Revue générale de droit

# Cameroon: The Law across the Bridge: Twenty Years (1972-1992) of Confusion

Ephraim N. Ngwafor

Volume 26, Number 1, March 1995

URI: https://id.erudit.org/iderudit/1035848ar
DOI: https://doi.org/10.7202/1035848ar

See table of contents

Publisher(s)

Éditions Wilson & Lafleur, inc.

ISSN

0035-3086 (print)
2292-2512 (digital)

Explore this journal

Cite this article

Ngwafor, E. N. (1995). Cameroon: The Law across the Bridge: Twenty Years (1972-1992) of Confusion. *Revue générale de droit*, *26*(1), 69–77. https://doi.org/10.7202/1035848ar

Article abstract

As a result of its hi-jural legal system consisting of Common Law and Civil Law jurisdictions, Cameroon has been faced with some serious legal dilemmas. Amongst the problems that have arisen is the question of whether a judge in a Civil Law jurisdiction has the authority to judge a divorce matter where the parties to the action are domiciled in a Common Law jurisdiction and vice versa. This article aims to undertake an analysis of the legal system in Cameroon in an attempt to provide a solution to the foregoing issue.

# Cameroon : The Law across the Bridge : Twenty Years (1972-1992) of Confusion

**EPHRAIM N. NGWAFOR**
Associate Professor, Faculty of Laws,
University of Yaoundé II, Cameroon

**ABSTRACT**

*As a result of its bi-jural legal system consisting of Common Law and Civil Law jurisdictions, Cameroon has been faced with some serious legal dilemmas. Amongst the problems that have arisen is the question of whether a judge in a Civil Law jurisdiction has the authority to judge a divorce matter where the parties to the action are domiciled in a Common Law jurisdiction and vice versa. This article aims to undertake an analysis of the legal system in Cameroon in an attempt to provide a solution to the foregoing issue.*

**RÉSUMÉ**

*Le fait d'avoir un régime dualiste de common law et de droit civil pose certaines difficultés pour le Cameroun. Parmi les problèmes se pose la question de savoir si un juge de juridiction civile est compétent pour connaître une action en divorce concernant des citoyens domiciliés dans une juridiction de common law et vice versa. Cet article se veut une brève analyse du système juridique du Cameroun dans le but de répondre à la question soulevée ci-dessus.*

**TABLE OF CONTENTS**



**(1995) 26 *R.G.D.* 69-77**

## INTRODUCTION

The bi-jural nature of the legal system in Cameroon has brought with it several inconveniences, one of which has given rise to a long standing debate — namely, whether a judge in a Civil Law jurisdiction is competent to hear and try a divorce matter between citizens domiciled in a Common Law jurisdiction and vice versa. For the last twenty years this question has received various answers depending on the judge before whom the case has been brought. A brief analysis of the evolution of the legal system in Cameroon may be helpful in the appreciation of this study.

## I. THE EVOLUTION OF THE LEGAL SYSTEM IN CAMEROON

One of the logical consequences of Africa's colonial past has been the reception and implantation of European imposed legal systems. Cameroon's case is all the more peculiar because, unlike in most African countries where either the received Civil Law or Common Law prevails, mindful of its colonial past, these two legal systems of law operate in well-defined areas of the national territory. When Germany lost the First World War, Cameroon was divided between Great Britain and France.[1] The two powers administered their respective portions of Cameroon under the League of Nations' Mandate[2] and subsequently under the United Nations Trusteeship Agreement.[3] Article 9 of the British Mandate Agreement was most decisive in the application of English Law in British Cameroons (Anglophone Cameroon). It provided that :

> The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above principles.
>
> The Mandatory shall therefore be at liberty to apply his laws to the territory subject to the mandate with such modifications as may be required by local conditions, and to constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe to provisions of this mandate.

When British Cameroons passed from a trust territory, the foreign *Jurisdiction Act 1890* was the enabling statute for the introduction and observance of English Law in the Southern Cameroons. France, on the other hand, also set up the Civil Law system in her own part of the territory. In 1960, French Cameroons achieved independence and became known as the Republic of Cameroon.[4] The Southern part of British Cameroons, following a United Nations sponsored plebiscite,[5] joined the Republic of Cameroon to form a Federation.[6] And so the Federal Republic of Cameroon was born, made up of two States, West Cameroon (former

---

1. See Art. 119 of the Treaty of Versailles, 28th June, 1919; German Law had operated from July 1884 — March 1916.
2. Art. 22 of the Convenant of the League of Nations, 1922.
3. Art. 85 of the Charter of the United Nations of June 26, 1945.
4. January 1, 1960.
5. February 11, 1961.
6. See the Constitution of September 1, 1961.

