

THE STATUS OF CHILDREN ACT

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THE STATUS OF CHILDREN ACT

Acts
36 of 1976,
6 of 1993
S. 8,
30 of 2005
S. 28.

[1st November, 1976.]

Preliminary

1. This Act may be cited as the Status of Children Act.

Short title.

2.—(1) In this Act—

Interpreta-
tion.

“child” includes a child born out of wedlock;

“marriage” includes a void marriage;

“Registrar-General” means the Registrar-General under the Registration (Births and Deaths) Act and includes any person for the time being discharging the duties of that office;

“trustee” includes guardians, committees of lunatics, as well as all persons who are trustees within the meaning of the Trustee Act.

(2) For the purposes of sections 11 to 15 inclusive—

“blood samples” means blood taken for the purpose of blood tests;

“blood tests” means blood tests carried out and includes any test made with the object of ascertaining the inheritable characteristics of blood;

“excluded” means excluded subject to the occurrence of mutation.

Status of Children

3.—(1) Subject to subsection (4) and to the provisions of sections 4 and 7, for all the purposes of the law of Jamaica the relationship between every person and his father and mother shall be determined irrespective of

All children
of equal
status.

whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly.

(2) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is hereby abolished.

(3) Subject to subsection (4), this section shall apply in respect of every person, whether born before or after the 1st day of November, 1976, and whether born in Jamaica or not, and whether or not his father or mother has ever been domiciled in Jamaica.

(4) Nothing in this section shall affect or limit in any way any rule of law relating to—

- (a) the domicile of any person;
- (b) the provisions of the Children (Adoption of) Act which determine the relationship to any other person of a person who has been adopted;
- (c) the construction of the word “heir” or of any expression which is used to create an entailed interest in real or personal property.

Transitional provisions re wills, and other instruments and intestacies.

4.—(1) All dispositions made before the 1st day of November, 1976, shall be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(2) Where any disposition to which subsection (1) applies creates a special power of appointment, nothing in this Act shall extend the class of person in whose favour the appointment may be made, or cause the exercise of the power to be construed so as to include any person who is not a member of that class.

(3) The estates of all persons who have died intestate as to the whole or any part thereof before the 1st day of November, 1976, shall be distributed in accordance with enactments and rules of law which would have applied to them if this Act had not been passed.

(4) In this section "disposition" means a disposition, including an oral disposition, of real or personal property whether *inter vivos* or by will or codicil; and notwithstanding any rule of law, a disposition made by will or codicil executed before the 1st day of November, 1976, shall, notwithstanding the provisions of section 29 of the Wills Act, not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

Status of Children

5.—(1) For the purposes of the administration or distribution of the estate of any deceased person or of any other property held upon trust, every personal representative or trustee shall, whenever it is material in the circumstances, make honest and reasonable inquiries as to the existence of any person who could claim an interest in the estate or other property by reason only of this Act, but shall not be obliged to pursue such inquiries further than he honestly and reasonably believes to be necessary.

Protection
of personal
representa-
tives and
trustees.

(2) No action shall lie against any personal representative or trustee, by any person who could claim an interest in the estate or other property aforesaid by reason only of this Act, to enforce any claim arising by reason of the fact that the personal representative or trustee has made any distribution of the estate or property or otherwise acted in the administration of the estate or property disregarding the claims of that person where, at the time of making the distribution or otherwise so acting, the trustee, having made

such inquiries as are required under subsection (1) had no notice of the relationship on which the claim is based.

(3) Nothing in this section shall prejudice the right of any person claiming an interest in the estate or property aforesaid, (which interest is alleged by the claimant to have existed at the time the trustee made the distribution or otherwise acted as aforesaid) to follow such estate or property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

Evidence re Parenthood

Presump-
tions re
parenthood
of child
born during
marriage.

6.—(1) Subject to subsections (2) and (3), a child born to a woman during her marriage, or within ten months after the marriage has been dissolved by death or otherwise, shall, in the absence of evidence to the contrary, be presumed to be the child of its mother and her husband, or former husband, as the case may be.

(2) Subsection (1) shall not apply if, during the whole of the time within which the child must have been conceived, the mother and her husband were living apart under an oral or written agreement for separation, or under a decree or order of separation, or *decree nisi* of divorce, made by a competent court or authority in Jamaica or elsewhere.

(3) Subsection (1) shall not apply where a child is born within ten months after the dissolution of the marriage of its mother by death or otherwise, and after she has married again, and in such case there shall be no presumption as between the husband of the mother and her former husband that either is the father of the child, and the question shall be determined on the balance of probabilities in each case.

7.—(1) The relationship of father and child, and any other relationship traced in any degree through that relationship shall, for any purpose related to succession to property or to the construction of any will or other testamentary disposition or of any instrument creating a trust, be recognized only if—

Recognition of paternity required in cases of succession, etc.

