

CHAPTER 28:02
AFFILIATION PROCEEDINGS
ARRANGEMENT OF SECTIONS

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Act 50, 1970,
Act 31, 1977,
Act 8, 1999.

An Act to provide for the determination of the paternity of an illegitimate child and to provide for the making of orders for the maintenance of such children and other matters connected therewith and for matters incidental thereto.

[Date of Commencement: 25th November, 1970]

1. Short title

This Act may be cited as the Affiliation Proceedings Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**child**" means a person below the age of 18 years;

"**court**" means a magistrate's court of any rank and includes a customary court which has been authorised, by any instrument, to hear paternity or maintenance proceedings;

"**order**" means a maintenance order made under section 6;

"**parent**" includes a mother of a child, a man who has acknowledged paternity by conduct or otherwise, a widow or widower and a married person who is divorced or living apart from the other spouse;

3. Commencement of action (1) A woman with child, a parent of a child or a person having the care or custody of a child may apply upon complaint to a court for a summons to be served, where the complainant is-

(a) a woman with child, on the man alleged to be the father of the child;

(b) a parent, on the other parent of the child; or

(c) a person having the care or custody of the child, on either or both parents.

(2) A summons served under subsection (1) shall state whether the complainant seeks a paternity order or a maintenance order.

4. Time for application for summons

(1) A complainant seeking a paternity order may make an application-

(a) at any time before or within 5 years after the birth of the child;

(b) at any subsequent time upon proof that the complainant was influenced not to make a complaint within the period prescribed by paragraph (a) by virtue of anything said,

written or done by the man alleged to be the father of the child and which there are reasonable grounds to believe was dishonestly said, written or done with the intention of so influencing the complainant; or

- (c) at any time after the return to Botswana of the man alleged to be the father of the child, upon proof that he ceased to reside in Botswana within 5 years after the birth of the child;
- (d) at any subsequent time in respect of a child with physical or mental disability preventing him from being independent.

(2) A single woman who has been delivered of a child may, upon proof that-

- (a) before the birth she was a party to a marriage which would have been valid but for provisions of a written law making it void on account of her being under the age of 14 or the other party being under the age of 16; and
- (b) the said other party had access to her within 12 months before the birth,

make at any time a complaint under section 3 against that party.

(3) A complainant seeking a maintenance order may make an application at-

- (a) any subsequent time after obtaining a paternity order under subsection (1), where the defendant is the male parent; or
- (b) any time before the child turns 18 years, where the defendant is the female parent

5. Venue Notwithstanding the provisions of any other Act, a complaint under section 3 shall be made to a court having jurisdiction in the administrative district in which the complainant resides, or in the administrative district in which it is most convenient for the complainant to bring the suit.

6. Powers of court on hearing of complaint

(1) Where the court is satisfied as to the sufficiency of the evidence adduced, it may, where the defendant-

- (a) is the alleged father of the child, make against him a paternity order or a maintenance order; or
- (b) is the mother of the child, make against her a maintenance order.

(2) An order shall require the parent to pay not less than P100 a month for the maintenance and education of the child:

Provided that the court may order the parent to pay such lesser or greater amount as it considers appropriate taking into account the financial circumstances and ability to pay of the parent.

(3) Where a complaint has been made to a magistrate's court and the parent of the child has no income from which deductions for maintenance and education can be made, the court shall-

- (a) order that a social worker assess his estate or socio-economic standing forthwith to determine how he can contribute to the maintenance and education of the child, and prepare a report thereon; and
- (b) refer the complaint, together with the said report, to a customary court, which shall apply customary law thereto.

(4) Where a complaint under section 3 is made before or within two months after the birth of the child, the order, if made after the birth, may require, in addition to the payment of a sum of money monthly, the payment of a specified lump sum of money equal to the aggregate amount that would, at the time the order is made, have been otherwise due under the order if it had been made on the date of birth; and such sum shall be paid forthwith or within such reasonable period as the order may specify.

(5) An order may require the payment of the child's funeral expenses if the child had died before the order is made.

(6) An order may require that on the child reaching the age of six years a specified amount from every sum thereafter payable monthly under the order shall be expended on the

education of the child.

7. Person entitled to payments

(1) Subject to this section, the person entitled to any payments to be made under an order shall be the child's parent, and the order shall make provision accordingly.

