

Namibia

## Children's Status Act, 2006

Legislation as at 2006-12-29.

FRBR URI: /akn/na/act/2006/6/eng@2006-12-29

PDF created on 2021-10-14 at 19:51.

There may have been updates since this file was created.

[Check for updates](#)



### About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

[www.laws.africa](http://www.laws.africa)

[info@laws.africa](mailto:info@laws.africa)

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0).

Share widely and freely.

## Table of Contents

Children’s Status Act, 2006	3
Act 6 of 2006	3
Part 1 – INTRODUCTORY PROVISIONS	3
1. Definitions	3
2. Objectives and interpretation	4
3. Guidelines to be applied in all decisions regarding custody, guardianship or access	4
Part 2 – JURISDICTION AND PROCEDURE	5
4. Jurisdiction and procedure in children’s court	5
5. Review of certain decisions	5
6. Appeals	6
7. Suspension of order pending review or appeal	6
Part 3 – PROOF OF PARENTAGE	6
8. Procedure	6
9. Presumption of paternity	7
10. Presumption on refusal to submit to scientific tests	7
Part 4 – CHILDREN BORN OUTSIDE MARRIAGE	7
11. Custody	7
12. Procedure for obtaining custody	8
13. Guardianship	8
14. Access	9
15. Children born outside marriage as a result of rape	10
16. Inheritance	10
17. Duty to maintain	11
18. Domicile	11
19. Effect of subsequent marriage of parents	11
Part 5 – CUSTODY AND GUARDIANSHIP OF CHILDREN ON DEATH OF CUSTODIAN OR GUARDIAN	11
20. Custody on death of custodian	11
21. Guardianship on death of guardian	12
Part 6 – CHILDREN OF VOID OR VOIDABLE MARRIAGES	13
22. Status	13
23. Safeguarding of interests of dependent and minor children of void or voidable marriages	13
Part 7 – CHILDREN BORN OF ASSISTED REPRODUCTION TECHNIQUES	13
24. Status of children born of artificial insemination or in vitro fertilisation	13
Part 8 – MISCELLANEOUS	14
25. Regulations	14
26. Application of this Act	14
27. Short title and commencement	15



Republic of Namibia  
Annotated Statutes

---

## Children's Status Act, 2006

### Act 6 of 2006

Published in [Government Gazette no. 3761](#) on 29 December 2006

Assented to on 22 December 2006

Commenced on 3 November 2008 by [Government Notice 266 of 2008](#)

*[Up to date as at 8 October 2021]*

*[Repealed by [Child Care and Protection Act, 2015 \(Act 3 of 2015\)](#) on 30 January 2019]*

ACT

**To provide for children born outside marriage to be treated equally regardless of whether they are born inside marriage or outside marriage; to provide for matters relating to custody, access, guardianship and inheritance in relation to children born outside marriage; to provide for matters which are in the best interest of all children; and to provide for matters connected thereto.**

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

### Part 1 – INTRODUCTORY PROVISIONS

#### 1. Definitions

In this Act, unless the context indicates otherwise -

“**child**” means a person who is under the legal age of majority;

“**children's court**” means the children's court referred to in section 1 of the Children's Act, 1960 (Act [No. 33 of 1960](#));

“**commissioner**” means the commissioner for child welfare referred to in section 1 of the Children's Act, 1960 (Act [No. 33 of 1960](#));

“**marriage**” means a marriage in terms of any law of Namibia and includes a marriage recognised as such in terms of any tradition, custom or religion of Namibia and any marriage in terms of the law of any country, other than Namibia, which marriage is recognised as a marriage by the laws of Namibia;

“**Minister**” means the Minister responsible for child welfare;

“**order**” includes -

- (a) a refusal to make any order; and
- (b) a variation or withdrawal of any order made in terms of this Act;

“**parent**” means a woman or a man in respect of whom parentage has been acknowledged or otherwise established;

“**prescribe**” means prescribe by regulations or rules made in terms of this Act;

“**primary caretaker**” means a person, other than the parent or a custodian of a child whether or not related to the child, who takes primary responsibility for the daily care of the child with the express or implied permission of the child's custodian;

“**sole custody**” means the exercise of the rights, duties and powers of custody by one person, to the exclusion of all other persons;

“**sole guardianship**” means the exercise of the rights, duties and powers of guardianship by one person, to the exclusion of all other persons; and

“**this Act**” includes the regulations or rules made in terms of section 25.

## 2. Objectives and interpretation

- (1) The objectives of this Act are to promote and protect the best interests of the child and to ensure that no child suffers any discrimination or disadvantage because of the marital status of his or her parents and this Act must be interpreted in a manner consistent with these objectives.

