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CHAPTER 35:61

MAINTENANCE ACT

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CHAPTER 35:61

MAINTENANCE ACT

6 of 1982

AN ACT to provide for the maintenance of certain classes of persons and for matters connected therewith.

Commencement

[11th February 1982]

Short title

1. This Act may be cited as the -

MAINTENANCE ACT.

Interpretation

2. In this Act, unless the context otherwise requires-

"Court" means a Magistrate's Court;

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

"child" includes a child not born in lawful wedlock;

"parent" means the mother, father or putative father of a child; "single woman" includes —

- (a) a widow;
- (b) a married woman living apart from her husband whether under a decree of judicial separation or otherwise;
- (c) a woman whose marriage has been dissolved or annulled; and
- (d) an unmarried woman.

Duty to maintain dependants.

3. (1) It shall be the duty of every man to provide reasonable maintenance for —

- (a) his wife and children under the age of fifteen years; and in any case where his child is pursuing a full-time course of secondary or further education at an educational institution, the duty to provide such reasonable maintenance shall continue until the child attains the age of eighteen years; but if the child ceases to be a student, or marries prior to attaining the age of eighteen years there shall thereafter be no duty to provide such *maintenance*;

- (b) his father and mother, if any such person is by reason of old age or mental or physical disability unable to maintain himself; and
 - (c) *any* child notwithstanding his age who by reason of physical or mental disability is unable to maintain himself; but if at any time the disability ceases there shall thereafter be no duty to provide such maintenance.
- (2) It shall be the duty of every married woman to provide reasonable maintenance for —
- (a) her husband and children under the age of fifteen years; and in any case where her child is pursuing a full-time course of secondary or further education at an educational institution, the duty to provide such reasonable maintenance shall continue until the child *attains* the age of eighteen years; but if the child ceases to be a student or marries prior to attaining the age of eighteen years there shall thereafter be no duty to provide such maintenance;
 - (b) her father and mother, if any such person is by reason of old age or mental or physical disability unable to maintain himself; and
 - (c) any child notwithstanding his age who by reason of physical or mental disability is unable to maintain himself; but if at any time the disability ceases there shall thereafter be no duty to provide such maintenance.
- (3) It shall be the duty of every single woman to provide reasonable maintenance for —
- (a) her children under the age of fifteen years; and in any case where her child is pursuing a full-time course of secondary or further education at an educational institution, the duty to provide such reasonable maintenance shall continue until the child attains the age of eighteen years; but if the child ceases to be a student or marries prior to attaining the age of eighteen years there shall be no duty to provide such maintenance;
 - (b) her father and mother, if any such person is by reason of old age or mental or physical disability unable to maintain himself; and
 - (c) any child notwithstanding his age who by reason of physical or mental disability is unable to maintain himself; but if at any time the disability ceases there shall thereafter be no duty to provide such maintenance.

Maintenance order

4. Whoever fails to provide reasonable maintenance for any person whom it is his duty to maintain may be summoned before the Court in the manner hereinafter provided to show cause why an order (herein referred to as a "maintenance order") should not be made against him to provide reasonable maintenance for such person; but no such order shall be made unless the Court having inquired into the financial circumstances of the defendant and the number of persons, if any, whom it is his duty to maintain, is satisfied that the defendant is possessed of sufficient means to provide reasonable maintenance in whole or in part for the person in respect of whom he is summoned.

Amount of maintenance order

5. No maintenance order shall require the payment of any sum exceeding thirty dollars per week in respect

of the maintenance of any one person.

Variation, discharge, And revival of maintenance order

6. Subject to the provisions of this Act, the Court by which any maintenance order has been made may at any time vary, discharge or revive the order, but the amount payable by the order shall not be increased beyond the limits set forth in section 5.

PART II AFFILIATION

7. (1) Any single 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 any period 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 the State of the man alleged to be the father of the child, upon proof that he ceased to reside in the State within the twelve months next after the birth of the child,

make application to the Magistrate exercising jurisdiction in the district in which she may reside, for a summons to be served on the man alleged by her to be the father of the child, and if the application is made before the birth of the child the woman shall make a deposition upon oath stating who is the father of the child and the Magistrate shall thereupon issue his summons to the person alleged to be the father of the child to appear before the Magistrate on some day to be named in the summons.

(2) In any case where the woman is by reason of mental or physical disability unable to make the application any social welfare officer shall have power to make an application on behalf of the woman; but if such woman is by reason of mental disability unable to provide satisfactory evidence, the Magistrate shall hear the evidence of any other person relevant to the circumstances of the case, which shall be corroborated in some material particular in accordance with the provisions of section 9.