- (a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or
- (b) paternity has been admitted by or established during the lifetime of the father (whether by one or more of the types of evidence specified by section 8 or otherwise):

Provided that, if the purpose aforesaid is for the benefit of the father, there shall be the additional requirement that paternity has been so admitted or established during the lifetime of the child or prior to its birth.

(2) In any case where by reason of subsection (1) the relationship of father and child is not recognized for certain purposes at the time the child is born, the occurrence of any act, event, or conduct which enables that relationship, and any other relationship traced in any degree through it, to be recognized shall not affect any estate, right, or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event, or conduct occurred.

8.—(1) If, pursuant to section 19 of the Registration (Births and Deaths) Act or to the corresponding provisions of any former enactment, the name of the father of the child to whom the entry relates has been entered in the register of births (whether before or after the 1st day of November, 1976), a certified copy of the entry made or given in accordance with section 55 of that Act or sealed in accordance with section 57 of the said Act shall be *prima facie*

Evidence and proof of paternity.

evidence that the person named as the father is the father of the child.

(2) Any instrument signed by the mother of a child and by any person acknowledging that he is the father of the child shall, if executed as a deed or by each of those persons in the presence of an attorney-at-law or a Justice of the Peace or a Clerk of the Courts or a registered medical practitioner or a minister of religion or a marriage officer or a midwife or the headmaster of any public educational institution as defined in the Education Act be *prima facie* evidence that the person named as the father is the father of the child.

(3) [*Deleted by Act 30 of 2005, S. 28(2).*]

(4) Subject to subsection (1) of section 7, a declaration made under section 10 shall, for all purposes, be conclusive proof of the matters contained in it.

(5) An order made in any country outside Jamaica declaring a person to be the father or putative father of a child, being an order to which this subsection applies pursuant to subsection (6), shall be *prima facie* evidence that the person declared the father or putative father, as the case may be, is the father of the child.

(6) The Minister may from time to time, by order, declare that subsection (5) applies with respect to orders made by any court or public authority in any specified country outside Jamaica or by any specified court or public authority in any such country.

Instruments of
acknowledgement
may be
filed with
Registrar-
General.

9.—(1) Any instrument of the kind described in subsection (2) of section 8, or a duplicate or attested copy of any such instrument, may in the prescribed manner and on payment of the prescribed fee (if any) be filed in the office of the Registrar-General, but it shall not be necessary to file any such instrument.

(2) The Registrar-General shall cause indices of all instruments and duplicates and copies of instruments filed with him under subsection (1) to be made and kept in his office, and shall upon the request of any person and on receipt of the prescribed fee (if any), cause a search of any index to be made, and shall permit any such person to inspect any such instrument or any such duplicate or copy.

(3) Where the Supreme Court, Resident Magistrate's Court or the Family Court makes a declaration of paternity under section 10, the Registrar of the Court or the Clerk of the Court, as the case may be, shall forward a copy of the declaration to the Registrar-General for filing in his office under this section, and on receipt of any such copy the Registrar-General shall file it accordingly as if it were an instrument described in section 8(2).

30/2005
S. 28 (2)(b).

10.—(1) Any person who—

- (a) being a woman, alleges that any named person is the father of her child; or
- (b) alleges that the relationship of father and child exists between himself and any other person; or
- (c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons,

Power of
Court to
make declaration of
paternity.

may apply in such other manner as may be prescribed by rules of court for a declaration of paternity, and if it is proved to the satisfaction of the Court that the relationship exists the Court may make a declaration of paternity whether or not the father or the child or both of them are living or dead.

(2) Where a declaration of paternity under subsection (1) is made after the death of the father or of the child, the Court may at the same or any subsequent time make a declaration determining, for the purposes of paragraph (b) of subsection (1)

of section 7, whether any of the requirements of that paragraph have been satisfied.

30/2005
S. 28(2)(c)(ii). (3) An application under subsection (1)(a) may be made by a woman who is with child, before the birth of the child.

30/2005
S. 28(2)(c)(ii). (4) An application may be made under subsection (1) to—

- (a) the Resident Magistrate's Court for the parish in which any of the parties reside or, as the case may be, the Family Court; or
- (b) the Supreme Court.

Blood Tests

Power of court
to require use
of blood tests.

11.—(1) In any civil proceedings in which the paternity of any person (hereinafter referred to as “the subject”) falls to be determined by the court hearing the proceedings, the court may, on an application by any party to the proceedings, give a direction for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the father of the subject and for the taking, within a period to be specified in the direction, of blood samples from the subject, the mother of the subject and any party alleged to be the father of the subject or from any, or any two, of those persons.

(2) A court may at time revoke or vary a direction previously given by it under this section.

(3) The person responsible for carrying out blood tests taken for the purpose of giving effect to a direction under this section shall make to the court by which the direction was given a report in which he shall state—

- (a) the results of the tests;
- (b) whether the person to whom the report relates is or is not excluded by the results from being the father of the subject; and

- (c) if that person is not so excluded, the value, if any, of the results in determining whether that person is the subject's father,

and the report shall be received by the court as evidence in the proceedings of the matters stated therein.

