



Republic of Namibia
Annotated Statutes

Matrimonial Causes Jurisdiction Act 22 of 1939 (SA)

(SA GG 2635)

came into force in South West Africa on 19 April 1943,
when sections 7bis and 7ter were inserted by Act 17 of 1943

APPLICABILITY TO SOUTH WEST AFRICA: Section 7bis of the Act, as inserted by Act 17 of 1943, defines "Republic" to include "the Mandated Territory of South-West Africa". Section 7ter, as inserted by Act 17 of 1943, originally stated "This Act shall apply to the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay, and for the purpose of such application the High Court of South-West Africa shall be deemed to be a provincial division of the Supreme Court of South Africa." As substituted by Act 70 of 1968 with retroactive effect from 18 October 1953, section 7ter states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968)."

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. The Act was repealed in South Africa by the Divorce Act 70 of 1979 (RSA GG 6505), effective 1 July 1979 (section 19 of Act 70 of 1979) – shortly before it was transferred to South West Africa in November 1979. The repealing Act arguably should have repealed the Act in respect of South West Africa by virtue of section 7ter of the Act (as amended), even though it was not made expressly applicable to South West Africa. However, the principal Act was specifically mentioned in the subsequent transfer proclamation. Therefore, it apparently remained in force in South West Africa – and it has been amended in independent Namibia and relied upon to found jurisdiction in a 2013 High Court case, *SS v YS* 2013 (1) NR 32 (HC).

Section 3(1)(c) of the transfer proclamation excluded the reference to the "Republic" in the Act from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that prior to Namibian independence "Republic" retained the meaning given to it in section 7bis of the Act (South Africa and South West Africa).

as amended by

Matrimonial Causes Jurisdiction Amendment Act 17 of 1943 (SA) (SA GG 3180)

came into operation on date of publication: 19 April 1943

Matrimonial Affairs Act 37 of 1953 (SA) (SA GG 5170)

came into force on date of publication: 28 October 1953

General Law Amendment Act 70 of 1968 (RSA) (RSA GG 2106)

came into force in relevant part on date of publication: 21 June 1968, with the substitution of section 7ter deemed to have come into effect as of 18 October 1953 (section 22(2) of Act 70 of 1958)

Married Persons Equality Act 1 of 1996 (GG 1316)

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

Matrimonial Causes Jurisdiction Act 22 of 1939 (SA)**ACT**

To amend the law relating to the jurisdiction of the several divisions of the Supreme Court of South Africa in matrimonial causes.

*(Signed by the Governor-General in Afrikaans)
(Assented to 8th May, 1939)*

ARRANGEMENT OF SECTIONS

1. Jurisdiction
[The word "Jurisdiction" is misspelt in the *Government Gazette*, as reproduced above.]
2. Preliminary orders
3. Setting aside of judicial separation decreed by another division of Supreme Court
4. Claims in reconvention
5. Orders as to property rights of spouses and custody, guardianship and maintenance of children
6. Law and practice applicable in actions or claims in reconvention for divorce or restitution of conjugal rights dealt with under this Act
- 6bis. Recognition of certain decrees and orders
7. Saving
- 7bis. Definition
- 7ter. Application to South-West Africa and Walvis Bay
8. Short title

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[Act 70 of 1968 amends the Act throughout to substitute "Republic" for "Union".]

Jurisdiction

[The word "Jurisdiction" is misspelt in the *Government Gazette*, as reproduced above.]

1. (1) A court shall have jurisdiction in a divorce action if the parties are or either of the parties is -

- (a) domiciled in the area of jurisdiction of the court on the date on which the action is instituted; or
- (b) ordinarily resident in the area of jurisdiction of the court on the said date and have or has been ordinarily resident in Namibia for a period of not less than one year immediately prior to that date.

(2) A court which has jurisdiction in terms of subsection (1) shall also have jurisdiction in respect of a claim in reconvention or a counter-application in the divorce action concerned.

(3) A court which has jurisdiction in terms of this section in a case where the parties are or either of the parties is not domiciled in Namibia shall determine any issue in accordance

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with the law which would have been applicable had the parties been domiciled in Namibia on the date on which the divorce action was instituted.

(4) The provisions of this Act shall not derogate from the jurisdiction which a court has in terms of any other law or the common law.

(5) For the purposes of this Act a divorce action shall be deemed to be instituted on the date on which the summons is issued or the notice of motion is filed or the notice is delivered in terms of the rules of court, as the case may be.