British Cameroons) and East Cameroon (former French Cameroons) each maintaining its own legal system. In fact the Federal Constitution of 1961 expressly provided for the continuous application of pre-independence pieces of legislation in the following manner :

> Previous legislation of the Federated States shall remain in force in so far as it does not conflict with the provisions of this constitution.[7]

At this point in time the importation of English Law into West Cameroon was guaranteed by Section 11 of the *Southern Cameroons High Court Law 1955*, wherein it is stipulated that :

> Subject to the provisions of any written law and in particular of this section and of sections 10, 15 and 27 of this law, the common law, the doctrines of equity, and the statutes of general application which were in force in England or the 1st day of January, 1900, shall in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force with the jurisdiction of the court.

A strict interpretation of this section would limit the application of English Law to pre-1900 statutes. But the law in England has evolved tremendously, especially in the realm of matrimonial causes. It is argued that the words "for the time being in force" in section 11, gives the courts power to apply post-1900 statutes. In fact section 15 of the *Southern Cameroons High Court Law 1955* stipulates that :

> The jurisdiction of the High Court in probate, divorce and matrimonial causes and proceedings may, subject to the provision of this law and in particular of section 27, and to rules of court, be exercised by the court in conformity with the law and practice for the time being in force in England.

It follows therefore that in probate, divorce and matrimonial causes, the law in former West Cameroon changes with that in England. This seems to be the only justification for applying the *Matrimonial Causes Act 1973* instead of the *Matrimonial Causes Act 1857* (a pre-1900 statute), since they both refer to matrimonial causes.

## II. THE 1972 BRIDGE

Cameroonians remember the year 1972 as one that gave birth to the merger of the two Federated States of East Cameroon and West Cameroon into the United Republic of Cameroon. The new constitution of June 2, 1972 again guaranteed the preservation of the two legal systems in its Article 38.[8]

Before 1972 one could travel from East Cameroon to West Cameroon and vice versa only by air or by sea. Following this Re-unification, a bridge was built over the River Mungo which indeed had served as a dividing line between the two states. Going across the bridge implied stepping from one legal system into another legal system.

---

7. Art. 46.

8. "The legislation resulting from the laws and regulations applicable in the Federal State of Cameroon and in the Federated States on the day of entry into force of this constitution shall remain in force in all of their dispositions which are not contrary to the stipulation of this constitution, for as long as it is not amended by legislative or regulatory powers".

## III. The Conflict of Laws Dilemma

The new United Republic came along with many administrative innovations. Cameroonians were almost immediately transferred from one jurisdiction to another. Anglophones were transferred to former East Cameroon while Francophones were sent to take up duties in former West Cameroon. And that is how the conflict of laws problem was born. Francophone Cameroonians who were transferred, say to Bamenda (a city in the English Law jurisdiction), and who eventually had a matrimonial dispute, were now confronted with the question of whether the High Court in Bamenda had any jurisdiction to entertain the matter. It was the same dilemma with a couple from former West Cameroon (British Cameroon) who were sent to work in Yaoundé, for example (a city in former East Cameroon). Would the High Court in Yaoundé be competent to hear the matter? For convenience reasons, Cameroonians who were domiciled in the Common Law jurisdiction, for example, found themselves petitioning for divorce in a Civil Law jurisdiction and vice versa. The examples abound. In the following cases chosen at random, *Mbiaffie* v. *Mbiaffie*,[9] *Nseke* v. *Nseke*,[10] *Moussi* v. *Moussi*,[11] *Donfact Marie* v. *Kouati Daniel*,[12] *Yamnose née Ngounou Thérèse* v. *Yamnose Dieudonné*,[13] *Lelpon née Ngessi Helene* v. *Lelpon Daniel*,[14] *Onana* v. *Oana*,[15] the parties were domiciled in former East Cameroon (Civil Law jurisdiction), had lived all their lives there, and yet decided to petition for divorce in a Common Law jurisdiction where they had been sent to work. In fact in two of the above cases the parties were married in France, returned to Cameroon and lived in former East Cameroon (Civil Law jurisdiction) before being transferred to former West Cameroon,[16] while in one other case,[17] not only were the parties domiciled in former East Cameroon (Civil Law), but all the events which led to the case occurred in East Cameroon, and the matter was brought in the High Court in a Common Law jurisdiction, following their transfer to Buea (a city in former British Cameroon).