## 3. Guidelines to be applied in all decisions regarding custody, guardianship or access

- (1) When making any decision pertaining to custody, guardianship or access, the best interests of the child are, despite anything to the contrary contained in any law, the paramount consideration and the children's court or any other competent court must take the following factors into consideration -
  - (a) the child's age, sex, background and any other relevant personal characteristics;
  - (b) the child's physical, emotional and educational needs;
  - (c) the capability of each parent, and of any other relevant person, to meet the child's physical, emotional and educational needs;
  - (d) the fitness of all relevant persons to exercise the rights and responsibilities in question in the best interests of the child;
  - (e) the nature of the relationship of the child with each of the child's parents and with other relevant persons;
  - (f) the degree of commitment and responsibility which the respective parents have shown towards the child, as evidenced by such factors as financial support, maintaining or attempting to maintain contact with the child or being named as a parent on the child's birth certificate;
  - (g) any harm which the child has suffered or is at risk of suffering, directly or indirectly, from being subjected or exposed to abuse, ill-treatment, violence or other harmful behaviour;
  - (h) in a case where an application has been brought before the children's court, the reasons for the application in question;
  - (i) any wishes expressed by the child or his or her representative, in light of the child's maturity and level of understanding;

- (j) the practical difficulty and expense of present and proposed arrangements;
  - (k) the likely effect of any change in the child's circumstances; and
  - (l) any other fact or circumstance that the court considers relevant.
- (2) When deciding what is in the best interests of the child, the children's court must consider the financial positions of the parents, together with the guidelines enumerated in subsection (1), but -
- (a) the financial positions of the parents are not the decisive factor; and
  - (b) the court may not approve an application for the custody of a child if the application is based on a desire to avoid the payment of maintenance in respect of that child.

## Part 2 – JURISDICTION AND PROCEDURE

### 4. Jurisdiction and procedure in children's court

- (1) For the purposes of this section, "legal practitioner" means a legal practitioner or a candidate legal practitioner referred to in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995).
- (2) A children's court has jurisdiction over any proceedings brought before it in terms of this Act and, unless otherwise provided for in this Act, proceedings in the children's courts must be conducted in the same form and manner that children's court proceedings are conducted under the Children's Act 1960 (Act No. 33 of 1960).
- (3) The procedures for orders pertaining to custody in section 12, orders pertaining to guardianship in section 13(3) to (6), orders restricting or denying access to a non-custodian parent section 14(5) to (8) and orders dealing with the unreasonable denial or restriction of access in section 14(11) to (12) will apply with the necessary changes to children of divorced parents.
- (4) If, in any legal proceedings in terms of this Act or any investigation referred to in section 12(4), 13(6) and 14(7), the children's court is of the opinion that it is necessary to protect the best interests of the child, the children's court may -
  - (a) appoint a legal practitioner to represent the child concerned and may order one or more of the parties to pay the costs of such representation; or
  - (b) subject to the Legal Aid Act, 1990 (Act No. 29 of 1990), order that legal aid as defined in that Act, be provided to that child, if the parties are unable to pay the costs of a legal practitioner.
- (5) A legal practitioner appointed to represent the child may adduce any relevant evidence and may cross-examine any witness called by any other party to the proceedings.
- (6) The children's court may afford a child who will be affected by any decision made in terms of this Act an opportunity to express his or her views or preferences if the children's court considers that the child is able to understand and participate in the proceeding having regard to the child's age and maturity.
- (7) If the children's court finds that a child refuses or is unable to participate in the proceedings before the court the court must record that finding in the record of the case.

### 5. Review of certain decisions

- (1) Despite anything to the contrary contained in any law, a children's court may, if circumstances have changed, alter an order of the High Court pertaining to custody, guardianship or access made in connection with a divorce or in any other proceedings.
- (2) An order which is altered by a children's court in terms of subsection (1) is subject to review by a judge of the High Court.
- (3) Review proceedings contemplated in this section must be instituted and conducted in the form and manner prescribed and within the prescribed periods.

- (4) In review proceedings instituted in terms of subsection (3), the High Court or a judge thereof must consider the record of the proceedings together with any other documents submitted in accordance with subsection (3) and any further information or evidence which may at the request of the judge be supplied or taken by the children's court in question, and the High Court or judge may -
- (a) confirm, alter or set aside the decision of the children's court;
  - (b) make any order which the High Court or judge believes ought to have been made by the children's court in terms of this Act; or
  - (c) remit the case to the children's court with instructions to deal with the matter in such manner as the High Court or judge may see fit.

## 6. Appeals

Any person aggrieved by an order made by a children's court under this Act or a decision of the commissioner made in terms of section 21 may, within such period and in such manner as may be prescribed, appeal against such order or decision to the High Court, as if such order or decision were a civil judgment of a magistrate's court.

