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LEGITIMACY ACT

CHAPTER 145

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CHAPTER 145

LEGITIMACY ACT

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CHAPTER 145**LEGITIMACY ACT**

[Date of commencement: 10th June, 1930.]

An Act of Parliament relating to children born out of wedlock

[Act No. 23 of 1930, Act No. 26 of 1931, L.N. 462/1963, Act No. 9 of 1967.]

1. Short title

This Act may be cited as the Legitimacy Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**court**” means the High Court;

“**date of legitimation**” means the date of the marriage leading to the legitimation, or, where the marriage occurred before the commencement of this Act;

“**disposition**” means an assurance of any interest in property by any instrument whether *inter vivos* or by will;

“**entailed interest**” means an interest in tail or in tail male or in tail female or in tail special;

“**intestate**” includes a person who leaves a will but dies intestate as to some beneficial interest in his movable or immovable estate;

“**legitimated person**” means a person legitimated by this Act.

3. Legitimation by subsequent marriage of parents

(1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in Kenya, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens.

(2) The legitimation of a person under this Act does not enable him or his spouse, children or remoter issue to take any interest in movable or immovable property save as is hereafter in this Act expressly provided.

(3) The provisions of the Schedule to this Act shall have effect with respect to the re-registration of the births of legitimated persons.

[Act No. 26 of 1931, s. 2.]

4. Declarations of legitimacy

(1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in Kenya or elsewhere and whether a Kenya citizen or not, apply by petition to the court praying for a decree declaring that the petitioner is the legitimate child of his

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parents, and the court shall have jurisdiction to hear and determine the application and to make such decree declaratory of the legitimacy or illegitimacy of that person as to the court may seem just; and the decree shall be binding to all intents and purposes on the Government and on all persons whomsoever:

Provided that the decree of the court shall not in any case prejudice any person, unless that person has been cited or made a party to the proceedings, or is the heir-at-law or next of kin or other real or personal representative of, or derives title under or through, a person so cited or made a party; nor shall the sentence or decree of the court prejudice any person if it is subsequently proved to have been obtained by fraud or collusion.

(2) A petition under this section shall be accompanied by such affidavit verifying it, and of the absence of collusion as the court may by any general rule direct.

(3) In all proceedings under this section, the court may award and enforce payment of costs to any person cited whether or not that person opposes the declaration applied for, where the court deems it reasonable that these costs should be paid.

(4) A copy of every petition under this section, and of the affidavit accompanying it, shall, one month at least before the presentation or filing of the petition, be delivered to the Attorney-General, who shall be a respondent upon the hearing of the petition and upon every subsequent proceeding relating thereto.

(5) Where any application is made under this section, the court may direct that such persons (if any) besides the Attorney-General as it thinks fit shall, subject to the rules made under this section, be cited to see proceedings or otherwise summoned in such manner as the court shall direct, and may be permitted to become parties to the proceedings and to oppose the application.

(6) No proceedings under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

(7) The Rules Committee may make rules of court for carrying the provisions of this section into effect.

[Act No. 26 of 1931, s. 3, Act No. 9 of 1967, Sch.]

5. Rights of legitimated persons, etc., to take interest in property

(1) Subject to the provisions of this Act, a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest—

- (a) in the estate of an intestate dying after the date of legitimation; or
- (b) under any disposition coming into operation after the date of legitimation; or
- (c) by descent under an entailed interest created after the date of legitimation,

as if the legitimated person had been born legitimate.

(2) Where the right to any property, movable or immovable, depends on the relative seniority of the children of any person, and those children include one or more legitimated persons, the legitimated person or persons shall rank as if he or they had been born on the day when he or they became legitimated by virtue of

this Act, and if more than one such legitimated person became legitimated at the same time they shall rank as between themselves in order of seniority.

(3) Where property, movable or immovable, or any interest therein is limited in such a way that, if this Act had not been enacted, it would (subject or not to any preceding limitations or charges) have devolved (as nearly as the law permits) along with a dignity or title of honour, then nothing in this Act shall operate to sever the property or any interest therein from that dignity, but it shall devolve (without prejudice to the preceding limitations or charges) as if this Act had not been enacted; and this subsection applies, whether or not there is any express reference to the dignity or title of honour and notwithstanding that in some events the property, or some interest therein, may become severed therefrom.

(4) This section applies only if and so far as a contrary intention is not expressed in the disposition, and shall have effect subject to the terms of the disposition.

