

Zambia

## Legitimacy Act, 1929

### Chapter 52

Legislation as at 31 December 1996

FRBR URI: /akn/zm/act/1929/40/eng@1996-12-31

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PDF created on 21 February 2024 at 14:51.

*Collection last checked for updates: 31 December 1996.*

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Legitimacy Act, 1929

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# Zambia

## Legitimacy Act, 1929

### Chapter 52

Commenced on 27 December 1929

*[This is the version of this document at 31 December 1996.]*

*[Repealed by [Children's Code Act, 2022 \(Act 12 of 2022\)](#) on 11 August 2022]*

**An Act to amend the law relating to children born out of wedlock; and to provide for matters incidental thereto.**

#### 1. Short title

This Act may be cited as the Legitimacy Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**appointed date**" means the 1st January, 1966;

"**date of legitimation**" means—

- (a) in the case of a legitimated person whose father or mother was married to a third person when he was born, the date of the marriage leading to legitimation, or where the marriage occurred before the appointed date, the appointed date; or
- (b) in any other case, the date of the marriage leading to the legitimation, or where the marriage occurred before the commencement of this Act, the commencement of this Act;

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

"**intestate**" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

"**legitimated person**" means a person legitimated by this Act;

"**Registrar-General**" means the Registrar-General of Births and Deaths appointed under the provisions of section three of the Births and Deaths Registration Act;

*[Cap. 51]*

"**will**" includes a codicil.

*[No. 74 of 1965]*

#### 3. Legitimation by subsequent marriage

- (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 the Republic, render that person, if living, legitimate—
  - (a) in the case of an illegitimate person whose father or mother was married to a third person when he was born, from the appointed date or from the date of the marriage whichever last happens; or

- (b) in any other case, 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 real or personal property save as is hereinafter in this Act expressly provided.
- (3) The provisions contained in the Schedule shall have effect with respect to the re-registration of the births of legitimated persons.

*[As amended by No. 74 of 1965]*

#### **4. Legitimacy of children of certain void marriages**

- (1) Subject to the provisions of this section, the child of a void marriage, whether born before or after the appointed date, shall be treated as the legitimate child of his parents if at the time of the act of intercourse resulting in the birth (or at the time of the celebration of the marriage if later) both or either of the parties reasonably believed that the marriage was valid.
- (2) This section shall apply, and only apply, where the father of the child was domiciled in the Republic at the time of the birth or, if he died before the birth, was so domiciled immediately before his death.
- (3) The provisions of this section shall not affect—
  - (a) any rights under the intestacy of a person who died before the appointed date;
  - (b) the operation or construction of any disposition coming into operation before the appointed date.
- (4) In this section, "void marriage" means a marriage, not being voidable only, in respect of which the High Court has or had jurisdiction to grant a decree of nullity, or would have or would have had such jurisdiction if the parties were domiciled in the Republic.

*[No. 74 of 1965]*

#### **5. Legitimacy of children of voidable marriages**

Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, at the date of the decree shall be deemed to be their legitimate child notwithstanding the annulment.

*[No. 74 of 1965]*

#### **6. Declaration of legitimation**

- (1) A person claiming that he or his parent or any remoter ancestor became or has become a legitimated person may, whether domiciled in the Republic or elsewhere, apply by petition to the High Court praying the Court for a decree declaring that the petitioner is the legitimated child of his parents; and the High Court shall have jurisdiction to hear and determine such application and to make such decree as to the Court may seem just; and such decree shall be binding to all intents and purposes on all persons whomsoever:

Provided that the decree of the said Court shall not in any case prejudice any person, unless such 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 such sentence or decree of the Court prejudice any person if subsequently proved to have been obtained by fraud or collusion.

- (2) Every petition under this section shall be accompanied by such affidavit verifying the same, and of the absence of collusion, as the Court may by any general rule direct.

- (3) In all proceedings under this section the Court shall have full power to award and enforce payment of costs to any persons cited, whether such persons shall or shall not oppose the declaration applied for, in case the said Court shall deem it reasonable that such costs should be paid.
- (4) A copy of every petition under this section, and of the affidavit accompanying the same, shall, one month at least previously to the presentation or filing of such petition, be delivered to the Attorney-General, who shall be a respondent upon the hearing of such petition and upon every subsequent proceeding relating thereto.
- (5) Where any application is made under this section to the said Court, such person or persons (if any) besides the said Attorney-General as the Court shall think 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 oppose the application.
- (6) No proceeding to be had under this section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

*[As amended by No. 22 of 1930 and S.I. No. 152 of 1965]*

## **7. Rights of legitimated persons, etc., to take interests 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;
  - (b) under any disposition coming into operation after the date of legitimation;
  - (c) by descent under an entailed interest created after the date of legitimation;in like manner as if the legitimated person had been born legitimate.
- (2) Where the right to any property, real or personal, 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 real or personal or any interest therein is limited in such a way that, if this Act had not come into operation, 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 such dignity, but the same shall go and devolve (without prejudice to the preceding limitations or charges aforesaid) in like manner as if this Act had not come into operation. 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 and to the provisions therein contained.

