, and the prevention of disputes, confusion, and acrimony in the event of separation or divorce. It therefore recommends that the Matrimonial Causes Act in Nigeria be amended to incorporate provisions similar to those contained in the Matrimonial Property Act, thereby recognizing prenuptial agreements as an integral aspect of marriage contracts.*

Key words: marriage, agreement, divorce

INTRODUCTION

A pre-nuptial agreement (“prenup”), also known as ‘pre-marital agreement’, is a contract between a prospective husband and wife, which sets out the terms of ownership of assets acquired before and after the marriage and determines how earnings during the subsistence of the marriage will be treated and the settlement of property in the event of separation or divorce. The agreement would usually deal with the consensus of the parties on issues like debts, entitlement to retirement plans and accounts, separate and joint property, living expenses, gifts, separation and divorce, rights of parties to property in the event of death, child support/maintenance, etc.

Until recent times, the idea of a prenup was alien to Nigeria. This is because marriage was (and still largely is) considered a sacred institution created by God and initiated by love and any attempt to imply its contractual nature as evidenced in the signing of prenup (as done in “foreign lands”) was abominable. In fact, it can safely be said that people blindly entered into marriages, without discussions on crucial issues like property and finance¹. One major reason for this is the magnified position of the man as the natural ‘bread’ winner of the family with a duty to provide for his wife and children[1]. Many women were full-time housewives. However, times have changed. Women now work and own properties like men. It is not then, uncommon to find men looking to marry women that can ‘take care of them’ these days.

Another reason was that divorce was not common because of the place of family, deep-rooted traditions and religion that held couples bound to unhealthy and sometimes, life-threatening marriages and relationships. Today, these factors’ hold on marriages have lessened. In various courts in Nigeria today, it is no longer strange to see people seeking the dissolution of marriages aged only a few months or a few years, with unbelievable tales of marital difficulties.

Purpose of a Prenuptial Agreement

A prenuptial agreement is typically used to safeguard individual possession or income, and to make sure assets are divided in accordance to their desires.² However, they are not always enforceable, as courts may invalidate certain provisions that are considered unfair or against public policy. A prenuptial agreement can cover variety of topics, including but not limited to:³

- a) **Property rights:** It specifies how assets and property will be distributed amongst the two partners in case of a separation or divorce. The rights and obligations of each
- b) party in any of the property of either or both of them whenever and wherever acquired. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expand, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property. The disposal of property upon separation, marital dissolution, death, or the occurrence or non-occurrence of any other event.
- c) **Alimony:** It can specify whether or not one party will receive spouse maintenance in the event of a divorce.
- d) **Debts:** It can specify who will be responsible for any debts incurred during the Marriage.
- e) **Inheritance:** It can clarify how inheritances are to be divided if one of the parties dies. Including, the making of a will, trust or other arrangement to carry out the provisions of the agreement.
- f) **Business interests:** It can outline what will happen to any business interests owned by either party in the event of a divorce or separation.
- g) It can make reference to ownership rights in and disposition of the death benefit from a life insurance policy.

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² Clarfeld Rob, ‘Does a Prenuptial Agreement Protect Assets?’ (*Citizen Bank*)<<https://www.citizensbank.com/learning/protecting-assets-with-a-prenuptial-agreement.aspx>> accessed May 30th 2026.

³ Spector Nicole, ‘Prenuptial Agreement, What Is Prenup And Should I Get One’ *NBC Universal* (12 April 2019)<<https://www.nbcnews.com/better/amp/ncna993616>> accessed May 30th 2026

- h) Right to retirement savings plans and account and choice of law governing the construction of the agreement can be covered by a prenuptial agreement. Indebtedness, assets distribution, cost of living, presents, divorce and separation, entitlements of partners to estate in the case of death, child support and personal matters are all concepts that can be featured in a prenuptial agreement.⁴

Legal Framework for Prenuptial Agreement in Nigeria

There are different forms of family agreement all across the world catering for different issues. However, the validity and enforcement of these agreements depends on the legal regime available in each jurisdiction. The fundamental laws regulating marriage in Nigeria are Marriage Act (MA)⁵ and Matrimonial Causes Act (MCA).⁶ The MA is a federal law that governs the contract, celebration of statutory marriage and states the primary conditions for a valid marriage. The MCA regulates and considers issues arising from marriages celebrated under the Act, which includes divorce, separation, custody and maintenance, while the Matrimonial Causes Rule is the procedural law for the MCA that states the procedures for determining a marriage including divorce, separation, custody and maintenance. In addition, the relevant customs of the intending spouses govern customary marriage rites in Nigeria⁷.

