

REPUBLIC OF ZAMBIA

**THE LEGITIMACY ACT**

**CHAPTER 52 OF THE LAWS OF ZAMBIA**

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THE LEGITIMACY ACT

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SCHEDULE-Registration of births of legitimated persons

CHAPTER 52

LEGITIMACY

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

40 of 1929  
22 of 1930  
74 of 1965  
13 of 1994  
8 of 1996  
Government Notice  
497 of 1964  
*Statutory Instrument*  
152 of 1965

[27th December, 1929]

1. This Act may be cited as the Legitimacy Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation

"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;

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"will" includes a codicil.

(No. 74 of 1965)

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3. (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-

Legitimation by  
subsequent marriage

- (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. (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.

Legitimacy of children  
of certain void  
marriages

(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. 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.

Legitimacy of children  
of voidable marriages

(No. 74 of 1965)

6. (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:

Declaration of  
legitimation

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. (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-

Rights of legitimated persons, etc., to take interests in property

(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. 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.

Succession on intestacy of legitimated persons and their issue

9. 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.

Application to illegitimate person dying before marriage of parents

*(As amended by Act No. 8 of 1996)*