

DIVORCE AND JUDICIAL SEPARATION ACT

Act 20 of 1981 – 1 January 1982

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DIVORCE AND JUDICIAL SEPARATION ACT

1. Short title

This Act may be cited as the Divorce and Judicial Separation Act.

2. Interpretation

In this Act—

“child” means a child of the parties to a marriage;

“Court” means the Supreme Court;

“decree” means a decree of divorce or judicial separation;

“party” means party to a marriage;

“property” means movable or immovable property or part of property and includes money.

3. Institution of proceedings

No person shall institute any proceedings under this Act unless—

- he is a citizen of Mauritius;
- he was a citizen of Mauritius at the time of his marriage;
- he is married to a citizen of Mauritius;

- (d) he was married in Mauritius; or
- (e) he is a resident of Mauritius and has resided in Mauritius for a continuous period of at least one year.

4. Proceedings to be by petition or motion

(1) Any proceedings for the grant of a decree shall be entered by way of petition to the Judge in Chambers.

(2) Any application incidental to or consequential upon a petition for a decree shall be made by way of motion.

5. Contents of petition

(1) Subject to subsection (2), a petition for divorce or judicial separation under article 230, 231, 235, 238-1 or 238-3 of the Code Civil Mauricien shall set out all the facts on which the petitioner relies to satisfy the Court that he is entitled to a decree and no facts other than those set out in the petition shall be admitted in evidence.

(2) Where new facts arise or come to the knowledge of the petitioner after the presentation of the petition, the petitioner may, with the leave of the Court, adduce in evidence the new facts and thereupon the new facts shall be deemed to form part of the petition.

(3) There shall be annexed to every petition—

- (a)
 - (i) a copy of the marriage certificate of the parties; or
 - (ii) where the marriage certificate is not available, an affidavit containing—
 - (A) the names of the parties;
 - (B) the date on which and the place where the marriage was celebrated;
 - (C) the matrimonial regime under which the parties are married;
- (b) a list of the witnesses which the petitioner intends to call;
- (ba) in the case of a petition under article 238-1 of the Code Civil Mauricien, a statement that the parties accept that the marriage has broken down;
- (c) where any agreement under article 238-3 of the Code Civil Mauricien or section 14 has been reached between the parties, a copy of the agreement;
- (d) where the petitioner is willing to make arrangements for the welfare of the children, a copy of the proposed arrangements.

[S. 5 amended by s. 3 (a) of Act 2 of 2011 w.e.f. 15 May 2011.]

6. Service and presentation of petition

(1) A petition shall be lodged with the Registrar who shall fix the date on which the petition may be presented to a Judge in Chambers.

(2) Except where a petition is lodged by the spouses jointly, the petitioner shall, subject to subsection (3), cause a copy of the petition to be served on the respondent in person and shall give at least 15 days' notice to the respondent of the date fixed for the presentation of the petition under subsection (1).

(3) Where the respondent is in Mauritius and personal service cannot be effected, and the Judge in Chambers is satisfied that the respondent is avoiding service of process, he may order that service be effected at the respondent's last known place of residence.

(4) The petition shall be presented to a Judge in Chambers by the petitioner or petitioners, as the case may be, in person on the date fixed for the presentation of the petition under subsection (1).

(5) The judge shall, in the case of a petition under article 238-1 or article 238-3 of the Code Civil Mauricien, go through the petition in the manner provided for in article 238-2 or article 238-4 of the Code Civil Mauricien, as the case may be.

[S. 6 amended by s. 3 (b) of Act 2 of 2011 w.e.f. 15 May 2011.]

7. Reconciliation

(1) On presentation of a petition, the Judge in Chambers shall inquire from the petitioner and from the respondent, if in attendance, and their counsel or attorney, whether an attempt has been made to effect a reconciliation of the parties.

(2) (a) Where the Judge in Chambers is satisfied that proper efforts have been made to effect a reconciliation and the parties are unlikely to be reconciled, he shall order a statement to be drawn up—

- (i) showing that the petition has been presented;
- (ii) recording all that took place on the presentation of the petition; and
- (iii) directing that the petition be set down for further proceedings in accordance with section 8.

(b) Where the Judge in Chambers is satisfied that no proper efforts have been made to effect a reconciliation or that the parties are likely to be reconciled, he shall give consideration to the possibility of reconciling the parties and, where appropriate, try to reconcile them or adjourn the proceedings for such period as he thinks fit not exceeding one month, with or without a direction that the parties seek help on the possibility of a reconciliation.

(c) Where the parties cannot be reconciled under paragraph (b), the Judge in Chambers shall make the order provided under paragraph (a) (iii).

[S. 7 amended by s. 3 (c) of Act 2 of 2011 w.e.f. 15 May 2011.]

8. Further proceedings

(1) The Judge shall, pursuant to section 7 (2) (a) (iii)—

- (a) in the case of a petition under article 238-1 or article 238-3 of the Code Civil Mauricien, fix the case for trial on a date determined by him;
- (b) in every other case—
 - (i) where the respondent has indicated that the petition will not be resisted, cause the case to be fixed for trial on a date determined by him;
 - (ii) where the respondent was not present on the day fixed for presentation of the petition or was present and indicated that the petition is resisted, cause the matter to be mentioned before the Court on a date determined by him.