Examples which spring to mind concerning citizens in former British Cameroons and whose only reason for presenting their petition for divorce in the former French Cameroon is that they were either employed or transferred there: *Arrêt Lantum*,[18] *Arrêt Jua*,[19] *Arrêt Iketuonye*,[20] all of which suffered several appeals in the Court of Appeal in this Civil Law jurisdiction. In fact, *Arrêt Lantum* went right up to the Supreme Court, and has been the subject of heated debates for several years.

Undeniably, we have two systems of law in Cameroon, the Civil Law applicable in former East Cameroon and the Common Law applicable in former West Cameroon. Will it be proper for a judge who has been schooled in a Civil

---

9. Unreported judgment of September 3, 1985. Suit No. HCSW/30mc/85.
10. Unreported judgment of June 6, 1985. Suit No. HCSW/108mc/84.
11. Unreported judgment of June 6, 1988. Suit No. HFC/115mc/87.
12. Unreported judgment of March 27, 1985. Suit No. HCSW/12mc/83.
13. Unreported judgment of October 9, 1990. Suit No. HCF/9mc/89.
14. Unreported judgment of June 12, 1989. Suit No. HCSW/76mc/85.
15. Suit No. HCSW/38mc/85.
16. *Supra*, note 9; *Supra*, note 15.
17. *Ondoa* v. *Ondoa*, Suit No. HCSW/127mc/85.
18. C.L. *Arrêt No. 94 CC* of May 4, 1977.
19. *Arrêt No. 636 CC* of June 10, 1986.
20. *Arrêt No. 64 CC* of January 18, 1988.

Law system to hear and try matters concerning English Law? Yet we are not unaware of the fact that conditions like capacity to marry and jurisdiction to grant divorce are governed by a person's domicile. In other words such problems can only be resolved by referring to the person's domicile. This problem, however, does not arise in the case where the parties have now acquired a domicile of choice. Indeed when the Court of Appeal in February 1991, heard and tried the case of *Biaka* v. *Biaka*,[21] any reader of private international law would have raised no objection notwithstanding the fact that Dr. Biaka's roots were found to be in French Cameroon, for the facts disclosed that he had acquired a domicile of choice in former British Cameroon.[22]

It is true that to choose one's personal law, there must exist a connecting factor. Ordinarily, a connecting factor establishes a natural connection between a factual situation before the court and a particular legal system. Two of such connecting factors are domicile and nationality.

From the decisions arrived at in the courts in the Civil Law jurisdiction, it is clear that nationality has been used as the connecting factor. But should this practice kick against the law as it is? Why should an Anglophone Cameroonian who is domiciled in former British Cameroon have his matter heard by a judge who is exclusively specialized in Civil Law? An example of adversity can be seen in the provisions of section 49 of *Ordinance N° 81-02* of June 29th 1981,[23] which requires the spouses-to-be to mention in their marriage certificate if they opt for co-ownership or separation of property. Presuming two English speaking Cameroonians contract a monogamous marriage in the Civil Law jurisdiction (*e.g.* in Yaoundé), but, as is almost always the case, they fail to state in the marriage certificate any of the options found in Section 49; in the event of any breakdown of the marriage what will be the Civil Law judge's guidelines? His training will oblige him to employ the mechanism of community of property, mindful of the fact that it is a monogamous marriage. But these are people who are domiciled in a common law jurisdiction wherein the principle as applied is that English law knows no community of property.[24]

## IV. REACTION BY THE COMMON LAW JUDGES

It is very difficult to state with much certainty if the Common Law judges in former West Cameroon have grasped this area of the law. There does not seem to be any uniform thread of interpretation underlining the various decisions. In the first place one notices that the conflict of laws problem is hardly ever raised, even in passing. In *Yufani* v. *Yufani*,[25] the parties were married in May 1973 in

21. Unreported judgment of February 28, 1991. Appeal No. CASWP/37/90.

22. See also *Ngengwe* v. *Ngengwe*, Suit No. HCSW/-/81.

23. Which governs civil status registration in Cameroon.

24. *Pettit* v. *Pettit*, (1970) A.C. 777 (H.L.). See also S. MELONE, "Le Droit civil contre la coutume, La fin d'une suprématie à propos des effets patrimoniaux du marriage", *Rev. Cam. de Droit*, n° 1, p. 12; and P.G. POUGOUE, *La Famille et la Terre, essai de contribution à la systématisation du droit privé au Cameroun*, thèse de Doctorat d'État en Droit, Université de Bordeaux, 1977, p. 117, which discuss the peculiarities of the case where spouses in former East Cameroon fail to draw up a contract, before marriage, defining their respective rights to property before and after the marriage ceremony.