[Act No. 26 of 1931, s. 4.]

6. Succession on intestacy of legitimated persons and issue

Where a legitimated person or a child or remoter issue of a legitimated person dies intestate in respect of all or any of his movable or immovable property, the same persons shall be entitled to take the same interests therein as they would have been entitled to take if the legitimated person had been born legitimate.

7. Application to illegitimate person dying before marriage of parents

Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents leaving any spouse, children or remoter issue living at the date of that marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated persons, the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person shall apply as if that person had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

8. Personal rights and obligation of legitimated persons

A legitimated person shall have the same rights, and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate, and, subject to the provisions of this Act, the provisions of any Act relating to claims for damages, compensation, allowance, benefit or otherwise by or in respect of a legitimate child shall apply in the case of a legitimated person.

9. Provisions as to persons legitimated by extraneous law

(1) Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, and the father of the illegitimate person was or is, at the time of the marriage, domiciled in a country, other than Kenya, by the law of which the illegitimate person became legitimated by virtue of that subsequent marriage, that person, if living, shall in Kenya be recognized as having been so legitimated from the commencement of this Act or from the date of the marriage, whichever last happens,

notwithstanding that his father was not at the time of the birth of that person domiciled in a country in which legitimation by subsequent marriage was permitted by law.

(2) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remoter issue of a legitimated person shall apply in the case of a person recognized as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognized; and accordingly this Act shall have effect as if references therein to a legitimated person included a person so recognized as having been legitimated.

[Act No. 9 of 1967, Sch.]

10. Right of illegitimate child and mother of illegitimate child to succeed on intestacy of the other

(1) Where, after the commencement of this Act, the mother of an illegitimate child, that child not being a legitimated person, dies intestate as respects all or any of her movable or immovable property, and does not leave any legitimate issue surviving her, the illegitimate child, or if he is dead his issue, shall be entitled to take any interest therein to which he or his issue would have been entitled if he had been born legitimate.

(2) Where, after the commencement of this Act, an illegitimate child, not being a legitimated person, dies intestate in respect of all or any of his movable or immovable property, his mother if surviving shall be entitled to take any interest therein to which she would have been entitled if the child had been born legitimate and she had been the only surviving parent.

(3) This section does not apply to or affect the right of any person to take by purchase or descent any entailed interest in movable or immovable property.

11. Saving

(1) Nothing in this Act shall affect the succession to any dignity or title of honour, or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title.

(2) Nothing in this Act shall affect the operation or construction of any disposition coming into operation before the commencement of this Act, or affect any rights under the intestacy of a person dying before the commencement of this Act.

SCHEDULE

[Section 3(3).]

RE-REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS

1. The Registrar-General may, on production of such evidence as appears to him to be satisfactory, authorise at any time the re-registration of the birth of a legitimated person whose birth is already registered under the Births and Deaths

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Registration Act (Cap. 149) and the re-registration shall be affected in the prescribed manner and at the prescribed place:

Provided that the Registrar-General shall not authorise the re-registration of the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless—

- (i) the name of a person acknowledging himself to be the father of the legitimated person has been registered under the Births and Deaths Registration Act; or
- (ii) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a court of competent jurisdiction; or
- (iii) a declaration of the legitimacy of the legitimated person has been made under this Act.

2. The parents of a legitimated person, or, in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, the surviving parent, shall furnish to the Registrar-General information with a view to obtaining the re-registration of the birth of that person within three months after the date of the marriage.

3. Where the parents, or either of them, fail to furnish the necessary information within the time limited for the purpose, the Registrar-General may at any time after the expiration of that time require the parents of a person whom he believes to have been legitimated by virtue of this Act, or either of them, to give him such information concerning the matter as he may consider necessary, verified in such manner as he may direct, and for that purpose to attend personally either at his office or at any other place appointed by him within such time, not being less than seven days after the receipt of the notice, as may be specified in the notice.

4. The failure of the parents or either of them to furnish information as required by this Schedule in respect of any legitimated person shall not affect the legitimation of that person.

5. No fee for re-registration under this Schedule shall be charged if the necessary information for the purpose is furnished within the time above specified; but in any other case there shall be charged in respect of the re-registration such fees, not exceeding in the aggregate ten shillings, as may be prescribed.

6. The Minister may make regulations prescribing anything which under this Schedule may be prescribed.

7. This Schedule shall be construed as one with the Births and Deaths Registration Act (Cap. 149).
