



Republic of Namibia
Annotated Statutes

Matrimonial Affairs Ordinance 25 of 1955

(OG 1927)

came into force on date of publication: 12 July 1955

as amended by

Married Persons Equality Act 1 of 1996 (GG 1316)

brought into force on 15 July 1996 by GN 154/1996 (GG 1340)

The Ordinance was amended by the Matrimonial Affairs Amendment Ordinance 9 of 1967 (OG 2777), which was to be brought into force on a date set by the Administrator by Proclamation in the *Official Gazette*. However, no such Proclamation has been located even though Act 1 of 1996 indicates that Ord. 25 of 1967 was previously amended by Ord. 9 of 1967. In any event, because the provisions amended by Ord. 9 of 1967 were all subsequently deleted or substituted by Act 1 of 1996, the current content of the Ordinance is the same regardless of whether or not Ord. 9 of 1967 was ever brought into force.

ORDINANCE

To amend the law relating to the property rights of Spouses, to the guardianship and custody of minors and to divorce.

[The word “Spouses” should not be capitalised.]

(Assented to 29th June, 1955)

(Afrikaans text signed by the Administrator)

ARRANGEMENT OF SECTIONS

[The sections in this Ordinance have no headings.]

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the Governor General, insofar as such consent is necessary, previously obtained and communicated to the Legislative Assembly by message from the Administrator in accordance with the provisions of section *twenty-six* of the South West Africa Constitution Act, 1925 (Act 42 of 1925), of the Parliament of the Union of South Africa as follows:-

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1.

[section 1 amended by Ord. 9 of 1967 (if it was ever brought into force) and deleted by Act 1 of 1996]

2.

[section 2 amended by Ord. 9 of 1967 (if it was ever brought into force) and deleted by Act 1 of 1996]

3.

[section 3 deleted by Act 1 of 1996]

4. (1) The High Court of Namibia or any judge thereof may -

[introductory phrase amended by Act 1 of 1996]

- (a) on the application of either parent of a minor in proceedings for divorce or judicial separation in which an order for divorce or judicial separation is granted; or
- (b) on the application of either parent of a minor whose parents are divorced or are living apart,

if it is proved that it would be in the interests of the minor to do so, grant to either parent the sole guardianship (which shall include the power to consent to a marriage) or sole custody of the minor, or order that on the predecease of the parent named in the order, a person other than the survivor shall be the guardian of the minor, to the exclusion of the survivor or otherwise.

(2) An order under sub-section (1) granting the sole guardianship or custody of a minor whose parents are living apart to a parent shall, if the parents become reconciled and live together again as husband and wife, lapse with effect from the date on which the parents commence to live together again.

(3) Subject to any order of court -

- (a) a parent to whom the sole guardianship or custody of a minor has been granted under subsection (1) or a father or mother upon whom a children's court has under 60 of the Children's Act, 1960 (Act 33 of 1960), conferred the exclusive right to exercise any parental powers in regard to a minor, may by testamentary disposition appoint any person to be the sole guardian or to be vested with the sole custody of the minor, as the case may be; and

[The Children's Act 33 of 1960 has been replaced by the Child Care and Protection Act 3 of 2015.]

- (b) the parent of a minor to whom the sole guardianship of the minor has not been granted under subsection (1) or upon whom a children's court has not conferred the exclusive right to exercise any parental powers in regard to the minor shall not be entitled by testamentary disposition to appoint any person as the guardian of the minor unless such parent was the sole natural guardian immediately before his or her death.

[subsection (3) substituted by Ord. 9 of 1967 (if it was ever brought into force) and substituted by Act 1 of 1996 (with amendment markings)]

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(4)

[subsection (4) deleted by Act 1 of 1996]

(5) The court or a judge may, where a parent has appointed a guardian or custodian as provided in paragraph (a) of subsection (3), upon application of the other parent or such guardian, made after the death of the testator or testatrix, make such order in regard to the guardianship or custody of the minor as the court or judge may deem in the interest of the minor.

**[Subsection (5) is substituted by Act 1 of 1996 (with amendment markings).
The word "testatrix" is misspelt in the *Government Gazette*, as reproduced above.]**

(6) If an order under section 60 of the Children's Act, 1960, is rescinded, or if an order under subsection (1) of this section granting the sole guardianship or custody of a minor to a parent lapses or is rescinded or is varied in such a manner that the parent is not longer the sole guardian or vested with the sole custody of the minor, any disposition made under subsection (3)(a) shall lapse.

[Subsection (6) is substituted by Ord. 9 of 1967 (if it was ever brought into force) and substituted by Act 1 of 1996 (with amendment markings). The phrase "not longer" should be "no longer", and the verb "shall lapses" should be "shall lapse".]

(7)

[subsection (7) deleted by Act 1 of 1996]

5. (1) The court granting a divorce may, notwithstanding the dissolution of the marriage -

- (a) make such order against the guilty spouse for the maintenance of the innocent spouse for any period until death or until the remarriage of the innocent spouse, whichever event may first occur, as the court may deem just; or
- (b) make any agreement between the spouses for the maintenance of one of them, an order of court,

and any court of competent jurisdiction may, on good cause shown (which may be a cause other than the financial means of either of the respective spouses) rescind, suspend or vary any such order.

(2) Any court of competent jurisdiction may at any time upon the application of either party to an agreement for the maintenance of one of them entered into prior to the date of commencement of this Ordinance between spouses who have been divorced, make such an agreement an order of court, and any court of competent jurisdiction may on good cause shown (which may be a cause other than the financial means of either of the respective spouses) rescind, suspend or vary any such order, or any order made prior to the date of commencement of this Ordinance by which an agreement between spouses who have been divorced, for the maintenance of one of them, was made an order of court.

6. This Ordinance shall be called the Matrimonial Affairs Ordinance, 1955.