

AFFILIATION

ARRANGEMENT OF SECTIONS

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25 of 1946

20 of 1948

24 of 1951

8 of 1963

22 of 1963

37 of 1967

24 of 1972

30 of 1997

An Act to provide for the maintenance of illegitimate children

[28TH DECEMBER 1946]

[Ch2602s1]1. Short title

This Act may be cited as the Affiliation Act.

[Ch2602s2]2. Interpretation

In this Act—

“child” means a bastard child;

“court” means any subordinate court and, in relation to any claim within its jurisdiction, any Traditional Court;

“custodian” means a person, other than the mother or putative father of a child, who is appointed to have custody, thereof under this Act;

“unmarried woman” includes a married woman who is living apart from her husband.

[Ch2602s3]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 thereafter 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 Malawi of the man alleged to be the father of the child, upon proof that he ceased to reside in Malawi within the twelve months next after the birth of the child,

make application, by complaint on oath to a court, 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 is the father of the child, and such court shall thereupon issue a summons to the person alleged to be the father of the child to appear before a court on some day to be named in the summons.

[Ch2602s4]4. Condition of issue of summons

It shall be lawful for a court, on any application for a summons under this Act, to refuse to issue such summons if it is not satisfied that there is reasonable cause to believe that the man alleged to be the father of the child is in truth and in fact the father of such child, and that such application is made bona fide and not for any purpose of intimidation or extortion.

[Ch2602s5]5. Order of maintenance

24 of 1972, 30 of 1997 (1) After the birth of such child, on the appearance of the person summoned under this Act, or on proof that the summons was duly served on such person or left at his last place of abode seven days or more before the hearing, a court shall hear the evidence of such woman and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father, and may adjudge the person summoned to be the putative father of the child, and the court may also, if it sees fit, 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 this Act of a sum of money monthly of not less than K250 a month for the maintenance and education of the child, and of the expenses incidental to the birth of the child, and of the funeral expenses of the child if it has died before the making of such order, and of such costs as may have been incurred in obtaining such order; and if the application be made before the birth of the child or within two months after the birth of the child, such monthly sum may, if the court thinks fit, be calculated from the birth of the child. The court if it

thinks fit may, in lieu of monthly payments, order that a lump sum of not less than K20,000 be paid into court and that such sum shall be expended on the maintenance of the child in such manner as the court may direct. The court may also order that a portion of the payments or of any lump sum awarded shall be expended on the education of the child in such school as it may nominate:

Provided that if, at the time of making the order, the putative father is a minor without income or is, for any other sufficient reason, unable to make any payments under the order, the court may direct that payments under the order shall commence at such time in the future as the court shall specify in the order.

Enforcement of order

(2) If at any time after the expiration of one month from the making of such order as aforesaid, it shall be made to appear to a court upon oath that any sum to be paid in pursuance of such order has not been paid, the court may, by warrant cause the putative father to be brought before it, and in case such putative father neglects or refuses to make payment of the sums due from him under such order, the court may, by warrant, direct the sum so appearing to be due, together with such costs as 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 such warrant of distress, unless he gives sufficient security by way of recognizance or otherwise to the satisfaction of such court for his appearance before a court on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security.

Distress

(3) If upon the return of such warrant, or if by the admission of the putative father, it appears that no sufficient distress can be had, then the court may, if it sees fit, by warrant, cause such putative father to be committed to prison, there to remain without bail for any term not exceeding three months, unless such 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.

Variation of order

30 of 1997(4) Upon the application of either the mother or custodian of the child, or of the putative father, a court may, after inquiring into the circumstances, make an order either increasing or decreasing the amount previously ordered to be paid monthly by the putative father, but so that in no case shall such amount exceed K250 per month.

Costs of defendant

(5) A court to whom an application is made for an order under subsection (1) may, if the application is dismissed, make an order for the payment by the mother of the child of the reasonable costs of the person alleged to be the father incurred in resisting the application.

(6) The refusal or dismissal of an application under this Act, whether such refusal or dismissal was made before or after the coming into force of this subsection, shall not debar the mother of the child from making a second or subsequent application to the same or any other court, provided that the second or subsequent application is made within two years of the date of the original application.

24 of 1972(7) Where a Traditional Court is empowered to hear applications under this Act, it shall not, on any such application, make any order whereby the aggregate of all monthly payments payable thereunder, or the lump sum awarded thereby, as the case may be, exceeds the limit of the civil jurisdiction of such Court as specified in its warrant.

30 of 1997(8) If, at the time a court is making an order for maintenance under this section or at any time it is shown to its satisfaction that the putative father against whom the order is made is employed and receives a salary, wage or other regular pecuniary employment benefit the court may, if it thinks it appropriate in the circumstances so to do having regard to—

- (a) the regular or immediate needs of the child;
- (b) defaults or the likelihood of defaults by the putative father in making payments;
- (c) places where the parties reside; and
- (d) any other factors,

direct that the amount of maintenance so ordered shall be deducted by the employer from the salary, wage or such other benefit of the putative father and paid to the mother or custodian of the child in such manner as the court shall direct; and an employer who, having been served with the order of the court, fails to comply with the order shall be guilty of an offence and liable to a fine of K5,000.

