

CHAPTER 44:03

**MAINTENANCE OF CHILDREN**

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CHAPTER 44:03

**MAINTENANCE OF CHILDREN**

11 of 1988. An Act to make provision for the Maintenance of Children and for matters connected therewith.

[6TH SEPTEMBER, 1988.]

PART I.—PRELIMINARY

Short title. 1. This Act may be cited as the Maintenance of Children Act.

Interpretation. 2. In this Act, unless the context otherwise requires—  
“Court” means a Subordinate Court, a District Tribunal or a Moham-  
medan Court;

“Commissioner” means the Commissioner of the Division in which the child is domiciled;

“Director” means the Director of Social Welfare or any officer designated by him;

“District Tribunal” means a District Tribunal established under the District Tribunals Act; Cap. 6:03

“Minister” means the Minister for the time being responsible for the administration of this Act;

“Mohammedan Court” means a Mohammedan Court established under section 4 and 5 of the Mohammedan Law Recognition Act; Cap. 6:04

“subordinate court” means a subordinate court established under section 14 of the Courts Act. Cap. 6:01

3. (1) Subject to the provisions of subsection (2) of this section, the Court shall have jurisdiction to hear and determine applications regarding maintenance, custody, access and paternity of children and shall exercise such powers as are conferred upon it by this Act. Jurisdiction of the Court.

(2) Notwithstanding the provisions of subsection (1) of this section—

(a) the District Tribunals and Mohammedan Courts shall have exclusive original jurisdiction to hear and determine all applications regarding custody and access of the offspring of muslim marriages; and

(b) the jurisdiction of the Subordinate Court to hear and determine applications under this Act, shall not extend to any cause of action arising from an order made under the Matrimonial Causes Act. Cap. 43

#### PART II.—MAINTENANCE

4. A parent or any other person who is legally liable to maintain a child shall be under a duty to supply the necessaries of health, life and reasonable education to that child. Duty to provide maintenance.

5. (1) An application for the maintenance of a child may be made against a parent of the child or any other person legally responsible for the maintenance of such child. Application for maintenance.

(2) For the purposes of this section, a person other than a parent of a child shall not be deemed to be legally responsible for the maintenance of a child unless—

- (a) an obligation to maintain such child is imposed by statute or by the personal law of such child; and
- (b) the Court is satisfied that it is reasonable in the circumstance to expect such person to maintain such child and for the purpose of so satisfying itself, the Court shall consider—
  - (i) whether the person had in fact undertaken any responsibility for the maintenance of the child and if so, the extent, duration and basis for such responsibility;
  - (ii) whether in undertaking and discharging that responsibility, he did so knowing that the child was not his own child;
  - (iii) whether any other person is under a duty to provide for the maintenance of the child, and the extent to which such other person is maintaining or may be expected to maintain the child; and
  - (iv) any other relevant circumstances.

Persons who may make applications for maintenance.

6. An application for maintenance may be made by—
- (a) a person who has custody of the child;
  - (b) a guardian of the child;
  - (c) the Director; or
  - (d) the Commissioner.

Maintenance orders.

7. (1) The Court shall, upon hearing an application for maintenance with respect to any child, make an order, requiring any person responsible for the maintenance of that child to make to the applicant, for the benefit of that child—

- (a) such periodic payments for a term; or
  - (b) such amount of lump sum payment as may be specified in such order.
- (2) Payments under this section shall be made to the applicant unless the Court otherwise directs.

8. (1) The Court in exercising any of its powers under section 7 of this Act, shall have regard to all the circumstances of the case including the following—

Matters to which court is required to have regard in making an order for maintenance.