(2) An order may, on the application of a person other than the child's parent who for the time being has the custody of the child either legally or by any arrangement approved by the court, be made or varied by a court so as to entitle that person to any payments to be made under the order.

(3) Where an order for the time being provides for the child's parent to be entitled to any payments to be made under the order the payments shall be due under the order in respect of such time and so long as he is living and of sound mind and is not in prison, and if the parent has died, or is of unsound mind, or is in prison, any court may by order from time to time appoint some person (with his consent) to have the custody of the child; and a person appointed as custodian under this subsection shall be entitled to any payments to be made under the affiliation order and may make application for the recovery of any payments due thereunder in the same manner as the parent might have done.

(4) Where there is evidence that the person entitled to any payments to be made under an order is no longer able to receive such payments, or is not using such payments judiciously or for the purpose for which they were intended, the court shall-

(a) order that a social worker identify and assess another person to whom payments shall be made; and

(b) upon the satisfactory report of the social worker, appoint such person (with his consent) in place of the parent or other person formerly appointed.

(5)(a) The social worker shall monitor the use to which the payments referred to in this section are put and shall keep and maintain a record of those persons who misuse the said payments.

(b) The social worker shall forward or cause to be forwarded to the court every three months, a copy of the record referred to in paragraph (a).

(6) An order shall, in any case where payments to be made thereunder are not ordered to be made to the clerk of court under the Maintenance Orders Enforcement Act, provide for the payments to be made to the person for the time being entitled thereto in accordance with the provisions of this Act.

8. Revocation, variation, etc., of orders

A court may, at any time on the application of the parent or custodian of a child or of the person against whom an order has been made, revoke, vary or revive that part of the order which relates to the payment of money made under this Act.

9. Order to cease after child attains 13 or dies

Subject to the provisions of this Act, an order shall not, except for the purpose of recovering money previously due under the order, be of any force or validity after the child has attained the age of 18 years or has died.

10. Continuance of payments in certain cases

(1) Notwithstanding section 9 if, on the application of the child's parent, it appears to the court that the child is or will be engaged in a course of education or training after attaining the age of 18 years, and that it is expedient for that purpose for payments to be made under the order after the child attains that age, then subject to subsections (2) and (3) the court may by order direct that payments shall be so made for such period, not exceeding two years from the date of the order, as may be specified in the order.

(2) Where it appears to the court that the child has a disability which will prevent him from ever being independent, the court shall order that the parent maintain the child until the death of the parent or that of the child, whichever comes first.

(3) Subject to subsection (3), the period specified in an order made by virtue of the

foregoing provisions of this section may from time to time be extended by a subsequent order so made, but shall not in any case extend beyond the date when the child attains the age of 21.

(4) Any reference in this section to a child's parent shall be taken as including a reference to any person for the time being having the care or custody of the child either legally or by any arrangement approved by the court.

11. Effect of order

(1) An order made under this Act shall have effect as if it were a civil judgment of the court making the order against the defendant, and the provisions of the Magistrates' Courts Act and of the rules made thereunder shall, subject to the provisions of this section, apply to any proceedings for the payment of any moneys due under such order; and the power of the Chief Justice to make rules under section 67 of that Act shall include power to make rules for the enforcement of orders made under this Act:

Provided that a garnishee order may be issued against future earnings in respect of instalments of maintenance not yet due under a maintenance order and the full amount of each instalment of such maintenance order shall be recoverable from such future earnings under the garnishee order.

(2) No court fee or charge shall be payable for anything done under this Act and process shall be served free of charge by a member of the Botswana Police Force, who shall have all the powers vested in a messenger of the court under the Magistrates' Courts Act for the purposes of this Act.

12. Misconduct by parent or custodian of illegitimate child If the parent or any person appointed under section 7(3) to have the custody of a child-

(a) misapplies any money paid by the parent for the child's support;

(b) withholds proper nourishment from or otherwise abuses or maltreats the child, the parent or such other person shall be liable to a fine not exceeding P200.

13. No jurisdiction if proceedings instituted in customary court

No court shall have jurisdiction in respect of a complaint under section 3 where proceedings by the complainant for substantially the same relief as is provided by this Act have been instituted in relation to the same child in a customary court, and the final determination of those proceedings is still pending or has been made upon the merits.