(2) Where the respondent was not present on the day fixed for presentation of the petition, the petitioner shall give not less than 15 days' notice to the respondent of the date fixed under subsection (1) (b) (ii).

(3) On the day fixed under subsection (1) (b) (ii), the respondent may—

- (a) admit the contents of the petition;
- (b) file his reasons of objection;
- (c) file a cross petition,

and the Court shall fix the case for trial.

(4) (a) Where the Court has fixed a date for trial, either party shall, not later than 15 days before the date, give notice to the Court and to the other party of his list of witnesses.

(b) Any respondent who intends to resist a petition shall, not later than 15 days before the date of trial, give notice to the petitioner of his objections.

[S. 8 repealed and replaced by s. 3 (d) of Act 2 of 2011 w.e.f. 15 May 2011.]

9. Provisional decree

Subject to section 11—

- (a) in the case of a petition under article 238-1 or article 238-3 of the Code Civil Mauricien, where the Court is satisfied that the divorce should be pronounced, the Court shall grant a provisional decree;
- (b) in every other case, where the Court is satisfied that the petitioner has established his case or that both parties are to blame, the Court shall grant a provisional decree.

[S. 9 repealed and replaced by s. 3 (e) of Act 2 of 2011 w.e.f. 15 May 2011.]

10. Permanent decree

(1) Subject to subsection (2), a provisional decree shall become permanent 3 months after the provisional decree has been granted.

(2) Where a party wishes to object to a provisional decree becoming permanent, he shall, by way of motion, lodge and serve notice of his objection to the Court not later than 15 days before the expiry of the period specified in subsection (1).

[S. 10 repealed and replaced by s. 3 (f) of Act 2 of 2011 w.e.f. 15 May 2011.]

11. Restrictions on provisional decree

The Court shall not grant a provisional decree unless the Court is satisfied—

- (a) that there is no child in relation to whom financial arrangements ought to be made;
- (b) that financial arrangements have been made for every child in relation to whom such arrangements should be made and that the arrangements made are satisfactory or the best that can be devised in the circumstances; or
- (c) that it is impracticable for the party or parties appearing before the Court to make such arrangements.

[S. 11 reprinted by Reprint 1 of 1982; amended by s. 3 (g) of Act 2 of 2011 w.e.f. 15 May 2011.]

11A. Conversion into permanent decree

(1) Subject to section 10 (2), the Court shall, upon expiry of the 3 months specified in section 10 (1), order that the provisional decree be made permanent.

(2) Where the Court makes an order under subsection (1), the Registrar shall issue a rule to that effect and notify the Registrar of Civil Status accordingly.

(3) Any interested party may, on application to the Registrar, obtain a certified true copy of the rule issued under subsection (2), which shall be evidence of the matters specified therein.

[S. 11A inserted by s. 3 (h) of Act 2 of 2011 w.e.f. 15 May 2011.]

12. Judicial separation

(1) A petitioner who has been granted a decree of judicial separation may at any time apply to the Court for the conversion of the decree into a decree of divorce.

(2) The respondent to a decree of judicial separation may, not earlier than 2 years after the date of the decree, apply to the Court for the conversion of the decree into a decree of divorce.

(3) The Court shall, upon an application being made under subsection (1) or (2), grant the application unless good cause is shown against the grant of the application.

[S. 12 amended by s. 3 (i) of Act 2 of 2011 w.e.f. 15 May 2011.]

13. Periodical payments orders

(1) On granting a decree or at any time thereafter, the Court may make one or both of the following orders—

- (a) an order that either party shall make to the other party periodical payments;
- (b) an order that either party shall make to any person for the benefit of any child periodical payments,

for such term and on such conditions as the Court may specify.

(2) An order for periodical payments under subsection (1) (a) shall lapse on the remarriage of the party in whose favour the order was made.

(3) Subject to subsection (4), no order shall be made under subsection (1) (b)—

- (a) in favour of a child who has attained the age of 18;
- (b) so as to extend beyond the eighteenth birthday of a child.

(4) Notwithstanding any other enactment, the Court may make an order under subsection (1) (b) in favour of a child who has attained the age of 18 or make an order extending beyond a child's eighteenth birthday, if the Court is satisfied that—

- (a) the child is or will be receiving instruction at an educational establishment; or
- (b) there are special circumstances which justify the making of the order.

(5) Any party against whom an order to make any periodical payment has been made and who, without lawful excuse or justification, fails to comply with the order, shall, without prejudice to any other proceedings which may be instituted against him, commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding one year.

14. Maintenance agreements

(1) Subject to subsection (2), the parties may at any time make an agreement in writing that—

- (a) either party shall make to the other party periodical payments;
- (b) either party shall make to any person for the benefit of any child periodical payments,

for such term and on such conditions as they think fit.

(2) Any provision in an agreement made under subsection (1) which purports to restrict the right of any party to apply to the Court for the variation or discharge of the agreement shall be void.