'Family agreements are presumed not to give rise to legal relations unless there is clear evidence to the contrary'.⁸ 49 However, where there is undoubtable intent to become legally binding, the assumption is rebutted. In *Merritt v Merritt*⁹ an agreement for separation amongst partners who had drifted apart was held enforceable by the court. While the laws governing family, agreement vary from jurisdiction to jurisdiction, certain contents in the agreement or circumstance may render such agreements out rightly unenforceable some of which are, fraud, duress or non-disclosure.

The Validity of Prenup under Nigerian Law

The MCA in Section 72(2) recognises the right of parties to execute prenup and post-nuptial agreement (a post-nuptial agreement is entered into after the marriage and in most cases, during the course of a divorce proceeding). Though the court has discretion on the enforcement of pre or post-nuptial agreements with respect to the allocation of property in the event of a divorce, experience has shown that the court readily enforces post-nuptial agreements. The same approach would apply to prenup, in

⁴ Asia E. Elvis, 'Practical and Legal Reasons for Pre-nuptial Agreement in Nigeria' *Academia* <https://www.academia.edu/39976807/PRACTICAL_AND_LEGAL_REASONS_FOR_PRENUPTIAL_AGREEMENT_IN_NIGERIA> accessed May 30th 2026

⁵ CAP. M6, LFN, 2004.

⁶ CAP M7LFN 2004.

⁷ O. A Okparavero, T. O. Aderibigbe, D. A. Odunaike 'When Love Is Not Enough: A Comparative Appraisal Of The Legal Framework For The Validity And Enforcement Of Prenuptial Agreements In Nigeria And South Africa' *Current Trends in Humanities and Law Research (CTHLR)*, Volume 3, No. 1, June, 2025 <https://doi.org/10.61867/pcub.v3i1a.206> accessed May 30th 2026.

⁸ Laurence Koffman and Elizabeth Macdonald, *The law of contract* (Oxford University Press, 2010) 98 <https://books.google.com.ng/books?hl=en&lr=&id=3WycAQAAQBAJ&oi=fnd&pg=PP2&dq=Koffman,+Macdonald,+p.+98&ots=rCYMfUXsub&sig=ucFwA4eeJS5Y_vkEdzMjmS6VLHI&redir_esc=y#v=onepage&q=Koffman%2C%20Macdonald%2C%20p.%2098&f=false> May 30th 2026.

⁹ [1970] 2 All ER 760, [1970] 1 WLR 1211.

view of the fact that court is mandated to take into consideration any prenup made by the parties for settlement of properties.

A careful perusal and digestion of Section 72 Matrimonial Causes Act suggest that the Act recognizes the rights of parties to a marriage to enter into a pre-nuptial or post-nuptial agreement. However, it empowers the court to make an order that it considers just and equitable in any circumstances, notwithstanding any pre or post-nuptial agreement. The court reserves the discretion to distribute the asset of the marriage for the benefit of all, notwithstanding the existence of any ante or post-nuptial agreement. Furthermore, the court is not bound by the subsistence of any ante or post-nuptial agreement in the exercise of its discretion in distributing properties. What guides the courts is justness and equitableness.

Section 72 is like bedrock for a pre-nuptial agreement in Nigeria, but there is no single legislation regulating what a pre-nuptial agreement is. The Section merely makes a mention of pre-nuptial and nothing more. It envisages the fact that it might be in existence and nothing more. It is merely speculative. Even though pre-nuptial agreements are not prevalent in this part of the world, they may still be enforceable in courts⁸⁹³. Parties are bound by their agreement in as much as the agreements are not vitiated by other factors. For instance, they are written law in Nigeria that governs succession, custody of children, divorce, and dissolution of marriages¹⁰.

Other Categories of Marital-Related Agreements

This paper is primarily focused on pre-nuptial agreement. However, there is the yawning need to briefly examine other variants of pre-nuptial agreement which perhaps has almost the same implication as a pre-nuptial agreement. Under this heading, this article will discuss three such other forms of agreement that are closely related to a pre-nuptial agreement. These forms of agreement are post-nuptial agreement, Mid-nuptial agreement, and Cohabitation agreement.

Post-Nuptial Agreement

Post-nuptial agreement (also known as a post-marital agreement) is an agreement entered into by the parties after the marriage that sets forth the rights and obligations of each party in the event of divorce¹¹. A post-nuptial agreement can be used when no divorce is contemplated or when divorce is not imminent. A separation agreement is entered when divorce is imminent.

Postnuptial agreements are created and signed by spouses after they marry. It is similar to prenuptial agreements because it outlines information such as responsibilities or assets. However, post-nuptial agreements are typically used to resolve some type of problem in the marriage and can be in lieu of alimony. The contract may seek to regulate spouses' behavior, such as spending too much money, household responsibilities, or adultery. Also, the contract can be created after there some change in finances after the spouses were married, which can include but are not limited

¹⁰ O. A Okparavero, T. O. Aderibigbe, D. A. Odunaike 'When Love Is Not Enough: A Comparative Appraisal Of The Legal Framework For The Validity And Enforcement Of Prenuptial Agreements In Nigeria And South Africa' *Current Trends in Humanities and Law Research (CTHLR)*, Volume 3, No. 1, June, 2025 <https://doi.org/10.61867/pcub.v3i1a.206> accessed May 30th 2026.