25. Unreported judgment of June 20, 1984. Suit No. HCSW/25mc/84.

Wroclow, Poland in the Civil Registry. The petitioner was of Polish origin and the respondent, a Cameroonian. They returned to Cameroon in 1975 and following a break-down of the marriage the petitioner petitioned for divorce. The matter was heard and tried. But the fact that English Law was adopted without the judge explaining away why Polish Law was inapplicable is questionable.

Surprisingly, the tendency has been to go ahead and hear the matter. One could also argue that the residence test is used. But some of the judgments show that some of the judges and barristers seem to confuse the terms "residence" and "domicile". In *Tufon* v. *Tufon*,[26] it was argued that the respondent was "domiciled" in Bafoussam (this is a city in the former French Cameroons). But domicile attaches one to a territorial unit having its own legal system. Bafoussam has no legal system. It was more proper to say therefore that the respondent was resident (not domiciled) in Bafoussam.[27] It could be argued that the Common Law judges, in this connection, endeavour to apply section 46 of the 1973 *Matrimonial Causes Act* which gives the court powers to entertain a petition for divorce or nullity brought by a wife, who has been resident in this said jurisdiction for at least three years immediately preceding the presentation of the petition.[28] Even here too the contradictions have been enormous. Section 46 will apply only when the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or the Isle of Man, (in our case, he should not be domiciled in former French Cameroons). That has not been the practice, for in all the cases studied the husband has been domiciled in former French Cameroon. What is more, in *Donfact Marie* v. *Kouati Daniel*[29] and *Yamnose née Ngounou Thérèse* v. *Yamnose Dieudonné*,[30] the wives had been resident in former British Cameroon for less than three years.[31]

In any case, some of the judges are very cognizant of this problem of conflict of laws. The judgment of Inglis J. in *Enongenekang* v. *Enongenekang*[32] is a classic illustration of this fact. The judge was quick to point out that an estranged spouse who flees from a foreign jurisdiction to one of his domicile has acted properly. In the above case, the petitioner and the respondent, both of whom were domiciled in former British Cameroon were transferred to Douala, in the Civil Law jurisdiction, in the interest of the public service. Following a breakdown of their marriage, the petitioner travelled back to Buea (in the Common Law jurisdiction) where she presented her petition in the High Court, praying the court to dissolve her marriage with the respondent. The respondent entered appearance to dispute, *inter alia*, the jurisdiction of the court to try the case. One of the reasons advanced was that since both parties were resident in Douala (Civil Law jurisdiction) and had their matrimonial home there, the court in Buea (Common Law jurisdiction) could

---

26. Unreported judgment of December 6, 1983. Suit No. HCB/59mc/83.

27. See also *Enongenekang* v. *Enongenekang*, unreported judgment of August 13, 1982. Suit No. HCSW/28mc/82. where Counsel for the respondent maintained that the matter had to be heard in Douala because the respondent was "domiciled" there, but Douala is a city in former French Cameroon.

28. Section 46(1)(b).

29. *Supra*, note 12.

30. *Supra*, note 13.

31. *Supra*, note 17, where all the events which led to the petition for divorce had occurred in former French Cameroon, but following the transfer of the couple to former British Cameroon, the suit was filed barely a few months after their arrival in this new jurisdiction.

32. *Supra*, note 27.

not have jurisdiction to hear the matter. In discussing the conflict of laws problem in Cameroon Inglis J. said :

> Now, there are two systems of law in this country. In the North West and South West Provinces it is the Common Law, English Legislation of general application which were in force on 1st January 1900 and any particular legislation made applicable by any other law in force. In this respect Section 15 of the Southern Cameroons High Court Law, 1955, provides that :
>
> > "The jurisdiction of the High Court in probate, divorce and matrimonial causes and proceeding may, subject to the provisions of this law and in particular Section 27, and to rules of court, be exercised in conformity with the law and practice for the time being in force in England".
>
> There is no specific provision in our High Court Laws as to the practice and procedure to be applied by this High Court and therefore the law, practice and procedure for the time being in force in England apply to the petition [...]
>
> Now, under the Law of England, jurisdiction in divorce, subject to the provisions of Section 46 of the Matrimonial Causes Act, 1973, is founded on the domicile of the parties within the geographical area of jurisdiction of the court. Domicile is domicile as defined by English Private International Law. Domicile must be distinguished from residence [...]
>
> [...] As I have pointed out earlier, in this country we do not yet have a single system of law. It follows for the purpose of matrimonial proceedings that one cannot have a Cameroon domicile. Every person should be domiciled in either one or other part of the territory where the legal system pertaining to his personal law applies.