(4) Where a report has been made to a court under subsection (3), any party to the proceedings may, with the leave of the court, or shall, if the court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall be deemed for the purposes of this section to form part of the report made to the court.

(5) Where a direction is given under this section in any proceedings, a party to the proceedings shall not be entitled to call as a witness the person responsible for carrying out the tests taken for the purpose of giving effect to the direction, or any person by whom anything necessary for the purpose of enabling those tests to be carried out was done, unless—

- (a) within fourteen days after receiving a copy of the report he serves notice on the other parties to the proceedings, or on such of them as the court may direct, of his intention to call that person; or
- (b) the court otherwise directs,

and where any such person is called as a witness the party who called him shall be entitled to cross-examine him.

(6) Where a direction is given under this section the party on whose application the direction is given shall pay the cost of taking and testing blood samples for the purpose of giving effect to the direction (including any expenses reasonably incurred by any person in taking any steps required of him for the purpose), and of making a report to the court under this section, but the amount paid shall be treated

as costs incurred by him in the proceedings.

(7) [*Deleted by Act 30/2005, S. 28(2)(a).*]

Consents, etc.,
required for
taking of
blood samples.

12.—(1) Subject to the provisions of subsections (3) and (4) and without prejudice to section 13, a blood sample which is required to be taken from any person for the purpose of giving effect to a direction under section 11 shall not be taken from that person except with his consent.

(2) The consent of a minor who has attained the age of sixteen years to the taking from himself of a blood sample shall be as effective as it would be if he were of full age; and where a minor has by virtue of this subsection given an effective consent to the taking of a blood sample it shall not be necessary to obtain any consent for it from any other person.

(3) A blood sample may be taken from a person under the age of sixteen years, not being such a person as is referred to in subsection (4), if the person who has the care and control of him consents.

(4) A blood sample may be taken from a person who is suffering from mental disorder and is incapable of understanding the nature and purposes of blood tests if the person who has the care and control of him consents and the medical practitioner in whose care he is has certified that the taking of a blood sample from him will not be prejudicial to his proper care and treatment.

Failure to
comply with
directions for
blood tests.

13.—(1) Where a court gives a direction under section 11 and any person fails to take any step required of him for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

(2) Where in any proceedings in which the paternity of any person falls to be determined by the court hearing

the proceedings there is a presumption of law that that person is born in wedlock, then if—

- (a) a direction is given under section 11 in those proceedings; and
- (b) any party who is claiming any relief in the proceedings and who for the purpose of obtaining that relief is entitled to rely on the presumption fails to take any step required of him for the purpose of giving effect to the direction,

the court may adjourn the hearing for such period as it thinks fit to enable that party to take that step, and if at the end of that period he has failed without reasonable cause to take it the court may, without prejudice to subsection (1), dismiss his claim for relief notwithstanding the absence of evidence to rebut the presumption.

(3) Where any person named in a direction under section 11 fails to consent to the taking of a blood sample from himself or from any person named in the direction of whom he has the care and control, he shall be deemed for the purposes of this section to have failed to take a step required of him for the purposes of giving effect to the direction.

14.—If for the purpose of providing a blood sample for a test required to give effect to a direction under section 11 any person personates another, or proffers a child knowing that it is not the child named in the direction, he shall be liable on summary conviction in a Resident Magistrate's Court to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred dollars.

Penalty for personating another re blood tests.

15.—The Minister may by regulations make provision as to the manner of giving effect to directions under section 11 and, in particular, any such regulations may—

Regulations re blood tests.

- (a) provide that blood samples shall not be taken except by such medical practitioners as may be designated by the Minister;
- (b) regulate the taking, identification and transport of blood samples;
- (c) require the production at the time when a blood sample is to be taken of such evidence of the identity of the person from whom it is to be taken as may be prescribed by the regulations;
- (d) require any person from whom a blood sample is to be taken, or, in such cases as may be prescribed by the regulations, such other person as may be so prescribed, to state in writing whether he or the person from whom the sample is to be taken, as the case may be, has during such period as may be specified in the regulations suffered from any such illness as may be so specified or received a transfusion of blood;
- (e) provide that blood tests shall not be carried out except by such persons, and at such places, as may be appointed by the Minister;
- (f) prescribe the blood tests to be carried out and the manner in which they are to be carried out;
- (g) regulate the charges that may be made for the taking and testing of blood samples and for the making of a report to a court under section 11;
- (h) make provision for securing that so far as practicable the blood samples to be tested for the purpose of giving effect to a direction under section 11 are tested by the same person;
- (i) prescribe the form of the report to be made to a court under section 11.

General

16.—(1) The Minister may from time to time, make regulations for all or any of the following purposes—

Regulations,
general.

- (a) prescribing fees and forms for the purposes of this Act;
- (b) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) Where the Registrar-General is empowered to do any act for which a fee is payable, he may refuse to do the act until the fee is paid.

(3) Notwithstanding the provisions of any regulations under this Act, the Registrar-General may dispense with the payment of any fee payable under this Act.