

No. XXXIV. Subordinate Courts (Separation and Maintenance) 1928

No. 34 OF 1928.

Date of assent.

[31ST DECEMBER, 1928.]

An Ordinance to confer Jurisdiction on certain Magistrates in reference to married women.Date of
commencement.*By Proclamation.*

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

Short title.

1. This Ordinance may be cited as “ the Subordinate Courts (Separation and Maintenance) Ordinance, 1928.”

Interpretation.

2. In this Ordinance, unless the context otherwise requires :—

“ Court ” means a subordinate court of the first class ;

Cap. 121.

No. 10 of 1926.

“ Habitual drunkard ” or “ habitual drug-taker ” means a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor or habitual taking or using, except upon medical advice, of any opiate within the meaning of the Abuse of Opiates Prevention Ordinance as amended by the Abuse of Opiates Prevention (Amendment) Ordinance, 1926, at times dangerous to himself or to others or incapable of managing himself or his affairs.

Application
for order.

3. (1) Any woman may apply to the Court for an order or orders under this Ordinance on any of the following grounds, namely :—

(a) that her husband has been convicted of any offence against her under sections 323 to 326 (both inclusive) of the Indian Penal Code or under the corresponding provisions of any enactment substituted therefor ;

(b) that her husband has deserted her ;

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- (c) that her husband has been guilty of persistent cruelty to her or her children or of wilful neglect to provide reasonable maintenance for her or her children whom he is legally liable to maintain ;
- (d) that he has, while suffering from a venereal disease and knowing that he was so suffering, insisted upon having sexual intercourse with her ;
- (e) that her husband has compelled her to submit herself to prostitution ;
- (f) that her husband is a habitual drunkard or habitual drug-taker.

(2) When the husband has in the opinion of the Court been guilty of such conduct as was likely to result and has resulted in his wife submitting herself to prostitution, he shall for the purposes of this Ordinance be deemed to have compelled her so to submit herself.

(3) An application under this Ordinance shall be made to the Court having jurisdiction within the area in which any such conviction has taken place or in which the cause of complaint shall have wholly or partially arisen.

(4) For the purposes of this Ordinance, the expression " children whom he is legally liable to maintain " shall include, in addition to children of the marriage, any child of the wife born before such marriage (whether such child be legitimate or illegitimate) until such child attains the age of sixteen years or until the death of its mother, whichever event shall first occur.

4. The Court to which any application under this Ordinance is made may make an order or orders containing all or any of the following provisions, namely :—

Power of Court.

- (a) a provision that the applicant be no longer bound to cohabit with her husband (which provision while in force shall have the effect in all respects of a decree of judicial separation on the ground of cruelty) ;
- (b) a provision that the legal custody of any children of the marriage between the applicant and her husband while under the age of sixteen years be committed to the applicant ;

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- (c) a provision that the husband shall pay to the applicant personally or for her use to any officer of the Court or third person on her behalf such monthly sum as the Court shall, having regard to the means both of the husband and wife, consider reasonable ;
- (d) a provision for payment by the applicant or the husband or both of them of the costs of the Court and such reasonable costs of either of the parties as the Court may think fit.

Limitation of
powers of
Court.

5. No orders shall be made under this Ordinance on the application of a married woman if it shall be proved that such married woman has committed an act of adultery : Provided that the husband has not condoned or connived at or by his wilful neglect or misconduct conduced to such act of adultery.

Court may vary
or discharge
order.

6. (1) The Court may, on the application of the married woman or of the husband and upon cause being shown upon fresh evidence to the satisfaction of the Court, at any time alter, vary or discharge any such order and may upon any such application from time to time increase or diminish the amount of any payment ordered to be made.