If this strand of thought was the popular view, then this conflict of laws problem could have been solved a long time ago. Hence it was held in the above case that it was proper for the petitioner to file her suit in the jurisdiction in which she was domiciled notwithstanding the fact that she was resident in the other jurisdiction.

## V. THE CUSTOMARY LAW ARM OF THE CONFUSION

As in other African countries, the ethnic structure in Cameroon is very vast. Cameroon is composed of about 250 different ethnic groups. So in addition to the Civil and Common Law systems existing in the national territory, Cameroon is also composed of various bodies of Customary Law (including Islamic Law). This group of customary laws has received legislative recognition in Section 27 of the *Southern Cameroons High Court Law 1955*. It is therein provided that :

> The High Court shall observe, and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law or custom.[33]

Although there is some ressemblance in these various laws, each tribe has a unique set of customary laws. If a man from the tribe A gets married to a woman from this same tribe, there will be no problem as to the choice of the native law and custom, should they eventually go to court. The customary law of A will apply. The matter becomes complicated if a man from tribe C gets married to a girl

33. S. 27(1).

from tribe D. What determines whether it will be the customary law of tribe C or that of tribe D that will govern the parties in the event of any legal problem? This is a long standing dispute.[34]

But a more far-reaching conflict could arise where spouses from one tribe travel to a completely different district having customary laws that are foreign to theirs. In the event of a breakdown of the marriage in this foreign jurisdiction, will the customary court have jurisdiction? In the case of *Theresia Ndamken* v. *Martin Sab*,[35] the spouses were married according to the native laws and customs of the Akum and Bafang tribes. But because the respondent was working in Buea, and the parties lived there (where the Bakweri native laws and custom apply), the petitioner filed her suit in Buea. The respondent disputed the jurisdiction of the Buea Customary Court arguing that the matter ought to be heard either by the Akum or Bafang customary court. This argument was very founded, but the court went ahead with the case contending that the petitioner was born in Buea and had permanently lived there. In any case, even if the Court in Buea had accepted that Akum and Bafang customary law could apply, the tendency today would be to hear the matter in Buea presided over by judges versed in Akum and Bafang customary laws.

It could happen that a customary court would expressly refuse to hear a matter if there is a conflict of laws problem. In *Ayuk Etang Elias Bechem* v. *Manyi Agbor Serah and Agbor Simon*,[36] the Kumba Customary Court disclaimed jurisdiction on the strength of the respondent's argument that, according to the *Manyu Native Law* (under which the marriage was contracted), dowry is not refunded until the divorced woman remarries. This principle, the Court noted, was different from that of the Bafaw people and so the case was accordingly transferred to Manyu Division.

Such a matter also arose in the Court of Appeal in Bamenda in the case of *Onana* v. *Onana*[37] where the parties had been married according to the customary laws of the Beti people. In a petition for divorce filed in the Mankon Customary Court, a dissolution of the marriage was ordered. On appeal it was held that as the parties had gotten married in Yaoundé according to the custom of the Beti tribe, the Mankon Customary Court had no jurisdiction to hear the matter.

## CONCLUSION

It is imperative that our judges in both the Civil Law and the Common Law jurisdictions be sensitized to the problem of conflict of laws in Cameroon. There is nothing like Cameroon Law, mindful of the presence of these two systems of law existing by each other, with the Mungo Bridge serving as the dividing line. Ordinarily all the cases studied above, whether in the Civil Law courts or the Common Law courts, would have been subjected to the principle of *Renvoi*. Another possibility could have been to invite experts to give an opinion on such foreign law. Unfortunately, this has never been the practice. Should these decisions

34. But the Manual of Practice and Procedure for Court Clerks provides that the applicable law will be that of the parents of the girls.

35. Case No. 166/86-87—C.R.B./3-86 P. 81.

36. Case No. 44/85-86—C.R.B. 2/85-86 P. 37.

37. Appeal No. BCA/13cc/89.

be recognized? Should the cases not undergo a retrial in the proper jurisdiction? Could not the judgment of Inglis J. in *Enongenekang* v. *Enongenekan*,[38] serve as a starting point and enable us follow the right path? In my considered opinion all these decisions including the famous *Arrêt Lantum* and *Arrêt Jua*, constitute an amalgam of a big legal farce and should be disregarded. One can even go further to state that there does not exist any proper decree of divorce separating the parties. Legally the marriages are still valid and the parties remain husbands and wives.

Ephraim N. Ngwafor
Faculty of Laws
University of Yaoundé II
B.P. 1365 Yaoundé — Cameroon
Tel. : (237) 23.03.96
Fax : (237) 22.13.20

38. *Supra*, note 32.