¹¹B. Clark B, "Should greater prominence be given to pre-nuptial contracts in the law of ancillary relief?" *Child and Family Law Quarterly*(2004) 399

Mid-Nuptial Agreement

As the name suggests, a Mid-nuptial agreement is an agreement that is entered into between spouses during the marriage. This could be an initial agreement or a prior agreement variation, such as a pre-nuptial agreement¹². There may be numerous reasons for couples to draft a Midnuptial contract or agreement; usually, it is used when a major change in financial situation has occurred since the marriage of the couples. Even if the spouses have no plans for divorce, many find security in knowing that their financial interest is protected, whether the marriage continues or not.

Cohabitation Agreement

A cohabitation agreement exists between two unmarried individuals who live or intend to live together, defining their intentions, rights, and obligations concerning each other living together and upon the termination of their relationship. The contract can include which partner receives any shared investment property or pets¹³.

Family Agreement

This is a confidential obligation between older people and their relatives and friends which is planned to accommodate the desires of the older person as they age, and are consistent with the wish, needs, resources, and aspirations of the other persons who assume the place of the counterparty (often the carers). Family contract or agreements can also be described as independent care contract or agreements, personal services contracts, or lifetime care contracts.¹⁴

Judicial Perspective: Analysis of Provided Case Law

While there is no direct case law in the provided context specifically addressing prenuptial agreements in matrimonial disputes, the case of **AJEIGBE v. ECOBANK**¹⁵ offers an indirect, albeit general, contractual principle that may shed some light on how Nigerian courts might view "pre-agreements" in relation to "legally binding agreements."

In **AJEIGBE v. ECOBANK**, the core issue considered by the Court of Appeal was "Whether pre-agreement can be used to vary or contradict a legally binding agreement." The court, in analyzing the relationship between an "original contract" (loan agreement) and a subsequent "Deed of Legal Mortgage," held that the argument that the original contract was primary and the Deed of Legal Mortgage was merely ancillary to ensure performance was "misconceived." This implies that a subsequent, formal, and legally binding agreement (like the Deed of Legal Mortgage in that case) would generally take precedence and would not be varied or contradicted by a prior agreement.

¹² J.C. Colucci, "The P World: Ohio Should Adopt the Uniform Premarital Agreement Act to Achieve Consistency and Uniformity in the Treatment of Prenuptial Agreement" *Cleveland State Law Review*, 66,p. 215 52 J.A. Parness, "Parentage Prenups and Midnups" *Georgia State University Law Review* (2107) 31, 343

¹³ S. Kennedy, "Ignorance is not Bliss: Why States Should Adopt California's Independent Counsel Requirement for the Enforceability of Prenuptial Agreements" *Family Court Review*, (2014) 52(4), 709-724 56 John Wade, "Marriage and Cohabitation Contracts" *The National Legal Eagle* (2011) 17(2) 3-5

¹⁴ **O. O. Ikubanni, A.A Oyeade, T. Ololu, I. Baba Mohammed, A. Adam, Musa Hussaini & Yusuf Hussaini** 'Planning for Divorce before the Marriage: The Concept of Pre-Nuptial Agreement and its Enforceability in Nigeria' *Journal Of Commercial And Property Law*, Nnamdi Azikiwe University, Awka Vol 10(2) 2023

¹⁵ (2025) LPELR-82465(CA)

The principle from *AJEIGBE v. ECOBANK* suggests that such a "pre-agreement" might face limitations if it seeks to vary or contradict the statutory provisions or judicial discretion that apply to a "legally binding agreement" (the marriage and its dissolution under Nigerian law). For instance, courts in matrimonial proceedings often have broad discretion in matters of property division and spousal maintenance, guided by principles of fairness and equity, which might not be easily overridden by a prior private agreement.

It is crucial to note that *AJEIGBE v. ECOBANK*¹⁶ arose in a commercial contractual context (loan and mortgage) and not in a matrimonial one. Therefore, while the general principle regarding the relationship between "pre-agreements" and "legally binding agreements" is relevant, its direct application to the specific nuances of matrimonial law and prenuptial agreements requires careful consideration and is not explicitly detailed in the provided legal context.