(2) If any married woman upon whose application an order shall have been made under this Ordinance shall voluntarily resume cohabitation with her husband the order shall cease to have effect on the resumption of such cohabitation and if she commit an act of adultery such order shall on proof thereof be discharged : Provided that the Court may, if the Court thinks fit—

- (a) refuse to discharge the order if in the opinion of the Court such act of adultery as aforesaid was conduced to by the failure of the husband to make such payments as in the opinion of the Court he was able to make ; and
- (b) in the event of the order being discharged, make a new order that the legal custody of the children of the marriage shall continue to be committed to the wife and that the husband shall pay to the wife or to any officer of the Court or third person on her behalf such monthly sum as the Court shall consider reasonable in the circumstances of the case for the

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maintenance of each such child until the child attains the age of sixteen years : Provided that the total monthly sum ordered to be paid under this paragraph shall not exceed twenty pounds. In making such an order the Court shall have regard primarily to the interests of the children.

7. In the case of the conviction of a husband under sections 323 to 326 (both inclusive) of the Indian Penal Code or under the corresponding provisions of any enactment substituted therefor, of any offence against his wife, her application may by leave of the Court be made by summons to be issued and made returnable immediately upon such conviction. **Procedure.**

8. No order made under this Ordinance shall be enforceable and no liability shall accrue under any such order whilst the married woman with respect to whom such order was made resides with her husband, and any such order shall cease to have effect if for a period of three months after it is made the married woman continues to reside with her husband. **Order not enforceable if parties reside together.**

9. Any person for the time being under an obligation to make payments (including costs) under an order made under this Ordinance shall give notice to such person (if any) as may be specified in the order of any change of address, and any person failing to give such notice without reasonable excuse shall be liable to a fine not exceeding five pounds. **Change of address.**

10. Where on the hearing of an application for an order of maintenance the application is adjourned for any period exceeding one week, the Court may order that the husband do pay to the wife or to an officer of the Court or third person on her behalf such weekly sum as the Court shall consider reasonable in the circumstances of the case for the maintenance of the wife and any child or children in her custody until the final determination of the case : Provided that the order directing such payment shall not remain in operation for more than three months from the date on which it was made. Any such order shall be enforced in like manner as if it were a final order of the Court. **Interim order for maintenance.**

11. (1) Any sum ordered to be paid under the provisions of this Ordinance shall be a civil debt recoverable summarily under the Civil Debts (Summary Recovery) Ordinance. **Enforcement of orders.**
Cap. 6.

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(2) A person making default in complying with an order made by a Court under this Ordinance in relation to any matter other than the payment of money may be sentenced to simple imprisonment until he has remedied his default: Provided always that a person shall not for non-compliance with an order of a Court, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this subsection to imprisonment for a period or periods amounting in the aggregate to more than six months.

Custody
and main-
tenance of
children.

12. When a woman, who might have applied for an order or orders under this Ordinance, is dead or has committed an act of adultery, and the Attorney General is satisfied that she would, if alive or if she had not committed an act of adultery, have had reasonable grounds for applying for an order or orders under this Ordinance, he may apply to the Court for an order or orders giving directions as to the legal custody of and the reasonable maintenance by the husband of such woman of her children whom he is legally liable to maintain, and the Court may, on such application, make such order or orders giving such directions as to the matters mentioned above as it may, in its discretion, think fit.

Any such order or orders shall, when made, be enforceable in the same way as any other order or orders is enforceable under this Ordinance.

Saving clause.

Cap. 170.

No. 7 of 1926.

13. Nothing in this Ordinance shall be deemed to affect the provisions of the Divorce Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926.

Residence.

14. A Court shall entertain proceedings under this Ordinance only in cases where one of the parties has at the time of the issue of the summons his or her usual place of residence in the Colony.

Application of
Ordinance.

Cap. 170.

No. 7 of 1926.

15. This Ordinance shall apply only in cases where the husband and wife have been married within the definition of the word "marriage" contained in section 3 of the Divorce Ordinance as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926.

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16. The Chief Justice may make Rules of Court—

**Power to make
Rules.**

- (a) prescribing the forms to be used and the fees to be paid in proceedings under this Ordinance ;
- (b) prescribing the procedure to be followed on applications under this Ordinance ; and
- (c) generally for the carrying out of the provisions of this Ordinance.

17. This Ordinance shall come into force on such date as the Governor shall by proclamation in the Gazette appoint.

**Commencement
of Ordinance.**
