

Tanzania

Affiliation Act

Chapter 278

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Affiliation Act

Chapter 278

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[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]

[Ords. Nos. 42 of 1949; 10 of 1950; Acts Nos. 55 of 1963; 14 of 1964]

An Act to provide for the maintenance of children born out of wedlock.

1. Short title

This Act may be cited as the Affiliation Act.

2. Interpretation

In this Act unless the context otherwise requires—

"**child**" means a child born out of wedlock;

"**custodian**" means a person, other than the mother or putative father of a child, who is appointed to have its custody under the provisions of this Act;

"**magistrate**" means a district magistrate;

"**unmarried woman**" includes a married woman who is living apart from her husband and a widow.

3. Putative father to be summoned on application of mother

Any unmarried woman who may be with child or who may be delivered of a child may—

- (a) before the birth of the child; or
- (b) at any time within twelve months from the birth of the child; or
- (c) at any time after the birth of the child upon proof that the man alleged to be the father of the child has within twelve months next after the birth of the child paid money for its maintenance; or
- (d) at any time within the twelve months next after the return to Mainland Tanzania of the man alleged to be the father of the child, upon proof that he ceased to reside in Tanzania within the twelve months next after the birth of the child,

make application, by complaint on oath to a magistrate, with jurisdiction in the place in which she resides, for a summons to be served on the man alleged by her to be the father of the child, and if such application be made before the birth of the child the woman shall make a deposition upon oath stating who the father of the child is, and, subject to the provisions of section 4, such magistrate shall thereupon issue a summons to the person alleged to be the father of the child to appear before a magistrate on some day to be named in the summons.

4. Conditions of issue of summons

A magistrate shall refuse to issue a summons under section 3 of this Act unless he is satisfied that there is reasonable cause to believe that—

- (a) the man alleged to be the father of the child is in truth and in fact the father of that child and that the application for a summons is made in good faith and not for any purpose of intimidation or extortion; and
- (b) the man alleged to be the father of the child has been requested by or on behalf of the applicant, to make provision for the maintenance and education of the child and for any further expenses which are referred to in subsection (1) of section 5, or for one or more of those matters, and has refused or neglected to make the provision, or has made inadequate provision.

5. Order of maintenance, enforcement and variation of the order and distress

- (1) After the birth of a child, on the appearance of the person summoned under this Act, or on proof that the summons was duly served on that person or was left at his last place of abode seven days or more before the hearing, a magistrate shall hear the evidence of the mother of the child and any other evidence which she may produce, and shall also hear any evidence tendered, by or on behalf of the person alleged to be the father.
- (2) If the evidence of the mother is corroborated by other evidence to the satisfaction of the Magistrate, he may adjudge the person summoned to be the putative father of the child.
- (3) Subject to subsection (1), the Magistrate may, having regard to all the circumstances of the case, proceed to make an order on the putative father for the payment to the mother of the child or to any person who may be appointed to have the custody of the child under the provisions of this Act—
 - (a) a sum of money monthly not exceeding one hundred shillings a month for the maintenance and education of the child; and
 - (b) of the expenses incidental to the birth of the child; and
 - (c) of the funeral expenses of the child if it has died before the making of such order.
- (4) If the application is made before the birth of the child or within two months after the birth of the child, the monthly sum may, if the magistrate thinks fit, be calculated from the birth of the child or *in lieu* of monthly payments be paid in lump sum not exceeding fifteen thousand shillings.
- (5) The payments made under subsection (4) shall be paid into court and shall be expended on the maintenance of the child in any manner which the Magistrate may direct.
- (6) Without prejudice to subsection (5) the Magistrate may order a portion of the payments or of any lump sum awarded be expended on the education of the child in any school which he may nominate.
- (7) Notwithstanding the foregoing provisions of this section, no order shall be made if, since the date on which the application was made—
 - (a) the applicant has married; or
 - (b) where the applicant was a married woman living apart from her husband, she has resumed cohabitation with her husband.
- (8) If at any time after the expiration of one month from the making of the order it shall be made to appear to a magistrate upon oath that any sum to be paid in pursuance of the order has not been paid, the magistrate may, by warrant under his hand, cause the putative father to be brought before him, and in case the putative father neglects or refuses to make payment of the sums due from him under the order, the magistrate may, by warrant under his hand, direct the sum so appearing to be