PRENUP IN OTHER AFRICAN COUNTRIES

SOUTH AFRICA

in South Africa, spouses are automatically regulated by a matrimonial property framework called 'community of property system' which includes their premarital property except they choose to opt out by executing a prenuptial agreement.¹⁷ The use of a prenuptial agreement in South Africa is intricately linked with the matrimonial property regime. Hence, there are two matrimonial property regimes in South Africa, namely, the community of property and the accrual system (also referred to as the out of community of property).¹⁸ These regimes are regulated by the Matrimonial Property Act (MPA). The main purpose of prenuptial agreement in jurisdictions like South Africa is to vary the effect of some statutory standards on matrimonial possessions; the main focus of prenuptial agreement in South Africa is the matrimonial property regime.

The South African matrimonial system is mainly governed by means of statutory law. However, these statutes do not contain all the rules and certain rules are still regulated by the common law. It is difficult to state which one of the existing matrimonial property system would be the most suitable for indigent persons. This is because some individuals have little material resources, and most times commit themselves blindly to the proprietary effect of their prenuptial agreement. Some scholars argue that the matrimonial property systems in South Africa are limited and parties are restricted only to the two systems available. The researchers deviate from this perspective and are of the opinion that the matrimonial property systems available in South Africa is sufficient and should be improved consistently in light of evolutionary changes in marriage and societal dynamics. One of the challenges of the community of property system is that it does not give either of the parties' protection to their individual asset as it calls for joint administration and management of estate. Where either of the partners are said to be insolvent, it will influence the joint estate of the partners. Also, there is no specialised family court division of the superior courts. The High Courts possess general jurisdiction

¹⁶ (2025) LPELR-82465(CA)

¹⁷ Morley Jeremy 'Prenuptial Agreement in South Africa' (*Lawlytics*) <<https://www.internationaldivorce.com/prenuptial-agreements-south-africa>> accessed 30 May 2026

¹⁸ Robinson JA 'Matrimonial Property Regimes and Damages: The Far Reaches of the South African Constitution' (2007) 1(3) PER, ISSN 1727-3781 <<https://www.ajol.info/index.php/pelj/article/view/43401/26938>> 30 May 2026.

over civil and criminal matters, including divorce and family related matters. The lower courts have designated divorce courts, maintenance courts and children's courts.¹⁹

The Legal Framework for Prenuptial Agreement in South Africa and Nigeria: Similarities and Differences

Like Nigeria, South Africa is a cosmopolitan country, rich with diverse ethnic, cultural, traditional and religious heritages and groups. The South African matrimonial system affords intending spouses with two options which enables them choose the preferable system peculiar to their circumstance. Intending spouses in South Africa can choose which matrimonial property system will apply to their marriage before they enter into marriage. This explicit provision obtainable in South Africa is not the case in Nigeria. Intending spouses planning a marriage in Nigeria do not have a variety of options to explore as to which matrimonial system best suits their marriage.

South Africa stands as one of the countries that have developed its matrimonial property system in Africa. The Nigerian matrimonial systems are a clone of old traditional practices that view women as chattels and undeserving of partaking in the property of their spouses, upon dissolution of marriage.²¹ The South African matrimonial regime, which regulates the validity of a prenuptial agreement generally, seems to be broader in scope and more definite than of Nigeria. Parties seeking to get married in South Africa seem to have more freedom with regards to the choice of law to regulate the choice of a prenuptial agreement, compared to what is obtainable in Nigeria.

KENYA

In Kenya the Legal Framework Governing Prenuptial Agreements is Article 40(1)(b) of the Constitution of Kenya,²² which provides for the right to own property in any part of Kenya either individually or in association with others. Further, Article 40(2)(b), as read with Article 27(4), provides that Parliament shall not enact any laws that permit the State or any person to limit or in any way restrict the enjoyment of any right to own property on the basis of marital status. Nevertheless, it was not until the enactment of the Act that prenuptial agreements gained official recognition in Kenya²³.

The Act came into force on 16th January, 2014 and repealed the Married Women's Property Act of 1882, which made no provision for prenuptial agreements. Its main objective is to provide for the rights and responsibilities of spouses in relation to matrimonial property and connected purposes. Section 6(3) of the Act provides that parties to an intended marriage may enter into an agreement prior to their marriage to determine their property rights. Indeed, in the case of **MBK v MB**²⁴, the Court was

¹⁹ Ende Van Isabel 'South Africa: How Does The Children's Court Work in South Africa' Barnard Inc. 19 April 2023 <<https://www.mondaq.com/southafrica/family-law/1305730/how-does-the-childrens-court-work-in-southafrica>> accessed 20 May 2026

²⁰ O. A Okparavero, T. O. Aderibigbe, D. A. Odunaike 'When Love Is Not Enough: A Comparative Appraisal Of The Legal Framework For The Validity And Enforcement Of Prenuptial Agreements In Nigeria And South Africa' *Current Trends in Humanities and Law Research (CTHLR)*, Volume 3, No. 1, June, 2025 <https://doi.org/10.61867/pcub.v3i1a.206> accessed May 30th 2026.

