

CHAPTER 28:03
DESERTED WIVES AND CHILDREN PROTECTION
ARRANGEMENT OF SECTIONS

SECTION

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Law 29, 1962,
HMC Order 1, 1963,
L.N. 84, 1966,
Act 77, 1970,
Act 22, 1978.

An Act to provide for the making of orders for the maintenance of wives and children who have been deserted and are without adequate means of support and for matters incidental thereto.

[Date of Commencement: 25th July, 1963]

1. Short title

This Act may be cited as the Deserted Wives and Children Protection Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"**acts of cruelty**" include conduct creating a danger to life, limb or health or any course of conduct which in the opinion of the court is grossly insulting and intolerable or is of such a character without proof of actual personal violence that the wife or children seeking maintenance could not reasonably be expected to be willing to live with the husband or father after he has been guilty of the same;

"**child**" means a person-

- (a) under the age of 16 years;
- (b) who has attained the age of 16 years but has not attained the age of 21 years and is not earning his own living;

"**court**" means a magistrate's court;

"**district**", in relation to any magistrate's court, means the district or sub-district or area within which such court has jurisdiction;

"**wife**" means a wife recognized as such by law or by customary law.

(2) For the purposes of this Act-

- (a) a wife shall be regarded as having been deserted if she is without adequate means of support and-
 - (i) her husband has deserted her;
 - (ii) her husband has without sufficient cause refused or neglected to provide her with food or other necessaries of life;
 - (iii) her husband is guilty of adultery which has not been condoned; or
 - (iv) she is living apart from her husband because of his acts of cruelty or because he is an habitual drunkard;

- (b) a child shall be regarded as having been deserted by his father if such child is without adequate means of support and-
- (i) the father has deserted the child;
 - (ii) the father has without sufficient cause refused or neglected to provide such child with food or other necessaries of life; or
 - (iii) the child has left or has been removed from the home of the father because of the acts of cruelty of the father or because the father is an habitual drunkard,
- and the terms "deserted" and "desertion" shall be construed accordingly.

3. Complaint

(1) Upon complaint made on oath and in writing to a magistrate in the district in which a wife resides or is, that such wife is without adequate means of support and is deserted, a summons may be issued requiring the husband to appear at a time and place mentioned in the summons and show cause why he should not be ordered to pay a sum sufficient to provide her and her children, if any, with food and other necessaries of life.

(2) Upon complaint made on oath and in writing to a magistrate in the district in which a child is residing or is, that such child is without adequate means of support and is deserted by his father, a summons may be issued requiring the father of the child to appear at a time and place mentioned in the summons and show cause why he should not be ordered to pay a sum sufficient to provide the child with food and other necessaries of life.

(3) A complaint in terms of subsection (1) may be laid by the wife or by some responsible person on her behalf, and a complaint in terms of subsection (2) may be laid by a person having the care and custody of the child or by some responsible person on behalf of the child.

4. Court may make order for maintenance

(1) On the day appointed for the hearing and upon proof of the service of the summons, whether the defendant is then present or not, the court shall inquire into the matter of the complaint, and if it is satisfied that the wife or child, as the case may be, is in fact without adequate means of support and that the husband or father is able to maintain her or him or to contribute to her or his maintenance, such court shall make an order that the husband shall pay to his wife or to a named person on her behalf or to a named person on behalf of the child, as the case may be, such weekly or monthly sum as the court may consider proper, having regard to the means of the parties, the number of children, if any, who require to be supported and the question whether the wife is able to work and, if so, whether in the circumstances it is desirable that she should work.

(2) In the case of a complaint in terms of section 3(1) the court, if it is satisfied that the wife has since the desertion provided for the maintenance of any child of the marriage, may further order that the husband shall pay such arrear maintenance or such portion of such arrear maintenance as the court may consider just and equitable in the circumstances.

(3) The court may in its discretion make such order as to costs as it may deem just and equitable.

(4) The court by which an order for payment was made shall have power to vary the order on the application either of the person against whom or in whose favour it was made upon proof that the means, circumstances or needs of either party have altered since the making of the original order or any subsequent order varying it.

(5) The court may discharge any such order as aforesaid on it being proved to its satisfaction that there are no longer any reasons for the order remaining in force.

5. Order not to be made when wife guilty of adultery

(1) No order for the payment of any sum by the husband shall be made in favour of a wife who is proved to have committed adultery unless the adultery has been condoned.

(2) Any order for payment may be discharged by the court by whom the order was made upon proof that the wife has, since the making thereof, been guilty of adultery.

(3) In case it is held by the court that adultery has been proved the judgment of finding shall not be evidence of adultery except for the purpose of proceedings under this Act.

6. Effect of order

(1) An order made under section 4 shall have effect as if it was 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 arrears due under such order and the power of the Chief Justice to make rules under section 67 of the Magistrates' Courts Act shall include power to make rules for the enforcement of orders made under section 4:

Provided that a garnishee order may be issued against future earnings in respect of instalments not yet due under such 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) Upon complaint made on oath and in writing to a magistrate in the district in which such order was made that the order has not been complied with by the defendant, the magistrate may direct the clerk of the court of such district to take such steps consistent with the Magistrates' Courts Act, the rules made thereunder and this Act for enforcing the order as the magistrate may deem necessary.

(3) A complaint made under subsection (2) may be made by a wife or a person named by the court under section 4 to receive payments on behalf of a wife or on behalf of a child, as the case may be.

(4) 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.

7. Trial may be in private

All cases tried under this Act may at the discretion of the court be heard in private.

8. Order may be certified and transmitted to other courts

Any order made by a court under this Act may be duly certified by a magistrate under his hand and transmitted to any other magistrate in whose district the defendant may at any time or from time to time reside or be, and shall on receipt be endorsed by such last-named magistrate, and shall thereupon be put into force, and have such effect as though it had originally been pronounced by him.

9. Reciprocity with other countries

Whenever the President is advised that in any other country there is a law in force recognizing the orders of a court under this Act duly certified by a magistrate and providing for their enforcement against the defendant in the jurisdiction of such other country, it shall be lawful for the President to provide for the reciprocal recognition and enforcement in Botswana of orders made in such other country under any Act similar to this Act.