## 7. Suspension of order pending review or appeal

Where an order or a decision of the children's court is being reviewed in terms of section 5 or where an appeal has been lodged in terms of section 6, the children's court may, pending the outcome of the review or appeal -

- (a) suspend the operation of any order or decision of the children's court or the commissioner; or
- (b) make any other order which is in the best interests of the child,

but in either case, the best interests of the child are the paramount consideration.

## Part 3 – PROOF OF PARENTAGE

### 8. Procedure

- (1) For the purpose of this section -
  - (a) "putative father" means a man who claims or is alleged to be the father of a person for whom paternity has not yet been established or acknowledged without dispute; and
  - (b) "putative mother" means a woman who claims or is alleged to be the mother of a person for whom maternity has not yet been established or acknowledged without dispute.
- (2) Proceedings to establish parentage may be brought by -
  - (a) the mother or putative mother of the person whose parentage is in question;
  - (b) the father or putative father of the person whose parentage is in question;
  - (c) the person whose parentage is in question;
  - (d) someone, other than the mother or father of the person whose parentage is in question, who is acting as the primary caretaker of such person; or
  - (e) a person authorised in writing by the Minister to act on behalf of the person whose parentage is in question.
- (3) The mother or putative mother and the father or putative father of a person whose parentage is in question are competent and compellable witnesses in any proceedings in which the issue of parentage is raised, but nothing in this section is to be construed as compelling a person to testify against his or her spouse.

- (4) Proof on a balance of probabilities is required in order to establish parentage in proceedings brought under subsection (2).

### 9. Presumption of paternity

- (1) Despite anything to the contrary contained in any law, a rebuttable presumption that a man is the father of a person whose parentage is in question exists if;
- (a) he was at the approximate time of the conception, or at the time of the birth, of the person in question, or at any time between those two points in time, married to the mother of such person;
  - (b) he cohabited with the mother of the person in question at the approximate time of conception of such person;
  - (c) he is registered as the father of the person in question in accordance with the provisions of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963);
  - (d) both he and the mother acknowledge that he is the father of the person in question; or
  - (e) he admits or it is otherwise proved that he had sexual intercourse with the mother of the person in question at any time when such person could have been conceived.
- (2) Corroboration of evidence led to establish a presumption of paternity is not required and no special cautionary rules of evidence are applicable to such evidence.

### 10. Presumption on refusal to submit to scientific tests

- (1) At any legal proceeding at which the parentage of any person has been placed in issue, the refusal by either party -
- (a) to submit himself or herself; or
  - (b) to cause any child over whom he or she has parental authority to be submitted,
- to any procedure which is required to carry out scientific tests relating to the parentage of the person in question, must be presumed, until the contrary is proved, to be aimed at concealing the truth concerning the parentage of that person.
- (2) Regardless of anything contained in subsection (1), the High Court as the upper guardian of all children has the power to order that a child be submitted to a physical procedure referred to in subsection (1) if this is in the opinion of that Court in the best interests of the child.

## Part 4 – CHILDREN BORN OUTSIDE MARRIAGE

### 11. Custody

- (1) Both parents of a child born outside marriage have equal rights to become the custodian of the child.
- (2) One parent must be the primary custodian of the child and both parents may agree on who should be the primary custodian of the child, and that agreement may be verbal or in writing.
- (3) Where there is no agreement as to who should be the primary custodian of a child, either of the parents or any of the persons referred to under section 12 may, in the manner set out in that section, make an application to the children's court for the appointment of a primary custodian.
- (4) Despite subsection (3) or anything to the contrary in any law, if the parents of a child cannot agree as to who should have primary custody of the child, and there is a possibility that the best interests of the child may be compromised or prejudiced, the person who has physical custody of the child may, in the prescribed form and manner, make an ex parte application to court for an interim order of custody of the child.

- (5) On receiving an application made in terms of subsection (4) the court may grant the interim order to the applicant or to any other person, taking into account the best interests of the child.
- (6) An interim order granted in terms of subsection (5) has immediate effect and it must, in the prescribed form and manner, be served on the other party and the other party is entitled, in the prescribed form and manner, to respond to the application.
- (7) On receipt of a response made in terms of subsection (6) the court must, in the prescribed manner, hear and determine the matter and make any order which is appropriate in the circumstances having regard to the best interests of the child.
- (8) Where the agreement referred to in subsection (3) is in writing;
  - (a) the parties to it may decide to have it registered, in which case the agreement must be registered in the prescribed manner; and
  - (b) once registered it constitutes prima facie proof that the parent named in that agreement is the primary custodian of the child and has the legal power to act as the child's custodian.
- (9) For the purposes of subsections (4) to (7), "court" means the High Court, any magistrates court established in terms of the Magistrates Courts Act, 1944 (Act No. 32 of 1944), a children's court, a community court established or recognised in terms of the Community Courts Act, 2003 (Act No. 10 of 2003) or any other court which is established by virtue of any law in Namibia.