²¹ Adebayo Festus 'The Smart Alec called Achraf Hakimi' *Nigerian Tribune* (16 April 2023)

²² Republic of Kenya. (2010). *The Constitution of Kenya, 2010*. National Council for Law Reporting.

²³ Georgina Ogalo-Omondi, Jill Barasa 'Before 'I Do': Validity And Enforcement Of Prenuptial Agreements In Kenya' *ORAR O & COMPANY AD VOCALES NEWSLETTER* Issue No. 9 | December 2018 Pg.4-5

²⁴ (2016) eKLR

called upon to determine whether an apartment that the defendant had bought prior to the marriage formed part of the matrimonial property. The prenuptial agreement had only two clauses and provided, inter alia, that any property acquired by either party prior to their intended marriage would belong to that party after marriage. The Court held that since there was no evidence that the parties had agreed that the apartment would form part of the matrimonial property, it followed that the property belonged exclusively to the defendant.

Grounds for Invalidating a Prenuptial Agreement Section 6 (e) of the Act provides that prenuptial agreements should be entered into freely by the spouses while section 6 (4) states further that a party to a prenuptial agreement may apply to the Court to set aside the agreement on the ground that the agreement was influenced by fraud, coercion or is manifestly unjust.

However, the Act is silent on what amounts to fraud or coercion or what would render an agreement manifestly unjust. It should be noted that common law principles and other laws of England have played an important role in shaping the history of Kenya's legal framework. Kenyan jurisprudence has continually been influenced by that of England and as a result, English jurisprudence is still influential in Kenya. In fact, it is not uncommon for Kenyan Courts to refer to and apply English cases, particularly to fill gaps in the legislation or where certain matters have only recently been given force of law in Kenya and have not been dealt with in depth by the Courts, as is the case with the provisions on prenuptial agreements under the Act. In England, the case of *Radmacher v Granatino*²⁵ provided the first significant judgment about the status of prenuptial agreements. In its judgment, the United Kingdom Supreme Court set out the following factors that increase the likelihood of a prenuptial agreement being binding the parties: (i) The agreement must be freely entered into. (ii) The parties must have a full appreciation of the implications of the agreement. (iii) It must not be unfair to hold the parties to their agreement in the circumstances prevailing. Before entering into a prenuptial agreement, it is important that each party seeks independent legal advice. Taking independent legal advice will aid in establishing that an individual was fully aware of the terms of the agreement and therefore freely entered into it, particularly if warnings were raised at a preliminary stage. For instance, in the case of *DB v PB*²⁶, the wife's assertion of misrepresentation failed because it revealed that she had received independent legal advice in the United States advising her not to sign the agreement. A person's emotional state at the time of making the agreement is also relevant to whether the person entered into the agreement of his or her own free will, without undue influence or pressure. The Courts will also take into account the individual's age and maturity and whether either or both had been married or been in long-term relationships before. Timing is equally important and signing the prenuptial agreement immediately before the marriage increases the risk that one party will be considered to have put undue pressure on the other²⁷.

The parties should have a full appreciation of the implications of the prenuptial agreement. This requires an exchange of financial disclosure before the agreement is signed to ensure that each party is aware of the extent of the claims he or she may potentially be giving up. On this point, in the case

²⁵ (2010) UKSC 42

²⁶ (2016) EWHC 3431 (Fam)

²⁷ Georgina Ogalo-Omondi, Jill Barasa 'Before 'I Do': Validity And Enforcement Of Prenuptial Agreements In Kenya' *ORAR O & COMPANY AD VOCA T ES NEWSLETTER* Issue No. 9 | December 2018 Pg.4-5

of *Y v Y*²⁸, the Court refused to give effect to a French-style prenuptial agreement entered into by a French couple living in London who signed the agreement barely two days before their wedding. The Court took the view that while the wife had understood the function of the agreement when she signed it, she had not had any understanding of the financial consequences should the marriage break down. The agreement must also be fair in the circumstances of the case. Concept of fairness has been subjected to much debate. The English courts have a broad discretion in financial remedy proceedings and at an absolute minimum will seek to ensure that both parties' needs, and in particular the needs of the financially weaker party, and the needs of any children of the family are met. As a general rule, the longer the marriage, the lower the chance that the prenuptial agreement will be upheld, particularly if there have been significant or unforeseen changes in circumstances²⁹.

