



THE REPUBLIC OF KENYA

LAWS OF KENYA

**SUBORDINATE COURTS (SEPARATION
AND MAINTENANCE) ACT**

CHAPTER 153

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*Subordinate Courts
(separation and Maintenance)*

CHAPTER 153

SUBORDINATE COURTS (SEPARATION AND MAINTENANCE) ACT

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CHAPTER 153

SUBORDINATE COURTS (SEPARATION AND MAINTENANCE) ACT

[Date of commencement: 1st February, 1929.]

An Act to confer jurisdiction on certain magistrates in reference to married women

[Act No. 34 of 1928, Cap. 6 (1948), Act No. 32 of 1961, L.N. 2/1964, L.N. 67/1982, L.N. 29/1995.]

1. Short title

This Act may be cited as the Subordinate Courts (Separation and Maintenance) Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**court**” means a subordinate court of the first class;

“**habitual drunkard**” or “**habitual drug-taker**” means a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor or habitual taking or using, except upon medical advice, of any opiate, at times dangerous to himself or to others or incapable of managing himself or his affairs;

“**opiate**” means opium, coca leaf, crude cocaine, ecgonine, bhang, morphine, cocaine, heroin, Indian hemp or charas.

[L.N. 2/1964, L.N. 67/1982, L.N. 29/1995.]

3. Application for order

(1) Any woman may apply to the court for an order or orders under this Act on any of the following grounds, namely—

- (a) that her husband has been convicted of an offence against her under any of sections 234, 236, 237, 239, and 251 of the Penal Code (Cap. 63);
- (b) that her husband has deserted her;
- (c) that her husband has been guilty of persistent cruelty to her or her children or of wilful neglect to provide reasonable maintenance for her or her children whom he is legally liable to maintain;
- (d) that her husband has, while suffering from a venereal disease and knowing that he was so suffering, insisted upon having sexual intercourse with her;
- (e) that her husband has compelled her to submit herself to prostitution;
- (f) that her husband is an habitual drunkard or habitual drug-taker.

(2) When the husband has in the opinion of the court been guilty of such conduct as was likely to result and has resulted in his wife submitting herself to prostitution, he shall for the purposes of this Act be deemed to have compelled her so to submit herself.

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(3) An application under this Act shall be made to the court having jurisdiction within the area in which any such conviction has taken place or in which the cause of complaint has wholly or partially arisen.

(4) For the purposes of this Act, “**children whom he is legally liable to maintain**” includes, in addition to children of the marriage, any child of the wife born before such marriage (whether such child is legitimate or illegitimate) until such child attains the age of sixteen years or until the death of its mother, whichever event first occurs.

[Act No. 32 of 1961, Sch., L.N. 2/1964.]

4. Powers of court

The court to which any application under this Act is made may make an order or orders containing all or any of the following provisions, namely—

- (a) a provision that the applicant be no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty);
- (b) a provision that the legal custody of any children of the marriage between the applicant and her husband while under the age of sixteen years be committed to the applicant;
- (c) a provision that the husband shall pay to the applicant personally or for her use to any officer of the court or third person on her behalf such monthly sum as the court, having regard to the means both of the husband and wife, considers reasonable;
- (d) a provision for payment by the applicant or the husband or both of them of the costs of the court and such reasonable costs of either of the parties as the court may think fit.

5. Limitation of powers of court

No order shall be made under this Act on the application of a married woman if it is proved that such married woman has committed an act of adultery, provided the husband has not condoned or connived at, or by his wilful neglect or misconduct conduced to, the act of adultery.

[L.N. 2/1964.]

6. Court may vary or discharge order

(1) The court may, on the application of the married woman or of the husband and upon cause being shown upon fresh evidence to the satisfaction of the court, at any time alter, vary or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any payment ordered to be made.

(2) If any married woman upon whose application an order has been made under this Act voluntarily resumes cohabitation with her husband, the order shall cease to have effect on the resumption of such cohabitation, and if she commits an act of adultery such order shall on proof thereof be discharged:

Provided that the court may, if it thinks fit—

- (i) refuse to discharge the order, if in the opinion of the court such act of adultery as aforesaid was conduced to by the failure of the husband to make such payments as in the opinion of the court he was able to make; and

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- (ii) in the event of the order being discharged, make a new order that the legal custody of the children of the marriage shall continue to be committed to the wife, and that the husband shall pay to the wife or to any officer of the court or third person on her behalf such monthly sum as the court considers reasonable in the circumstances of the case for the maintenance of each such child until the child attains the age of sixteen years:

Provided that the total monthly sum ordered to be paid under this paragraph shall not exceed four hundred shillings; and in making such an order the court shall have regard primarily to the interests of the children.