[Ch2602s6]6. Time of cessation of order

30 of 1997An order for the maintenance and education or for contribution to the relief of any child made in pursuance of this Act shall, except for the purpose only of recovering money previously due under such order, cease to be of any force or validity—

- (a) after the death of the child;
- (b) after the marriage of the child;
- (c) subject to paragraph (d), after the child has attained the age of eighteen years; or
- (d) if the child continues to receive formal education after attaining the age of eighteen years, then after the child has completed such formal education up to obtaining his first university qualification where applicable:

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

[Ch2602s7]7. Continuation of payments in certain cases

(1) Notwithstanding any thing in section 6, a court shall have power to vary or revive an order in accordance with this section.

(2) If on the application of the child's mother or custodian it appears to the court that it is expedient in the interests of the child for payments to be made under the order after the child attains the age of sixteen years then, subject to this section, 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.

(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 age of twenty-one years.

[Ch2602s8]8. Money to be paid to mother or custodian

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

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

[Ch2602s9]9. Appointment of custodian

30 of 1997(1) Whenever under this Act an order has been made against the putative father for payments in respect of a child, any court may at the time of making such 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 the custody of such child, appoint some person other than the mother to have custody of such child provided that such person be willing.

When the mother dies, or becomes of unsound mind, or is in prison, a court shall from time to time appoint some person, who is willing, to have custody of the child.

Application by whom made

(2) The appointment of a custodian under subsection (1) may be made on the application of any person authorized by the Minister, or of the putative father, or of the mother when she is alive, and such appointment may be revoked and another person appointed to have custody of the child.

Claims by custodian

(3) A custodian shall have power to make application for the recovery of all payments in arrear or becoming due under an order made under section 5 or section 7 in the same manner as the mother of the child might have done.

Court may order delivery of child

(4) Upon any order of appointment or of revocation being made under this section, the court may also order the child to be delivered by any person to the person appointed to have the custody thereof as aforesaid.

Custody of child may be granted to putative father

(5) A court may also on the application of the putative father of a child under the age of twenty-one years or of an administrative officer make an order that the custody of such child be committed to the father.

Child taken out of mother's custody may be returned to mother

(6) If a child, in respect of whose maintenance and education an order subsists or is sought, shall be wrongfully taken out of the custody of the mother or custodian of such child, a court may on the application of the mother or custodian make an order that the custody of the child be committed to such mother or custodian.

Penalty

30 of 1997(7) Any person who contravenes any order made under subsection (6) shall be liable to a fine of K5,000 and to imprisonment for one year.

[Ch2602s10]10. Orders in respect of children being maintained at public expense

Where a child is being wholly or partly maintained at the public expense, or where the Minister is satisfied that the child is insufficiently provided for, the Ministry or authority responsible for such maintenance or the Minister, as the case may be, shall have the like right as the mother of the child to make application to a court under section 3 or section 5 and if an order is made in respect of the child the provisions of this Act relating to such order shall apply in relation to such Ministry or authority, or to the Minister, in like manner as they apply in relation to the mother of the child.

[Ch2602s11]11. Neglect and desertion of child

30 of 1997Every woman neglecting to maintain her child, being able wholly or in part so to do, or deserting her child, shall be liable to a fine of K5,000 and to imprisonment for one year.

[Ch2602s12]12. Misapplying moneys or ill-treating a child

30 of 1997Every person having the custody of a child under any order as hereinbefore provided who misapplies moneys paid by the putative father for the support of such child, or who withholds

proper nourishment from such child, or who in any manner ill-treats such child shall be liable to a fine of K5,000 and to imprisonment for one year.

[Ch2602s12A]12A. Fines to be applied for the child's maintenance

30 of 1997Where the sentence imposed by a court for an offence under this Act is or includes payment of a fine, the whole amount of the fine imposed shall be applied for the maintenance and education or for contribution to the relief of the child concerned and for that purpose the amount paid shall—

- (a) be paid out by the court to the mother or guardian of the child; or
- (b) where the offender is the mother or guardian, be held and expended in such manner as the court shall see fit to direct in the circumstances.

[Ch2602s13]13. 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 the court in the exercise of its criminal jurisdiction.

[Ch2602s14]14. Forms and procedure

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

[Ch2602s15]15. Power to make Rules

The Chief Justice may, with the prior approval of the Minister, make Rules prescribing the fees and costs payable in any proceedings or committal to prison under this Act; such Rules shall include provision for the remission of such fees and costs when the person liable to pay such fees and costs has not the means to do so.

SUBSIDIARY LEGISLATION

AFFILIATION (FEES AND COSTS) RULES

under s. 15

G.N. 44/1949

74/1989

1. Citation

These Rules may be cited as the Affiliation (Fees and Costs) Rules.

2. Fees

The fees and costs payable in proceedings under the Act shall be as follows— G.N. 74/1989

(a)	Court fees	(i)	On application for summons under section 3	300
(ii)	On hearing a summons under section 5 (1)	(iii)	On application under section 5 (4)	300
(iv)	On hearing of an application under section 5 (4)			300
(b)	Legal Practitioner's Costs			

Such sum as the court may in its discretion allow, but such sum shall not exceed half the ordinary scale allowed in the High Court.

3. Remittance of fees

The court may remit in whole or in part the court fees set out in rule 2 if it is satisfied that the person liable to pay such fees has not the means to do so