In the case of *WW v HW*³⁰ the Court accorded significant weight to the prenuptial agreement and went on to find that it would be fair to hold the husband to its terms unless his needs dictated a different outcome. Way Forward In view of the provisions of the Act on prenuptial agreements and the jurisprudence, couples contemplating signing a prenuptial agreement should be mindful of the following points: • The parties should seek independent legal advice as a prerequisite to signing the agreement, even where one of the parties insists that he or she has read and understood the terms of the agreement, the rights and obligations that he or she will be surrendering. This is an essential element as it tends to show that the agreement was freely entered into by the parties without coercion or fraud. • The parties should make full and frank disclosure of all of their assets including those that they intend to exclude under the prenuptial agreement. This is a requirement at common law. • The parties should note that the agreement could be set aside by the Courts on the ground that it was unfair or manifestly unjust; therefore, the parties should ensure that the agreement does not have the effect of producing gross inequality between them either at the time of execution or during the marriage and that the division of assets is not weighted too heavily in favour of one party. • The right of the child to support should be addressed prior to signing the Agreement, noting that the interests of the child take precedence over all other interests under Kenyan law. As was held in *Radmacher v Granatino*, the agreement cannot be allowed to prejudice the reasonable requirements of any children of the family. • While there is no minimum time requirement for a party to review and sign a prenuptial agreement under the Act, the position at common law appears to be that prenuptial agreements must not be entered into less than twenty-one (21) days before the marriage. • Signing the prenuptial agreement closely before the wedding is not recommended. The party initiating the process should therefore ensure that the other party is provided sufficient time to review the prenuptial agreement and the financial disclosures³¹.

GHANA

Ghana does not presently possess specific legislation governing prenuptial agreements. The *Matrimonial Causes Act 1971 (Act 367)* provides the statutory framework for the dissolution of marriage,³² while Article 22 of the 1992 Constitution of Ghana guarantees the property rights of

²⁸ (2014) EWHC 2920

²⁹ Georgina Ogalo-Omondi, Jill Barasa 'Before 'I Do': Validity And Enforcement Of Prenuptial Agreements In Kenya' *ORAR O & COMPANY AD VO CA T ES NEWSLETTER* Issue No. 9 December 2018 Pg.4-5

³⁰ (2015) EWHC 1844,

³¹ Ibid.

³² Matrimonial Causes Act 1971 (Act 367) (Ghana).

spouses and mandates Parliament to enact legislation regulating those rights; an obligation that remains unfulfilled.³³ In the absence of dedicated legislation, the enforceability of prenuptial agreements falls to be determined on a case-by-case basis through judicial interpretation.

It appears that as far back as 1983, our courts duly recognized prenuptial agreement in the case of *Achiampong v Achiampong*,³⁴ in which the court affirmed that where the rights of spouses in respect of any property have been "established or agreed", the court is duty-bound to give effect to such agreement. This decision laid the foundational premise that spousal agreements including those predating the marriage are not inherently repugnant to public policy and may properly be enforced as binding contracts³⁵.

The most direct and authoritative Ghanaian pronouncement on the enforceability of prenuptial agreements to date is the Court of Appeal's unanimous decision in *Emmanuel Obeng v Kate Nyamekye (otherwise known as Mary Frimpong Rubiera)* ³⁶. The court held that since marriage is a contract, the parties retain the right to enter into a prenuptial agreement delineating their respective property rights. Critically, the court declared that where such a premarital agreement is duly executed, Article 22(3) of the Constitution, sections 38(3) and (4) of the *Land Act 2020*³⁷, and the ruling in *Mensah v Mensah and Adjei v Adjei*³⁸ will not override the parties' agreed arrangement. This decision confirms that prenuptial agreements in Ghana are not merely persuasive instruments but can rise to the level of contractually binding obligations. Notwithstanding this judicial evolution, the legal position in Ghana remains characterised by significant uncertainty.

Prenuptial Agreement in Zambia

Prenuptial agreements have become increasingly popular in Zambia, and the rest of the world, as couples seek to protect their assets and interests prior to getting married. A prenuptial agreement is simply a contract between two individuals that outlines how their assets and liabilities will be divided in the event of a divorce or separation³⁹.

In Zambia, prenuptial agreements are not yet strictly regulated by law. However, they are legally binding if they meet certain requirements such as being in writing, signed by both parties, and witnessed by a notary public. It is therefore essential to consult a lawyer before drafting and signing a prenuptial agreement.

One of the primary reasons why couples choose to enter into prenuptial agreements is to protect their hard-earned assets. Prenuptial agreements can help to safeguard real estate properties, businesses, and other valuable assets from being divided in a divorce settlement. Additionally, prenuptial agreements

³³1992 Constitution of Ghana, art 22(1)-(3).

³⁴[1982-83] GLR 1017-1039

³⁵ Mary-Margaret Sarkodie Baffoe, *Prenuptial Agreements in Ghana: Legal Status, Enforceability, and The Case For Reform* May, 2022
https://www.researchgate.net/publication/404911262_PRENUPTIAL_AGREEMENTS_IN_GHANA_LEGAL_STATUS_ENFORCEABILITY_AND_THE_CASE_FOR_REFORM, accessed June 5 2026

³⁶Civil Appeal No: H1/51/2021 dated 20th July, 2023

³⁷Land Act 2020 (Act 1036) (Ghana), ss 38(3)-(4).