Condition of issue of summons

8. The Magistrate may, on any application for a summons under section 7, refuse to issue the summons if *he* is not satisfied that there is reasonable cause to believe that the man alleged to be the father of the child is the father of the child, and that the application is made *bona fide* and not for any purpose of intimidation or extortion.

Order for maintenance

9. (1) After the birth of the child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person or left at his last place of abode five days or more before the hearing the Magistrate exercising jurisdiction in the district in which the summons was issued shall hear the evidence of the woman or such other person and such other evidence tendered by or on behalf of the person alleged to be the father, and, if the evidence of the mother or such other person is corroborated in some material particular by other evidence to the satisfaction of the

Magistrate, he may adjudge the person summoned to be the putative father of the child; and the Magistrate may also, if he 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 the provisions of this Act of such a sum of money not exceeding thirty dollars a week, as he may consider reasonable 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 the child has died before the making of the order, and of such costs as may have been incurred in obtaining the order; and if the application is made before the birth of the child or within two months after the birth of the child the weekly sum may, if the Magistrate thinks fit, be calculated from the birth of the child.

(2) If at any time after the expiration of six *weeks* from the making of the order as aforesaid, it is made to appear to the Magistrate exercising jurisdiction in the district in which the order was made 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, or since any commitment for disobedience to the order as hereinafter provided, together with the costs attending the warrant, apprehension and bringing up of the putative father, the Magistrate may, by warrant under his hand, direct the sum so appearing to be due, together with such costs, to be recovered by distress and sale of the goods and chattels of the putative father, and may order the 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 recognizance or otherwise to the satisfaction of the Magistrate for his appearance before the 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 any such security.

(3) 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, if he sees fit 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 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 are sooner paid and satisfied.

(4) Notwithstanding the preceding provisions of this section, on an application for the enforcement of the payment of any sum payable in pursuance of an order under this section, the Magistrate shall make enquiries as to whether his failure to pay that sum was due either to his wilful refusal or to his culpable neglect, and if the Magistrate is of the opinion that the failure of the defendant to pay that sum was not due either to his wilful refusal or to his culpable neglect, a warrant of commitment to prison shall not be issued.

(5) Any order for the payment of money made under this section may be revoked, discharged, revived or varied by a subsequent order of a Magistrate.

(6) On an application for the enforcement, variation, revocation, discharge or revival of an order made under this section, the Magistrate may remit the payment of any sum due thereunder or of any part of any such sum.

(7) Where on an application for the enforcement of the payment of a sum payable in pursuance of an order no warrant of commitment to prison is issued, the application may be renewed, except so far as regards any part of that sum remitted under subsection (6), on the ground that the circumstances of person to whom the application relates have changed.

Time of cessation of order

10. No order for the maintenance and education or for contribution towards the maintenance and education of any child made in pursuance of this Act shall, *except* for the purpose of recovering money previously due under the order, be of any force or validity after the child in respect of whom it was made has attained the age of fifteen years or eighteen years in cases where the child is pursuing a full-time course of secondary or further education, or in any case after the death of the child.

Moneys to be paid to mother or custodian

11. All moneys payable under any order as aforesaid shall be due 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; but the Magistrate may, whenever he thinks fit, order that such payment, or any payment under section 4 of this Act, shall be made through an officer of the Court or any other person or officer specified in the order.

Appointment of custodian

12. (1) (a) Whenever under this Act an order has been made against the putative father for payments in respect of a child, the Magistrate may at the time of making the order, or the Magistrate exercising jurisdiction in any district to whom application is made may 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 the child provided that such person is willing.
- (b) When the mother dies, or becomes of unsound mind, or is in prison, the Magistrate exercising jurisdiction in any district to whom application is made shall from time to time appoint some person who is willing, to have custody of the child.
- (c) Any person who claims to be the father of a child may at any time before he is adjudged the putative father of the child make application to the Court for a paternity order and the custody of the child, and if the Magistrate is satisfied that the applicant is the father of the child and that the mother of the child is not a fit and proper person to have custody of the child, he shall appoint the applicant or some other fit and proper person to have custody of the child.

Application by whom made

(2) The appointment of a custodian under the provisions of subsection (1) may be on the application of the mother or of any social welfare officer, or of the putative father, or of the person claiming to be the father or of any person being entitled to have the lawful custody of the child, 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 arrears or becoming due under an order made under section 9 in the same manner as the mother of the child might have done; and *any social*

welfare officer has the same power so to do in any case where the mother or custodian by reason of insanity, absence from the State or for any other reason is unable to make the application; and any person who has been authorised by the mother to have custody of the child shall have the same power.

Magistrate may order delivery of child

(4) 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 thereof as aforesaid.

Custody of child may be granted to the putative father

(5) A Magistrate may also on the application of the putative father of a child under the age of fifteen years or of any social welfare officer make an order that the custody of the child be committed to the father.