due, together with any costs which may have been incurred to be recovered by distress, and sale of the goods and chattels of such putative father, and may order such putative father to be detained and kept in safe custody until return can be conveniently made to the warrant of distress, unless he gives sufficient security by way of recognisance or otherwise to the satisfaction of such magistrate for his appearance before a magistrate on the day which may be appointed for the return of the warrant of distress, such day not being more than seven days from the time of taking that security.

- (9) If upon the return of the warrant, or if by the admission of the putative father, it appears that no sufficient distress can be had, then the magistrate may, by warrant under his hand, cause the putative father to be committed to prison, there to remain without bail for any term not exceeding three months, unless the sum or costs and all reasonable charges attending the said distress, together with the costs and charges attending the commitment and conveying to prison and of the persons employed to convey him thither be sooner paid and satisfied.
- (10) Upon the application of either the mother or custodian of the child, or of the putative father, a magistrate may, after inquiring into the circumstances, make an order either increasing or decreasing the amount previously ordered to be paid by the putative father, but so that in no case shall the amount exceed one hundred shillings per month.

6. Discharge of orders on marriage, etc.

Where, after the sixth day of March, 1964¹ an order is made under this Act for payments in respect of a child, the putative father may apply to a magistrate for the discharge of the order on the grounds that, since the date on which the order was made—

- (a) the mother of the child has married; or
- (b) if the order was made on the application of a married woman living apart from her husband, she has resumed cohabitation with her husband,

and if the magistrate is satisfied that the mother of the child has married or resumed cohabitation with her husband, as the case may be, he shall discharge the order except in so far as it relates to the payment of money thereunder prior to the marriage or resumption of cohabitation:

Provided that a magistrate shall not discharge the order in that case where a custodian of the child has been appointed and the appointment is still subsisting.

7. Time of cessation of order

No order for the maintenance and education or for contribution towards the relief of any child made in pursuance of this Act shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of sixteen years, or after the death of the child:

Provided that a magistrate may, if good cause is shown, order that payments shall cease on the child attaining the age of fourteen years.

8. Money to be paid to mother or custodian

All moneys payable under any order shall be due and payable to the mother of the child unless a custodian has been appointed, in which case all the moneys shall be due and payable to that custodian:

Provided that a magistrate when making an order may order that the money shall be paid into court and then paid to the mother or custodian in any a manner and subject to such conditions which he may direct.

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The date of operation of amending Act [No. 14 of 1964](#).

9. Application, appointment, claims of custodian of child, etc.

- (1) Whenever under this Act an order has been made against the putative father for payments in respect of a child, any magistrate may at the time of making the order or from time to time thereafter, on being satisfied that the mother of the child is not a fit and proper person to have custody of the child, appoint some person other than the mother to have custody of that child provided that that person is willing.
- (2) When the mother dies, or becomes of unsound mind, or is in prison, a magistrate shall from time to time appoint some person, who is willing, to have custody of the child.
- (3) The appointment of a custodian under the provisions of subsection (1) of this section may be made on the application of an administrative officer, or of the putative father, or of the mother when she is alive, and that appointment may be revoked and another person appointed to have custody of the child.
- (4) A custodian shall have power to make application for the recovery of all payments in arrears or becoming due under an order made under section 5 of this Act in the same manner as the mother of the child might have done.
- (5) Upon any order of appointment or of revocation being made under this section, the magistrate may also order the child to be delivered by any person to the person appointed to have the custody of the child.
- (6) A magistrate may also on the application of the putative father of a child under the age of sixteen years or of an administrative officer make an order that the custody of that child be committed to the father.
- (7) If a child, in respect of whose maintenance and education an order subsists or is sought, is wrongfully taken out of the custody of the mother or custodian of that child, a magistrate may on the application of the mother or custodian make an order that the custody of the child be committed to the mother or custodian.
- (8) Any person who contravenes any order made under subsection (7) of this section commits an offence and on conviction is liable to a fine not exceeding five hundred shillings or to imprisonment for three months, or to both the fine and imprisonment.