³⁸*Adjei v Adjei* (J4/06/2021) [2021] GHASC 5 (Supreme Court, Ghana).

³⁹ Posted April 2022, <https://www.triathleteguru.com/wp/?p=6949>

can help to ensure that debts and liabilities incurred before the marriage remain the responsibility of the party that incurred them.

Another reason why prenuptial agreements are gaining momentum in Zambia is the changing nature of marriages in the country. Today, many women are entering into marriages as equal partners, with their own careers and assets. Prenuptial agreements can provide a level of security for these women, ensuring that they are not left financially vulnerable in case of a divorce or separation.

Overall, prenuptial agreements are becoming increasingly popular in Zambia as couples seek to protect their assets and interests during their marriage and in the unfortunate event of a divorce. While prenuptial agreements are not yet strictly regulated by law, it is important to consult a lawyer before drafting and signing any prenuptial agreement. By doing so, couples can protect themselves financially and have peace of mind knowing that their interests are protected.

Prenuptial Agreements in Zambia

As the institution of marriage continues to evolve, couples are increasingly seeking ways to protect their individual interests and assets. One tool that has gained popularity worldwide is the prenuptial agreement. However, in Zambia, the legal status of prenuptial agreements is less clear-cut. In this article, we will delve into the world of prenuptial agreements in Zambia, exploring the current state of the law and what it means for couples.⁴⁰

In Zambia, marriage and divorce are governed by two key pieces of legislation: the Marriage Act, Chapter 50 of the Laws of Zambia, and the Matrimonial Causes Act of 2007. However, neither of these Acts specifically addresses prenuptial agreements. As a result, the enforceability of prenuptial agreements in Zambia is uncertain.

According to Zambian law, marriage is considered a sacrament, and the courts tend to prioritize the principles of equity and fairness in divorce proceedings. This means that, even if a couple enters into a prenuptial agreement, the court may not necessarily uphold its terms.

So, what does this mean for couples in Zambia who are considering entering into a prenuptial agreement? While it is still possible to draft and sign a prenup, couples should be aware that it may not be enforceable in a Zambian court. That being said, a prenuptial agreement can still serve as a useful tool for couples to discuss and agree on key issues related to their marriage. Even if the agreement is not legally binding, it can help to prevent misunderstandings and conflicts down the line.

For couples who want to protect their individual interests and assets, there are alternative options available. One possibility is to enter into a postnuptial agreement, which is a contract signed after marriage. While postnuptial agreements are also not specifically recognized under Zambian law, they may be viewed more favorably by the courts than prenuptial agreements.

Another option is to consider entering into a cohabitation agreement, which can outline the rights and responsibilities of each partner in the event of a separation. However, it is essential to note that

⁴⁰ Patrick Chulu, *Prenuptial Agreements in Zambia* Legal News, 2 December 2024, <https://pclplaw.com/prenuptial-agreements-in-zambia/> Accessed June 6, 2026

cohabitation agreements are not automatically enforceable in Zambia, and their validity would depend on the specific circumstances of each case.

Prenup in Islamic Law (Sharia Law)⁴¹

Prenuptial agreements, or prenups as they're commonly known, are an important consideration for many couples who are planning to tie the knot. They allow both parties to clearly outline how their assets will be divided in the unfortunate event of a divorce, which can help prevent misunderstandings and conflict later on. However, there are often concerns about the validity of prenups in certain cultural or religious contexts, such as Islam. In this article, we'll explore the topic of prenuptial agreements in Islam and how they can be used to protect the rights of both individuals involved in the marriage.

Traditional Prenups in Islam.

Sadaq and Mahr have been traditional forms of prenuptial agreements in Islam for centuries. Sadaq, also known as mahr mu'ajjal, is a form of gift that is given by the groom to the bride at the time of marriage. It is a symbol of his commitment to the marriage and shows his willingness to take on financial responsibility for his wife. Mahr, on the other hand, is a mandatory amount of money or property that is given to the bride by the groom as a part of the Islamic marriage contract. This is considered the bride's rightful property, and the husband cannot claim any ownership of it.

Traditional prenups in Islam mainly focus on Mahr and are intended to protect the financial security of the bride in case of a divorce. The agreement outlines the amount of money or property that the husband will pay to the bride in the event of a divorce. It's worth noting that Mahr is not considered a form of alimony, but rather a gift to the bride.