[section 1 amended by Act 37 of 1953 and by Act 70 of 1968,
and substituted by Act 1 of 1996]

Preliminary orders

2. Any provincial or local division of the Supreme Court of South Africa which in terms of section *one* has or would have jurisdiction to try an action for divorce or for restitution of conjugal rights or for judicial separation shall have jurisdiction to hear an application made by the wife for leave to sue her husband *in forma pauperis* or for an interdict pending the action or for an order compelling him to pay alimony *pendente lite* or to make a contribution towards the costs of the action.

Setting aside of judicial separation decreed by another division of Supreme Court

3. Any provincial or local division of the Supreme Court of South Africa which in terms of section *one* has or would have jurisdiction to try an action for divorce or for restitution of conjugal rights shall have jurisdiction to set aside any order of judicial separation made by any other division of that Court, in so far as it may be necessary to set aside that order before such an action may be instituted or a divorce may be granted or an order for restitution of conjugal rights may be made.

Claims in reconvention

4. Any provincial or local division of the Supreme Court of South Africa which in terms of section *one* has jurisdiction to try an action instituted by a wife shall have jurisdiction to try any claim in reconvention made by the husband for divorce or for restitution of conjugal rights or for judicial separation, and the provisions of sections *two*, *three* and *five* shall, *mutatis mutandis*, apply to any such claim in reconvention.

Orders as to property rights of spouses and custody, guardianship and maintenance of children

5. Any division of the Supreme Court of South Africa which tries any action or claim in reconvention for divorce or for restitution of conjugal rights or for judicial separation by virtue of the jurisdiction conferred upon it by section *one* or *four* shall have jurisdiction to make an order determining the mutual property rights of the husband and wife or concerning the custody, guardianship and maintenance of any minor child born of the marriage subsisting between them; and any such division which has tried any such action or claim in reconvention by virtue of the jurisdiction so conferred upon it shall have jurisdiction at any time thereafter to amend any order made by it concerning the custody, guardianship or maintenance of any such child.

[section 5 amended by Act 37 of 1953]

Matrimonial Causes Jurisdiction Act 22 of 1939 (SA)**Law and practice applicable in actions or claims in reconvention for divorce or restitution of conjugal rights dealt with under this Act**

6. Whenever any division of the Supreme Court of South Africa deals with any action or claim in reconvention for divorce or for restitution of conjugal rights by virtue of the jurisdiction conferred upon it by section *one* or *four* or determines the mutual property rights of the husband and wife by virtue of the jurisdiction conferred upon it by section *five*, it shall do so in accordance with the practice and the law in accordance with which the division within whose area of jurisdiction the defendant in convention or the plaintiff in reconvention is or was domiciled or is resident, as the case may be would have dealt with it.

[Section 6 is amended by Act 37 of 1953.
There should be a comma after the phrase "as the case may be".]

Recognition of certain decrees and orders

6bis. (1) The validity of any decree or order made in any country in any case in which the husband is not domiciled in that country, under the provisions of any law which are declared by the Governor-General by proclamation in the *Gazette* to be provisions substantially corresponding to the relevant provisions of paragraph (a) of sub-section (1) of section *one*, or of section *four* or *five*, read with the said paragraph, shall be recognized by the courts of the Republic.

(2) No proclamation shall be issued under subsection (1) unless the Governor-General is satisfied that adequate provision is made by the law of the country concerned for the recognition by the courts thereof of the decrees and orders made in any case in which the husband is not domiciled within the Republic, under the said paragraph, or under section *four* or *five*, read with the said paragraph.

(3) The Governor-General may at any time withdraw any such proclamation.

[Section *6bis* is inserted by Act 37 of 1953. The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(b) that as from 31 May 1961, any reference to the Governor-General in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic or the State President as the circumstances may require.]

Saving

7. Nothing in this Act contained shall deprive any division of the Supreme Court of South Africa of any jurisdiction which it would have had if this Act had not been passed, or curtail any such jurisdiction.

Definition

7bis. In this Act "Republic" includes the Mandated Territory of South-West Africa.

[section *7bis* inserted by Act 17 of 1943]

Application to South-West Africa

7ter. This Act and any amendment thereof shall apply also in the territory of South-West Africa including the Eastern Caprivi Zipfel referred to in section 38 (5) of the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968).

[Section *7ter* is inserted by Act 17 of 1943 and substituted by Act 70 of 1968, with the substitution deemed to have come into effect as of 18 October 1953 (section 22(2) of Act 70 of 1958).]

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Short title

- 8.** This Act shall be called the Matrimonial Causes Jurisdiction Act, 1939.