15. Amendment of orders and agreements

The Court may, at any time, on application made by either party, amend or discharge an order made under section 13, an agreement made under section 14 or an agreement made under article 238-3 of the Code Civil Mauricien, if it appears necessary to do so, having regard to any material change in the circumstances relating to either of the parties or to any child.

[S. 15 amended by s. 3 (j) of Act 2 of 2011 w.e.f. 15 May 2011.]

16. Property transfer orders

(1) On granting a decree, the Court may order a party to transfer to the other party such property as may be specified in the order within such time and on such conditions as the Court thinks fit.

(2) Any party against whom an order under subsection (1) is made who, without reasonable excuse or justification, fails to comply with the order shall, without prejudice to any other proceedings which may be instituted against him, commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding one year.

17. Exercise of powers on orders

In the exercise of its powers under sections 13 and 16, the Court shall have regard to all the circumstances of the case, and in particular the following matters, where appropriate—

- (a) the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities of each party, as well as those of the children;
- (c) the responsibilities of either party to support any other person;
- (d) the age of the parties and that of any child;
- (e) any physical or mental disability of either of the parties and of any child;
- (f) the standard of living enjoyed by the family before the dissolution of the marriage;
- (g) the value to either of the parties of any present or future benefit which, by reason of the dissolution of the marriage, that party will lose;
- (h) the eligibility of either party for a pension, allowance or benefit under any enactment or under any superannuation fund or scheme;

- (i) the manner in which any child was or in which the parties expected him to be educated or brought up;
- (j) the financial position in which any child would have been if the marriage had not broken down and each of the parties had properly discharged his or her financial obligations and responsibilities towards him;
- (k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;
- (l) the need to protect the position of a woman who wishes to continue her role as a wife and mother.

18. Orders for custody of children

(1) On granting a decree, the Court shall make such order for the custody of any minor child as it thinks fit.

(2) An order made under subsection (1) may be made in favour of either party or of any other person, whether or not related to the child, who consents to the order being made in his favour.

(3) In making an order under subsection (1), the Court shall have regard to the interests of the child concerned as the first and paramount consideration.

(4) In determining the interests of the child under subsection (3), the Court shall inquire into all the circumstances of the case and shall for that purpose hear the child if the child is above the age of 10 and capable of discernment.

(5) The party to whom custody of a child has not been granted shall be granted a right of visit to the child on such conditions as the Court thinks fit.

[S. 18 amended by s. 7 of Act 15 of 1998 w.e.f. 22 August 1998.]

19. Provisional orders

On a petition for a decree, any party may apply to the Court for one or more of the following orders—

- (a) an order for maintenance pending the hearing of the petition requiring any party to make to the other such periodical payments for his maintenance for such term beginning not earlier than the date of the presentation of the petition and ending with the final determination of the petition, as the Court thinks reasonable;
- (b) an order for provisional custody of any minor child for such term beginning with the date of the making of the order and ending with the date of the final determination of the petition, as the Court thinks reasonable; or
- (c) an order for payment of litigation money, requiring any party to pay to the other such sum of money as is specified in the order to cover the reasonable costs incurred or likely to be incurred in connection with any proceedings under this Act.

20. Application of Act

(1) This Act shall not apply to a religious marriage governed by the Code Civil Mauricien, Livre Premier, Titre Cinquième, Chapitre Neuvième.

(2) Notwithstanding subsection (1), no Court shall have jurisdiction in any action for damages for adultery or enticement.

(3) This Act shall be in addition to and not in derogation from the Code Civil Mauricien.

20A. Suits entered outside the Island of Mauritius

Notwithstanding anything in this Act or any other enactment, in relation to any action for divorce or judicial separation entered outside the Island of Mauritius, the functions exercisable by a Judge or the Court pursuant to sections 6, 7, 8 and 19 or to articles 240 to 243 of the Code Civil Mauricien shall be performed—

- (a) in Rodrigues, by the Magistrate of Rodrigues;
- (b) in any other island, by the visiting Magistrate.

[S. 20A inserted by s. 3 of Act 11 of 1985 w.e.f. 27 March 1985.]

21. Regulations

(1) The Chief Justice may make such regulations as he thinks fit for the purposes of this Act.

(2) Without prejudice to the generality of the power conferred under subsection (1), the Chief Justice may—

- (a) in relation to any respondent who is absent from Mauritius, make regulations—
 - (i) for the service of process on the respondent;
 - (ii) for the appearance of the respondent by proxy;
- (b) in relation to any action for divorce or judicial separation entered outside the Island of Mauritius, make regulations for the procedure to be followed and the exemption from compliance with any formality prescribed by this Act or any other enactment.

(3) Where no regulations have been made for the purposes set out in subsection (2), the Courts (Civil Procedure) Act shall apply to absent respondents as they apply to absent defendants, subject to such adaptations or modifications as may be necessary.

[S. 21 amended by s. 4 of Act 11 of 1985 w.e.f. 27 March 1985; s. 3 (k) of Act 2 of 2011 w.e.f. 15 May 2011.]

22. – 24. —