## **8. Succession on intestacy of legitimated persons and their 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 real or personal 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.

## **9. 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 such marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, 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 such person as aforesaid had been a legitimated person and the date of the marriage of his parents had been the date of legitimation.

*[As amended by Act No. 8 of 1996]*

## 10. Personal rights and obligations 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 like manner in the case of a legitimated person.

## 11. Duties

Where a legitimated person or any relative of a legitimated person takes any interest in real or personal property, any succession, legacy or other duty which becomes leviable after the date of legitimation shall be payable at the same rate as if the legitimated person had been born legitimate.

## 12. 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 the Republic, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in the Republic be recognised 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 such 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 recognised as having been legitimated under this section, or who would, had he survived the marriage of his parents, have been so recognised; and, accordingly, this Act shall have effect as if references therein to a legitimated person included a person so recognised as having been legitimated.
- (3) For the purposes of this section, "country" includes any part of the Commonwealth, as well as a foreign country.

*[As amended by S.I. No. 152 of 1965]*

## 13. 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, such child not being a legitimated person, dies intestate as respects all or any of her real or personal property, and does not leave any legitimate issue her surviving, the illegitimate child, or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such 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 real or personal 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 real or personal property.

#### 14. High Court may make orders as to custody of illegitimate children

- (1) The High Court may, upon the application of either parent of an illegitimate infant, make such order as it may think fit relating to the custody of such infant and the right of access thereto of either parent.
- (2) Where, upon the hearing of an application under this section, the custody of an illegitimate infant is in question, the Court, in deciding that question, shall regard the welfare of such infant as the first and paramount consideration and shall not take into consideration whether from any other point of view the claim of the father in respect of such custody is superior to that of the mother, or the claim of the mother is superior to that of the father.
- (3) The High Court may, upon the application of either parent, alter, vary or discharge any order made under this section and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just.

*[No. 74 of 1965]*

#### 15. Applications for affiliation orders

An application under section 3 of the Bastardy Laws Amendment Act, 1872, of the United Kingdom, may be made by a woman who was a single woman at the date of the birth of the child, whether or not she is a single woman at the time of the application.

*[No. 74 of 1965]*

#### 16. Savings

- (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.
- (3) Nothing in any written law by which this Act is amended shall (unless expressly provided to the contrary therein) affect—
  - (a) the operation or construction of any disposition coming into operation before the commencement of such written law; or
  - (b) any rights under the intestacy of a person dying before the commencement of such written law.

*[As amended by No. 74 of 1965]*

### Schedule (Section 3)

#### Re-registration of births of legitimated persons

1. The Registrar-General may, on production of such evidence as appears to him 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 Registration Act, and such re-registration shall be effected in such manner and at such place as the Registrar-General may by regulation prescribe:

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 the person acknowledging himself to be the father of the legitimated person has been entered in the register in pursuance of section 15 of 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 by the High Court under [section 6](#).

*[Cap. 52]*

2. It shall be the duty of the parents of legitimated person, or in the cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent, within the time hereinafter specified, to furnish to the Registrar-General information with a view to obtaining the re-registration of the birth of that person: that is to say—
  - (a) if the marriage took place before the commencement of this Act, within six months of such commencement;
  - (b) if the marriage takes place after the commencement of this Act, 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 such re-registration such fees, not exceeding in the aggregate 15 fee units, as may be prescribed by regulations under this Schedule.
6. This Schedule shall be construed as one with the Births and Deaths Registration Act.
7. If any parent—
  - (a) refuses or neglects to comply with or acts in contravention of any of the provisions of this Schedule or any regulations made thereunder: or
  - (b) being a person required under this Schedule or any regulations made thereunder to make, sign or deliver any document, makes, signs or delivers, or causes to be made, signed or delivered a false document; or
  - (c) refuses to answer, or wilfully gives a false answer to any question necessary for obtaining the information required to be obtained under this Schedule;

such parent shall be guilty of an offence against this Act and shall for each offence be liable to a penalty not exceeding 1500 penalty units.

*[As amended by No. 22 of 1930 and Act [No. 13 of 1994](#)]*