

and shall be subject to the provisions of the Magistrates Court Rules.

(ii) Where a party fails to abide by the order for maintenance, a garnishee order may be granted against the future earnings in respect of maintenance not yet due (monthly maintenance fee) or maintenance arrears or both.

(iii) Failure to pay maintenance may result in the Clerk of court issuing a notice to show cause under Section 3 of the Maintenance Orders Enforcement Act Cap 29:04 such that any outstanding arrears may be paid within fourteen (14) days. If at the lapse of 14 days the maintenance arrears remain unpaid then the Clerk of court will issue a certificate in terms of Section 4 of the Maintenance Orders Enforcement Act Cap 29:04 and the complainant will submit it to the nearest Police Station.

(iv) Once the certificate has been submitted to the Police, the Police will conduct investigations regarding the alleged failure to comply with court orders and register a criminal case against the defaulter accordingly.

(v) Failure to comply with court orders attracts imprisonment of up to a year and further the defaulter will be ordered to pay outstanding arrears.

WHERE CAN ONE LODGE AN APPLICATION FOR MAINTENANCE?

Any of the Magistrates Courts of the Republic of Botswana.



Administration of Justice

For further details contact

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TOLL FREE NUMBERS

0800 600 922

0800 600 947

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**MAINTENANCE
COURT**

WHAT IS A MAINTENANCE COURT?

It is a court that provides for the determination of paternity of children born out of wedlock and provides for the making of orders for the maintenance of such children. These orders are granted in terms of Affiliation Proceedings Act Chapter 28:02 of the Laws of Botswana.

Specialised maintenance courts are mainly situated at Gaborone and Francistown. However, where specialised courts are not present any Magistrate in any of the magistrate courts across Botswana may hear an application for maintenance.

WHAT MAKES THE COURT EASY TO USE?

If the complainant is unable to prepare his or her own documents, the Clerk of Court will assist to draft the documents for free. A complaint form already exists in which the complainant is expected to fill in the necessary details.

Registration for initiating the case is free.

Proceedings are conducted in English but interpreters are provided for those who do not understand English.

Lawyers are allowed to appear before court on behalf of the parties if the parties so choose, at their own expense or through the Legal Aid.

The decision of the maintenance court is appealable to the High Court within 30 days.

The parties to a maintenance dispute are allowed to apply for variation of a court order if there has been a change in circumstances justifying or necessitating such a variation.

WHO CAN TAKE A CASE TO THE MAINTENANCE COURT?

Section 3 of the Affiliation Proceedings Act lists those who may bring an application for maintenance, these include the following;

- (i) A woman with child (pregnant woman)
- (ii) A parent of a child
- (iii) A person having the care or custody of a child

Where a complaint has been registered with court the following people may be summoned to court

- (i) the man alleged to be the father of the child.
- (ii) the mother of the child or father of the child.
- (iii) both parents of the child.

WHAT INFORMATION SHOULD ONE TAKE TO THE CLERK OF COURT?

Certified copy of the national identity card

Birth certificate of the child/ children

Respondent's full names, home/work addresses including telephone numbers

Bank Account details of the complainant i.e: account name, account number and the branch number

HOW TO START A CASE

Fill the complaint form

Clerk of court issues a summons against the respondent

Summons to be served on the respondent

Service is done by the Court Bailiff on behalf of the complainant however the complainant may choose to instruct another person to serve the summons on his or her behalf.

On the date of the hearing, the court will then consider an application for maintenance on the basis of the evidence which would be presented before it.

Both parties are allowed to call witnesses if they choose to do so.

POWERS OF THE MAINTENANCE COURT ON HEARING OF COMPLAINTS

Where the court is satisfied with the evidence provided, it may where the defendant is the alleged father of the child make:

- (a) a paternity order or
- (b) maintenance order

Paternity order – A paternity order may be granted;

- (i) Where the alleged father admits paternity
- (ii) Where paternity is in dispute the parties may be ordered to do a DNA or paternity test
- (iii) The court may determine paternity using the common law principle of presumption of paternity. The court may make a determination whether/not one is the father to the child based on the grounds surrounding conception and relationship of the concerned parties.

Maintenance order

The court considers the financial circumstances of both parties and the ability to take care of the child as well as the needs of the child. Where a parent alleges that he/she is without means, the court will order a Social Welfare Officer to conduct an assessment into the socio and economic standing of such a parent and determine how he/she can contribute towards the child's maintenance and educational needs.

Effects of the order;

- (i) An order granted in terms of the Affiliation Proceedings Act shall have the same effect as a civil judgment of the court