Child taken out of custody may be returned

(6) 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 the 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.

Penalty

(7) Any person who contravenes any order made under subsection (6) is liable on summary conviction to a fine of one hundred and twenty dollars or to imprisonment for three months.

Enforcement of arrears as civil debts

13. Notwithstanding the provisions of section 9, payments in arrears under an order made under section 4 or section 9 shall be enforceable as a civil debt.

Neglect and desertion of child

14. Every woman neglecting to maintain her child, being able wholly or in part so to do, or deserting her child, is liable on summary conviction, to a fine of one hundred and twenty dollars or to imprisonment for one month.

Misapplying or illtreating a child

15. Every person having the custody of a child under any order as hereinbefore provided who misapplies moneys paid by any person for the support of the child, or who withholds proper nourishment from the child, or who in any manner illtreats the child is liable on summary conviction to a fine of one hundred and twenty dollars or to imprisonment for one month.

Service of summons, notice or order

16. Every summons, notice or order to be served on any person *under* this Act may be served either personally or by leaving the same at the last known place of abode of the person to be served; and the service shall *be*

effected not less than five clear days before the day on which the person is required to appear before the Magistrate.

Appeal against order Ch. 4:20

17. Any *order* under this Act may be appealed against either by the mother or custodian of the child or by the putative father or any social welfare officer in the same manner as any other order made by a Magistrate under and subject to the provisions of the Magistrate's Code of Procedure Act.

Procedure Ch. 4:20

18. Except *as* provided for or varied by this Act, all procedure including the computation of and other matters with respect to costs, shall be as near as may be according to the procedure under the Magistrate's Code of Procedure Act; but the Magistrate may award costs in respect of travel and subsistence to the applicant in any proceedings to enforce an order made under this Act.

Forms

19. Subject to the provisions of section 13, the forms to *be* used shall as nearly as possible be those used in the case of a person charged with an offence punishable summarily by a Magistrate by fine or imprisonment.

Proceedings against parent supposed to be about to leave State without making adequate provisions for child

20. Where it is made to appear to any Magistrate upon oath that there is reasonable ground for believing that a parent is about to leave the State without making adequate provision for the maintenance and care during his absence of any child of his living in the State, the Magistrate may issue a summons directed to the parent requiring him to appear before the Magistrate at the time therein mentioned and to show cause why an order should not be made against him preventing him from leaving the State; and the Magistrate may, if he thinks it expedient so to do, either in the first instance or subsequently to the issue of a summons, issue a warrant addressed to the Commissioner of Police and all police officers of the State to apprehend the parent and to cause him to be brought before him or any other Magistrate.

Power of Magistrate to prohibit parent leaving the State

21. Where on the appearance of the parent before a Magistrate it appears to the Magistrate that the parent is about to leave the State, and the Magistrate is not satisfied that the parent has made adequate provision for the maintenance and care of the child during his absence, the Magistrate may, if he thinks it expedient so to do, order that the parent shall not leave the State.

Contravention of Magistrate's order an offence

22. Any parent against whom an order has been made under section 21 who leaves or attempts to leave the State before the order has ceased to be operative or has been rescinded shall on summary conviction be liable to a fine of one hundred dollars or to imprisonment for six months.

Power of police officer to arrest without a warrant

23. Any police officer may arrest without warrant and bring before Power of police any Magistrate any

person who is subject to an order made under section 21 and -

- (a) who has left the State and is found within the territorial waters thereof; or
- (b) whom the police officer has reason to suspect to be attempting to leave the State.

Presumption of age of child

24. Where any proceedings are taken against a parent under this Act in respect of a child who appears to the Magistrate to be under fifteen years of age, the child shall be deemed to be under that age unless the contrary is proved.

What to be deemed adequate provision in case of a person adjudged to be the putative father of a child

25. A person who has been adjudged to be the putative father of a child shall be deemed to have made adequate provision for the maintenance and care of the child within the meaning of the Act if he has made sufficient provision for the payment during his absence from the State of all moneys which may become payable by him during such absence under the order by which he was adjudged to be the putative father of the child or any order varying the same.

Duration and rescission of order

26. (1) No order made under section 21 shall have any force or validity after the expiration of twelve months from the day upon which the same was made.

(2) A Magistrate may upon application by or on behalf of any parent against whom an order has been made under section 21 rescind the order.

Saving for orders made under previous Acts 29 of 1996 Cap. 162 (1961 Ed.)

27. This Act shall apply in relation to any order in force at the commencement of this Act and made under the Maintenance Ordinance or the Maintenance of Children Ordinance (repealed by this Act) as though that order had been made under the provisions of this Act.