[L.N. 2/1964.]

7. Procedure

In the case of the conviction of a husband, under any of the sections of the Penal Code (Cap. 63) referred to in paragraph (a) of subsection (1) of section 3 of this Act, of any offence against his wife, her application may by leave of the court be made by summons to be issued and made returnable immediately upon such conviction.

[Act No. 32 of 1961, Sch., L.N. 2/1964.]

8. Order not enforceable if parties reside together

Save in the case of an order made under section 12 of this Act upon the application, of the Attorney-General, no order made under this Act shall be enforceable and no liability shall accrue under any such order whilst the married woman with respect to whom such order was made resides with her husband, and any such order shall cease to have effect if for a period of three months after it is made the married woman continues to reside with her husband.

[L.N. 2/1964.]

9. Change of address

Any person for the time being under an obligation to make payments (including costs) under an order made under this Act shall give notice to such person (if any) as may be specified in the order of any change of address, and any person failing to give such notice without reasonable excuse shall be guilty of an offence and liable to a fine not exceeding one hundred shillings.

[L.N. 2/1964.]

10. Interim order for maintenance

(1) Where on the hearing of an application for an order of maintenance the application is adjourned for any period exceeding one week, the court may order that the husband do pay to the wife, or to an officer of the court or third person on her behalf, such weekly sum as the court considers reasonable in the circumstances of the case for the maintenance of the wife and any child or children in her custody until the final determination of the case:

Provided that the order directing such payment shall not remain in operation for more than three months from the date on which it was made.

(2) Any such order shall be enforced in like manner as if it were a final order of the court.

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11. Enforcement of orders

(1) Any sum ordered to be paid under this Act shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily.

(2) A person making default in complying with an order made by a court under this Act in relation to any matter other than the payment of money may be sentenced to imprisonment until he has remedied his default:

Provided that a person shall not for non-compliance with an order of a court, whether made by one or more orders, to do or abstain from doing any act or thing be liable under this subsection to imprisonment for a period or periods amounting in the aggregate to more than six months.

[Act No. 32 of 1961, Sch., L.N. 2/1964.]

12. Application by Attorney-General as to children

(1) In any case where a woman is dead, or has committed an act of adultery, or is absent from Kenya, the Attorney-General may make application to the court in respect of her children if he is satisfied that such woman would have had reasonable grounds for applying to the court for an order under this Act if she had been alive, or had not committed an act of adultery, or she had been present in Kenya, as the case may be.

(2) The Attorney-General on any such application may ask for an order giving directions as to the legal custody of the children of such woman, and as to the payment by the husband of such woman of reasonable maintenance in respect of any such children whom such husband is legally liable to maintain.

(3) On any such application by the Attorney-General, the court may make such order or orders giving such directions as it may in its discretion think fit; and any such order or orders shall be enforceable in like manner as any other order or orders made under this Act.

(4) The court may, in accordance with subsection (1) of section 6 of this Act at any time alter, vary or discharge any order made under this section; an application for such alteration, variation or discharge may be made by the Attorney-General, or by the woman in respect of whose children the order has been made, or by the husband of such woman if he has been ordered to make payments in respect of such children, but before the making of any such application by such woman or her husband notice thereof shall in every case be served on the Attorney-General.

[L.N. 2/1964.]

13. Saving

Nothing in this Act shall be deemed to affect the provisions of the Matrimonial Causes Act (Cap. 152).

[L.N. 2/1964.]

14. Residence

Save in the case of an application made under section 12 of this Act by the Attorney-General, a court shall entertain proceedings under this Act only in cases where one of the parties has at the time of the issue of the summons his or her usual place of residence in Kenya.

[L.N. 2/1964.]

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15. Application of Act

This Act shall apply only in cases where the husband and wife have been married within the definition of the term "marriage" contained in section 2 of the Matrimonial Causes Act (Cap. 152).

[L.N. 2/1964.]

16. Rules

The Chief Justice may make rules of court—

- (a) prescribing the forms to be used and the fees to be paid in proceedings under this Act;
- (b) prescribing the procedure to be followed on applications under this Act; and
- (c) generally for the carrying out of the provisions of this Act.

[L.N. 2/1964.]

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