Modern Prenups in Islam

In today's world, many Islamic couples may opt to have a modern prenuptial agreement in addition to their traditional prenup. The modern prenups may have more specific provisions about the distribution of assets, property, and other financial obligations in the event of a divorce. For example, the couple may agree on how any jointly owned property will be divided, or how any shared debt will be handled. While modern prenuptial agreements are becoming increasingly popular, it's essential to ensure that they comply with Islamic teachings and do not undermine the traditional prenup agreements. It is important to note that any modern prenup should not contradict the provisions of the traditional prenup, such as Mahr, which is a mandatory gift to the bride given by the groom. This gift should not be replaced by any other form of monetary compensation or obligation.

It is always recommended that a qualified lawyer is consulted when creating any prenup, be it modern or traditional. The attorney can help ensure that the prenup meets all legal requirements and that it is tailored to the couple's specific needs. Moreover, seeking guidance from a religious leader or scholar can help ensure that the prenup does not contradict any Islamic teachings or principles.

Is a Modern Prenup Compatible with Islam

In recent times, the topic of modern prenups in Islam has been a subject of debate. Some people believe that modern prenups contradict Islamic teachings, but the truth is that modern prenups can be in line

⁴¹ Understanding The Role of Prenup in Islam, <https://wenup.co.uk/prenup/understanding-the-role-of-a-prenup-in-islam>
Accessed June 6,2026

with Islamic principles. As long as a modern prenup does not violate any Islamic legal principles, such as the rights of the wife to Mahr, it is considered valid and enforceable under Islamic law⁴².

Moreover, many Islamic scholars agree that prenuptial agreements can be important in modern times, particularly for couples living in countries where the laws may be different from Islamic law. They believe that a prenup can help avoid misunderstandings and conflicts between the couple in case of a divorce. However, it is important to note that prenups in Islam should not be used as a tool to exploit or oppress either party.

Islamic scholars also emphasise the importance of transparency and mutual agreement between the couple before entering into a prenup. It is essential that both parties understand and agree to the terms and conditions of the prenup before signing it. The husband must provide full disclosure of his assets and debts, and the wife must be fully aware of her rights and entitlements, including the Mahr.

Disadvantages of prenup⁴³

- **Cost.** You could spend considerable time, money and effort negotiating the terms of the nuptial agreement, but find it is not upheld by the court in any future divorce proceedings, although this will only happen if the court finds the agreement “unfair”.
- **Difficulties in making financial provision for children.** A court’s first consideration in deciding a financial settlement that involves children is the children. Children’s circumstances change so, what you agreed when you first drew up the agreement may not always provide a fair settlement as the children’s needs evolve. Including a review clause in the agreement may help overcome this. Also, the Child Maintenance Service (CMS) has ultimate jurisdiction over child maintenance claims, so any provision on the nuptial agreement for child maintenance may be overruled by the CMS.
- **Clauses providing for which legal jurisdiction deals with the divorce are not effective.** You can provide which country’s law should apply to the agreement if your marriage breaks down but not all countries will accept or be bound by your choice.
- **Circumstances can change** which may mean that the agreement will lose its relevance and is unlikely to be upheld by the court. A review clause may help to avoid this.
- **Needs to be kept under review** if there is any significant change to your circumstances or after a given number of years (usually at least every 3-5 years).
- **Adds to the pressure.** Preparing for a marriage is stressful and the added pressure of considering financial issues and negotiating the terms of a pre-nuptial agreement can put strain on a relationship.
- **Vulnerability of the economically weaker party.** Sometimes the economically weaker party wants to agree to clauses limiting their rights simply to get the pre-nuptial agreement finished so they can concentrate on the wedding.

⁴² Understanding The Role of Prenup in Islam, <https://wenup.co.uk/prenup/understanding-the-role-of-a-prenup-in-islam>
Accessed June 6,2026

⁴³ Sally Ward, *The Advantages And Disadvantages of a Pre or Post-Nuptial Agreement*, July 2024
<https://Ellisons.Com/News/The-Advantages-And-Disadvantages-Of-a-Pre-Or-Post-Nuptial-Agreement/> Accessed 30th May 2016

- **Parental influence** means a pre-nuptial agreement can end up reflecting the parents' wishes rather than those of the couple. This must not happen and can amount to duress which would invalidate the agreement. This can put strain on family relationships.
- **If it is used to waive inheritance issues.** This can leave one of you in a precarious financial position when the other dies which would invalidate the agreement.
- **Legal fees** of preparing the agreement are lost if the marriage survives.

CONCLUSION

Though hardly considered, there are many practical and legal reasons why a prenup should be explored in Nigeria. There is nothing under our law which precludes its enforceability. A prenup proposal may be unromantic but it is a practical financial decision, it has nothing to do with love or the absence of it. There is a reality after a marriage ceremony and like they say, 'life happens'. In this age of materialism where 'love' can be a deceptive tool and where the once sacred institution of marriage has been demystified; the only assurance of true love may just be a prenup.