



**LEGAL ASSISTANCE CENTRE**  
*Fighting for human rights in Namibia since 1988*



# *Pro* **Bono**

**INFORMATION ABOUT NAMIBIA'S LAW ON ...**

## **CHILDREN'S RIGHT TO CLAIM MAINTENANCE FOR THEMSELVES**

*ProBono is a monthly column by the Legal Assistance Centre designed to inform the public about Namibian law on various topics. You can request information on a specific legal topic by sending an SMS to 081-600-0098. Note that we will not be able to give advice on specific cases in this column, only general legal information.*

According to the Maintenance Act 9 of 2003, a child's parents are jointly responsible for the child's maintenance. Parents have a duty to support all of their children, regardless of the order of birth and regardless of whether a child was born inside or outside marriage.

Maintenance is intended to provide for a child's basic living expenses such as housing, food, clothing, school expenses and medical costs.

In terms of the Maintenance Act, a parent, a primary caretaker (such as a grandparent) or any other person with an interest in the child's well-being can claim maintenance for the child. However, children can also claim maintenance for themselves, without assistance from an adult.

Children usually cannot bring court cases without the help of a parent or guardian, but there is an exception in the law on maintenance.

There is no minimum age requirement for making a claim for maintenance, and children can claim maintenance even if this goes against the will of their parents or primary caretakers. For example, suppose that a child is in the care of the mother. The mother might prefer to get by on less money rather than having to confront the child's father in maintenance court. But the child might see the situation differently. The child might also be staying with a relative and seeking to claim maintenance from both of the parents.

In order to apply for maintenance, the child must go to the nearest magistrate's court and talk to the clerk of the court. No appointment is necessary. In some large towns, such as in Windhoek, a magistrate's court is set aside only for maintenance cases.

The clerk of the court or the maintenance officer will help the child complete the complaint form. The child has to provide some basic information such as name and date of birth, relevant contact details and a statement saying that the person being asked to pay maintenance is the child's parent and is not currently providing support. The application will also ask for details about the child's living expenses and any contributions currently being made by either parent.

A maintenance officer at the magistrate's court cannot ignore a maintenance complaint. The maintenance officer must investigate every complaint, including a complaint from a child.

Maintenance officers have very wide power of investigation. For example, they can order people to come to the maintenance court and give information. They can contact employers or banks to get detailed information about the income or assets of the parent who is not providing support.

The maintenance officer will often try to reach an informal agreement with the parties before the case goes to court. In many cases, a parent will agree to make monthly payments after discussing the case in the presence of the maintenance officer. However, mediation is not mandatory – and it is not advisable in circumstances where there is a history of violence between the parents, or between parent and child.

If the question of maintenance is not resolved by mediation, the maintenance court will set a date for an enquiry. At the enquiry, the magistrate will listen to all of the parties and consider the evidence. It is not necessary for any of the parties to engage a lawyer, since the maintenance officer is there to help the parties put all the relevant information before the court.

Because the maintenance officer is there to help, it is realistic for a child to put forward a case without the help of a parent or relative.

The proceedings in a maintenance court are private – only people involved in the case are allowed to be present.

A maintenance order will be given only if the parent in question is financially able to contribute towards the costs of the child's maintenance.

If a maintenance order is made, it will state the amount to be paid by the parent, the date when the parent must start paying, the time periods for the payments and where and how the money must be paid. Monthly payments can be paid to the court to be collected by the child or the person taking care of the child, or paid into directly into a bank account.

If the payments are not made as ordered, the court can take action as soon as one payment is ten days overdue.

Maintenance for a child is usually paid until the child reaches the age of 18. But if the child is still studying, the court may order that the payment should continue until the child turns 21.

Parents should fulfil their parental duties without court orders. But, where they do not, children can take action to help themselves.