10. Neglect and desertion of child

Every woman neglecting to maintain her child, being able wholly or in part so to do, or deserting her child, shall on conviction, be liable to a fine not exceeding two hundred shillings or to imprisonment for one month or to both the fine and imprisonment.

11. Misapplying moneys or ill-treating a child

Every person who having the custody of a child under any order made under this Act, misapplies moneys paid by the putative father for the support of such child, or who withholds proper nourishment from the child, or who in any manner ill-treats the child shall on conviction be liable to a fine not exceeding two hundred shillings or to imprisonment for one month or to both the fine and imprisonment.

12. Appeal against order

Any order made under this Act may be appealed against either by the mother or custodian of the child or by the putative father in the same manner as any order made by a magistrate under and subject to the provisions of the Criminal Procedure Act ², and the magistrate at the time when that order is made shall

inform any person so entitled to appeal, of his right of appeal under this section, and the time within which he is required to give notice of the appeal and to lodge a petition of appeal.

13. Forms and procedure

Save in the case of appeals, the forms to be used and the procedure to be followed in any proceedings (except for offences) under the Act shall be as nearly as practicable as in ordinary civil cases before subordinate courts.

14. Exclusion of public and prohibition of reports

- (1) No person shall be present during the hearing or determination of any proceeding in court or before a magistrate under this Act (including any proceeding on appeal), except—
 - (a) a judge or magistrate and the officers of the court;
 - (b) parties to the case, their advocates, witnesses, other persons directly concerned in the case and other persons whom either party desires to be present;
 - (c) if the court so allows, a probation or welfare officer.
- (2) Nothing in subsection (1) of this section shall affect the exercise by a court of the power to direct that witnesses be excluded until they are called for examination.
- (3) Subject to the provisions of subsection (4), any person who prints or publishes or causes to be printed or published any book, periodical, newspaper, pamphlet, broadsheet, handbill or circular containing any report or particulars of any proceeding in a court or before a magistrate under this Act or who makes its announcement over any wireless or broadcasting system, commits an offence and on conviction is liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months or to both the fine and imprisonment.
- (4) Nothing in subsection (3) of this section shall prohibit or make punishable the printing or publication of any report or particulars of any such proceedings from which the names of the parties have been omitted in any book or periodical of a technical character *bona fide* intended for circulation among members of the legal or medical professions.

15. Power to make rules

The High Court shall make rules prescribing the fees and costs payable in any proceedings or on committal to prison under this Act and those rules shall include provision for the remission of the fees and costs when the person liable to pay those fees and costs has no means to do so.

16. Election between remedies under Act and remedies under customary law

- (1) Notwithstanding the preceding provisions of this Act no order shall be made under section 5 in any case—
 - (a) in which the applicant, or any parent, guardian or husband of the applicant, has obtained, in proceedings instituted in accordance with any relevant rule of customary law, any order for the payment of money or other provision for the maintenance or education of the child; or
 - (b) in which, in any proceedings instituted in accordance with any relevant rule of customary law, the court hearing the proceedings held that it was not satisfied that the person against whom an order under section 5 is sought was the putative father of the child.
- (2) Notwithstanding any relevant rule of customary law, no person shall be entitled to make any claim, in accordance with that relevant rule, for any contribution to the maintenance or education of a child born out of wedlock against—
 - (a) a person against whom an order relating to that child has been made under section 5 of this Act;

- (b) a person against whom proceedings for an order under section 5 of this Act have been instituted in relation to that child, if, on the hearing of the proceedings, the magistrate held that he was not satisfied that that person was the putative father of the child; or
 - (c) any other person who, in accordance with customary law, is responsible for the acts of a person described in paragraph (a) or (b) of this subsection.
- (3) In this section, the expression "relevant rule" means a rule relating to the liability of the father of a child born out of wedlock (or of any other person who, in accordance with customary law, is responsible for his acts) to contribute towards, or make provision for, the maintenance or education of that child.