

THE AFFILIATION PROCEEDINGS ACT, 1970

No. 50



of 1970

ARRANGEMENT OF SECTIONS

Section

1. Short Title
2. Interpretation
3. Commencement of affiliation proceedings
4. Time for application for summons
5. Venue
6. Powers of court on hearing of complaint
7. Person entitled to payments
8. Revocation, variation etc. of orders
9. Duration of orders
10. Continuance of payments in certain cases
11. Effect of order
12. Misconduct by mother or custodian of illegitimate child.

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 THERE-TO

Date of Assent: 13.11.70.

Date of Commencement: 25.11.70.

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Affiliation Proceedings Act, 1970.

Interpretation

2. In this Act, unless the context otherwise requires —
 - “court” means a subordinate court of the first class;
 - “order” means an affiliation order made under the provisions of section 6;
 - “single woman” includes a widow and a married woman who is divorced or living apart from her husband.

Commencement of affiliation proceedings

3. A single woman who is with child, or who has been delivered of an illegitimate child, may apply upon complaint in writing to a magistrate for a summons to be served on the man alleged by her to be the father of the child.

Time for application for summons

4. (1) A complaint under section 3; where the complainant has been delivered of an illegitimate child, may be made —
 - (a) at any time within twelve months from the date of the child's birth;
 - (b) at any subsequent time, upon proof that the man alleged to be the father of the child has within the twelve months next after the birth paid money or supplied food, clothing or other necessities for its maintenance; or
 - (c) at any time within the twelve months next after the man's return to Botswana, upon proof that he ceased to reside in Botswana within the twelve months next after the birth.
- (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 fourteen or the other party being under the age of sixteen; and
 - (b) the said other party had access to her within twelve months before the birth,

make at any time a complaint under section 3 against that party, notwithstanding that he may not within the twelve months next after the birth have paid money, supplied food, clothing or other necessities for the child's maintenance.

Venue

5. A complaint under section 3 shall be made to a magistrate having jurisdiction to hold a court in the administrative district in which the mother of the child resides and shall be made on oath.

Powers of court on hearing of complaint

6. (1) On the hearing of a complaint under section 3 the court shall hear the evidence of the mother (notwithstanding any consent or admission on the part of the defendant) and such other evidence as may be produced and shall also hear any evidence tendered by or on behalf of the defendant.

(2) If the evidence of the mother is corroborated in some material particular by other evidence to the court's satisfaction, the court may adjudge the defendant to be the putative father of the child and may also, if it thinks fit in all the circumstances of the case, proceed to make against him an affiliation order for the payment by him of —

- (a) a sum of money weekly or monthly, not exceeding R5 a week or R25 a month for the maintenance and education of the child;
- (b) the expenses incidental to the birth of the child; and
- (c) if the child has died before the making of the order, the child's funeral expenses.

(3) In considering the circumstances of any case the court shall take into account any award whether of money or property of any kind made by a customary court in respect of the birth of the child.

(4) Where a complaint under section 3 is made before or within two months after the birth of the child, any sum ordered to be paid under subsection (2) (a) may, if the court thinks fit, be calculated from the date of the birth.

(5) Where a complaint under section 3 is made before the birth of the child any sum ordered to be paid under subsection (2) (a) may, if the court thinks fit, be calculated from the date of the order.

(6) An order may provide that on the child reaching the age of seven years a certain part of the sum ordered to be paid shall be expended on the education of the child.

Person entitled to payments

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

(2) An order may, on the application of a person, other than the child's mother, 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 mother 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 she is living and of sound mind and is not in prison, and if the mother 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 mother might have done.

(4) Any court may revoke an appointment made under subsection (3) and appoint another person thereunder in place of the person formerly appointed.

(5) 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, 1970, provide for the payments to be made to the person for the time being entitled thereto in accordance with the provisions of this Act.

Revocation, variation etc., of orders

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

Duration of orders

9. (1) 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 sixteen years or has died.

(2) Payments under an order shall not be required to be made in respect of any period after the child has attained the age of thirteen years unless the order contains a direction that payments to be made under it are to continue until the child attains the age of sixteen years.

Continuance of payments in certain cases

10. (1) Notwithstanding the provisions of section 9 if on the application of the child's mother, 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 sixteen 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 the two next following subsections 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) Subject to the next following subsection, 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 twenty-one.

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

Effect of order

11. (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 Subordinate Courts Proclamation (Chapter 5) 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 93 of that Proclamation 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, who shall have all the powers vested in a messenger of the court under the Subordinate Courts Proclamation (Chapter 5) for the purposes of this Act.

Misconduct by mother or custodian of illegitimate child

12. If the mother or any person appointed under section 7(3) of this Act to have the custody of an illegitimate child —

(a) misapplies any money paid by the putative father for the child's support,

(b) withholds proper nourishment from, or

otherwise abuses or maltreats, the child the mother or such other person shall be liable on conviction to a fine not exceeding R200 or to imprisonment for a period not exceeding six months.

Passed by the National Assembly this day, the 2nd November, 1970.

G. T. MATENGE,
Clerk of the National Assembly