- (a) the income, earning capacity and other financial resources of the parents or other person legally responsible for the maintenance of the child;
  - (b) the financial needs, obligations and responsibilities of the parent or other person legally responsible for the maintenance of the child, and the person who has custody of the child;
  - (c) the income, earning capacity (if any), property and other financial resources of the child;
  - (d) any improvement in the earning capacity of the parent or other person legally responsible for the maintenance of the child;
  - (e) the contents of any report from a Social Welfare Officer, or an officer of a District Tribunal or local government authority, under section 25 of this Act;
  - (f) any physical or mental disability of the child; and
  - (g) any other relevant circumstances.
- (2) In subsection (1) of this section—
- (a) references to a parent of a child includes any person in relation to whom the child was treated as a child of the household as defined under section 2 of the Matrimonial Causes Act; . Cap. 43
  - (b) the reference in paragraph (a) to income, earning capacity and financial resources, includes the income, earning capacity, property and other financial resources which the person concerned is likely to have in the foreseeable future; and
  - (c) the reference in paragraph (b) to financial needs, obligations and responsibilities, includes the financial needs, obligations and responsibilities which the person concerned is likely to have in the foreseeable future.

9. (1) The term to be specified in an order made under paragraph (a) of subsection (1) of section 7 of this Act in favour of a child may begin on the date of making of the application for the order in question or any later date, but shall not extend beyond the date on which such child attains twenty-one years of age or earlier marries, unless it appears to the court that—

Duration of maintenance orders.

(a) the child is or will be receiving instructions at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(b) there are special circumstances which justify the making of an order without complying with subsection (1) of this section.

(2) Any order made under section 5 of this Act in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order or on the death of the child.

Orders for lump sum payments.

10. Without prejudice to the generality of paragraph (b) of subsection 1 of section 7 of this Act, an order under that section for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses, reasonably incurred in maintaining the child before the making of the order, to be met.

#### PART III.—CUSTODY AND ACCESS

Application for custody.

11. (1) The Court may, on the application of a parent or other persons qualified to do so under subsection (2) make an order vesting the legal custody of a child in the applicant or one or more of the applicants.

(2) The Court may only hear an application from a person other than a parent of a child, if satisfied that the relationship between that person and the child is such that it will be in the best interests of the child to do so.

Cap. 43

(3) References to "parent" under this section, includes any person in relation to whom the child was treated as a child of the household under section 2 of the Matrimonial Causes Act.

Cap. 43

(4) This section shall not apply to any child who was named in any order for custody in proceedings for divorce or nullity under the Matrimonial Causes Act.

Application for an access order.

12. (1) The Court may, in making an order for custody or while an order for custody is in force, by order, on the application of a parent of the child, make such provision as it thinks fit requiring access to the child to be given to the applicant.

Cap. 43

(2) References to "parent" in this section includes any person in relation to whom the child was treated as a child of the household as defined under section 2 of the Matrimonial Causes Act.

(3) Notwithstanding the provisions of subsection (1) of this section, the Court may hear an application by a person other than the parent of a child, if satisfied that the relationship between that person and the child is such that it will be in the best interests of the child to do so.

13. Upon hearing an application under section 10 or section 11 of this Act, the Court may refuse custody or access to the applicant, or it may grant an order for custody or access, according to such terms and conditions as it may deem proper.

Power of the Court in making an order for access or custody.

14. (1) In making an order for custody or access, the Court shall consider—

Matters to be considered by the Court in making an order.

(a) the best interests of the child; and  
(b) in any case where the personal law of the child is Muslim Law, the relevant provisions of such Law.

(2) For the purposes of determining the best interests of the child under subsection (1) of this section, the Court shall consider any report made by a Social Welfare Officer, or an officer of a District Tribunal or local government authority, under section 25 of this Act.

15. (1) An order under this Part shall terminate when the child in respect of whom the order is made attains the age of twenty-one or earlier marries, unless the order provides otherwise with a view to making provision for the care, custody and support of a child who is so incapacitated that he cannot be expected to care for himself.

Termination of custody and access orders.

(2) Notwithstanding the provisions of subsection (1) of this section, an order made under this Part shall terminate on the death of the child with respect to whom the order was made.

#### PART IV.—PATERNITY

16. For the purposes of this Part, “putative father” means the person alleged to be the father of a child by the mother of that child.

“Paternity” defined.

17. On the birth of the child of an unmarried mother, an application may be made under this section for an order declaring the putative father to be the father of the child.

Application for a paternity order.

Persons who may make an application for a paternity order.

18. An application under section 17 of this Act may be made—
- (a) by the mother of the child;
  - (b) by the guardian of the child;
  - (c) by the Director; or
  - (d) by the Commissioner.

Paternity order by the Court.

19. Upon hearing the evidence, the Court shall, if it is satisfied that the putative father is the father of the child, make an order declaring the putative father to be the father of the child.

Order for maintenance.

20. In making an order under section 19 of this Act, the Court in addition—

- (a) may, order the father to pay the reasonable expenses for the maintenance or care (including medical expenses) of the mother—
  - (i) during a period not exceeding seven months preceding the birth of the child; and
  - (ii) during a period after the birth of the child that is considered necessary as a consequence of the birth of the child; and
- (b) shall order the father to pay to the applicant, for the benefit of the child, maintenance in accordance with Part II of this Act.

Period within which application may be made.

21. (1) An application under this Part may not be made against a putative father unless the application is made within his lifetime and—

- (a) not more than twenty-four months after the birth of the child;
- (b) within the twelve months after the father takes any action that could reasonably be regarded as an acknowledgement that he is the father of the child; or
- (c) if the putative father has ceased to reside in The Gambia within the period referred to under paragraph (a) of this subsection then within twenty-four months of his return or where his return is not known to the mother at once, within twenty-four months of the time when such return becomes known to her or should have become known to her, by the exercise of reasonable diligence.

(2) The death of the mother does not bar the bringing of an application or the continuation of any proceedings under this Act.

22. (1) An order shall not be made under this Part on the evidence of one person alone as to the paternity of the child unless such evidence is corroborated by some other material evidence. Evidence of paternity.

(2) Any testimony given by the complainant or a putative father in proceedings under this Part which tends to show that the person giving the testimony had sexual intercourse with any one shall not be admissible in evidence against the person giving the testimony in any matrimonial cause to which the person is party.

PART V.—FURTHER ORDERS AND RELIEFS

23. (1) The Court may by order, revoke a custody or access order on the application of— Revocation of custody and access orders.

(a) the person who has custody of the child;

(b) a parent or a guardian of the child;

(c) the Director; or

(d) the Commissioner.

(2) The Court shall not proceed to hear an application made by any person for the revocation of a custody order where a previous such application made by the same person was refused by that or any other Court, unless—

(a) in refusing the previous application the Court directed that this subsection should not apply; or

(b) it appears to the Court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

(3) Any order made under Part II of this Act for periodic payments of maintenance or under Part III of this Act for access in respect of a child who is the subject of a custody, shall cease to have effect on the revocation of the custody order.

(4) A custody or access order shall cease to have effect when the child attains the age of twenty-one years.

24. (1) An application may be made for the variation or revocation of a maintenance order for periodic payments under paragraph (a) of subsection (1) of section 7 of this Act by— Revocation or variation of maintenance orders.

- (a) a parent or guardian of the child;
- (b) a person who has custody of the child; or
- (c) any other person on whose application a maintenance order was made, or who was required to contribute towards the maintenance of the child.
- (2) In an application under this section, the Court shall have power to suspend the operation of any provision of that order temporarily and to revive the operation of any provision so suspended.
- (3) In exercising its powers under this section to revoke or vary an order made under subsection (1) of section 7 of this Act, the Court shall have regard to all the circumstances of the case, including any charge in any of the matters to which the Court was required to have regard under section 8 of this Act when making the order.
- (4) When, on an application under this section, the Court varies any payments required to be made, the Court may provide that the payments so varied shall be made from such date as it may specify, not being earlier than the date of the making of the application.
- (5) The power of a subordinate court to revoke, revive, vary or suspend an order for the periodic payment of money shall not apply in relation to an order made under this Act.

Report by  
Social  
Welfare  
Officer.

25. (1) For the purposes of any application made under this Act, the Court may, at any stage of the proceedings direct—

- (a) a social welfare officer or any person authorised by him; or
- (b) in the case of an application before a District Tribunal, an officer of the District Tribunal or local government authority, to investigate a specific or all aspects of the case and to attempt conciliation of the dispute if necessary.

(2) Whenever the Court makes a direction under subsection (1) of this section, the officer so directed shall report to the Court, whether orally or in writing within thirty days of the making of the direction.

Arrears.

26. (1) Where at anytime the arrears due under any order for periodic payments of money made under this Act amount to three periodical payments, or in the case of an amount ordered to be paid by lump sum, the payment is in arrears for not less than three months, the Court, on application of the person to whom payment was ordered to be made in favour of any child, may order that the income of the defaulting party be attached in satisfaction of the arrears, and may

issue a writ of execution permitting the seizure and sale of the exigible property of the defaulting party.

(2) Any amounts attached and any proceeds realised under subsection (1) of this section shall be paid to the applicant, unless an order is made pursuant to an application under section 23 of this Act.

(3) Nothing in this section shall prevent the continuation of an action for arrears of payments due, pursuant to an order under this Act, after the death of the child in respect of whom the order was made.

27. (1) If satisfied that it is in the interest of justice to do so, the Court may by order restrain—

Restraining orders.

(a) any person from leaving the jurisdiction until the Court is satisfied that he has made adequate provision to satisfy any award the Court has made or may make against him in the proceedings;

(b) any person from removing a child in respect of whom a custody order has been made under Part III of this Act; and

(c) any person from imposing any restraint on the personal liberty of, or from harming or interfering with, a child in respect of whom an order has been made under this Act, or on the person who has custody of such child.

(2) The Court may order any person to return to the jurisdiction, any child in respect of whom an order has been made under this Act.

#### PART VI.—MISCELLANEOUS

28. In all proceedings under this Act, there shall be excluded from the proceedings all persons other than the applicant, respondent, parents of the child, any social welfare officer or officer of the District Tribunal or local government authority, to whom a direction has been given under section 25 of this Act, Director, Commissioner, witnesses, counsel and any other person that the court in its discretion may permit.

Applications to be heard in private.

29. (1) No proceeding shall be heard by a Court under this Act, with respect to any matter in which an order for maintenance, custody or access has already been made by the Supreme Court in respect of any child under the Matrimonial Causes Act.

Supreme Court Orders. Cap. 43.

(2) Where any subsequent order is made by a Court contrary to subsection (1) of this section, such order shall be null and void.

L.R.O./1990

Cap. 43.

(3) In considering any proceedings under the Matrimonial Causes Act the Supreme Court may revise, vary or revoke any orders made by a Court under this Act.

Appeals.

30. An appeal shall lie to the Supreme Court from any order made by a Court under this Act.

Review of  
orders of  
District  
Tribunal.

31. (1) A subordinate court shall at all times have access to the records of any District Tribunal on any proceedings under this Act within its jurisdiction and may of its own—

- (a) revise any order made by such Tribunal under this Act; or
- (b) order any case to be retried before the same Tribunal or any other District Tribunal of competent jurisdiction.

Offences.

32. (1) Any person who receives any payments pursuant to an order made under this Act and misapplies or withholds any such payment or part of such payment, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dalasis or to imprisonment for a term not exceeding six months.

(2) Any person who obstructs or without reasonable excuse (the proof of which shall lie on him) fails to carry out any order made under this Act commits an offence and is liable on summary conviction to a fine not exceeding one thousand dalasis or to imprisonment for a term not exceeding six months.

Rules.  
Cap. 6:01

33. The Rules Committee established under section 54 of the Courts Act, may make rules—

- (a) modifying the rules of Court otherwise applicable in proceedings under this Act; and
- (b) prescribing any documents to be used in proceedings under this Act.

Regulations.

34. The Minister may in consultation with the Attorney-General make regulations for the better carrying out of the provisions of this Act.

Application  
of  
Cap. 44:02.

35. For the avoidance of doubt, the Maintenance Orders (Facilities for Enforcement) Act, shall apply to maintenance orders made under Parts II and IV of this Act.

36. Any proceedings for maintenance, custody, access or paternity commenced or pending before any Court immediately before the coming into force of this Act, shall be confirmed and determined as if they had been commenced in accordance with this Act.

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