## 12. Procedure for obtaining custody

- (1) The following persons may seek an order pertaining to custody of a child born outside marriage, provided that such a proceeding are brought by or on behalf of the person who is seeking custody of the child:
  - (a) the father, regardless of whether he is a major or a minor;
  - (b) the mother, regardless of whether she is a major or a minor;
  - (c) someone, other than the mother or father of the child, who is acting as the primary caretaker of the child; or
  - (d) a person authorised in writing by the Minister to act on behalf of the child.
- (2) A person who seeks a court order in terms of subsection (1) must make an application in the prescribed form and manner and the children's court must consider the application in the presence of the applicant or his or her authorised legal representative.
- (3) An order for custody in terms of this section may only be made after the prescribed attempts have been made to notify the child's parents, the child's primary caretaker and any other person or persons with custody or guardianship of the child immediately prior to the application, and that person has or those persons have been given an opportunity to be heard.
- (4) In the course of an application for custody, the children's court may institute any investigation that it deems necessary and order any person to appear before it, and may order one or more of the parents to pay the costs of such investigation or appearance.
- (5) Any order made in terms of this section may be varied or withdrawn by the children's court on application by any of the parties listed in subsection (1) and subsections (2), (3) and (4) apply to any application for variation or withdrawal.

## 13. Guardianship

- (1) A person with custody of a child in terms of section 11 will also be the guardian of that child, unless a competent court, on application made to it, directs otherwise.
- (2) If a parent is a minor, guardianship of such parent's child does, unless a competent court directs otherwise, vest in the guardian of such parent.



- (3) The following persons may seek a court order granting sole guardianship to one parent, or to some other person:
  - (a) either parent;
  - (b) the child;
  - (c) someone, other than the mother or father of the child, who is acting as the primary caretaker of the child; or
  - (d) a person authorised in writing by the Minister to act on behalf of the child.
- (4) A person who seeks a court order in terms of subsection (1) or (3) must make an application in the prescribed form and manner and the court must consider the application in the presence of the applicant or his or her authorised legal representative.
- (5) An order for guardianship in terms of this section may only be made after the prescribed attempts have been made to notify the child's parents, the child's primary caretaker and any other person or persons with custody or guardianship of the child immediately prior to the application, and that person has or those persons have been given an opportunity to be heard.
- (6) In the course of an application for guardianship, the court may institute any investigation that it deems necessary and order any person to appear before it, and may order one or more of the parents to pay the costs of such investigation or appearance.
- (7) Unless the children's court orders otherwise, the written consent of both parents is required for -
  - (a) the adoption of the child, subject to the provisions for dispensing with any required consent contained in the law on adoption; or
  - (b) the removal of a child from Namibia for a period longer than one year.
- (8) Despite subsection (7), no consent is required from a parent of a child if -
  - (a) the parent cannot be located through any of the prescribed means of notice within the prescribed period;
  - (b) the parent in question cannot give valid consent because he or she is mentally incapacitated; or
  - (c) in any other circumstances the children's court finds that the consent requirement would not serve the best interests of the child.
- (9) Lack of consent on any matter referred to in subsection (7) may be overruled by a children's court if the consent is being unreasonably withheld.
- (10) Any order made in terms of this section may be varied or withdrawn by the children's court on application by any of the parties listed in subsection (3), and subsections (4), (5) and (6) apply to any application for variation or withdrawal.

## 14. Access

- (1) Despite anything to the contrary contained in any other law, the non-custodian parent of a child born outside marriage has a right of reasonable access to such child unless a competent court, on application made to it, directs otherwise, but the right accrues only where the parent in question has voluntarily acknowledged parentage of the child.
- (2) The right of access referred to in this section does not give the non-custodian parent the right to remove the child from the custodian parent's home or from any other place where the child resides without the consent of the custodian parent.
- (3) Any access by the non-custodian parent is subject to the reasonable control of the custodian parent, or any other person who has been entrusted by the custodian parent with responsibility for the care and control of the child.

- (4) The following persons may seek a court order restricting or denying access to the non-custodian parent of a child born outside marriage:
  - (a) the parent or other person who has custody of the child;
  - (b) the child;
  - (c) anyone, other than the mother or father of the child, who is acting as the primary caretaker of the child; or
  - (d) a person authorised in writing by the Minister to act on behalf of the child.
- (5) A person who seeks a court order restricting or denying access to the non-custodian parent of a child must make an application in the prescribed form and manner and the children's court must consider the application in the presence of the applicant or his or her authorised legal representative.
- (6) An order applied for in terms of subsection (5) may only be made after the prescribed attempts have been made to notify the child's parents, the child's primary caretaker and any other person or persons with custody or guardianship of the child immediately prior to the application, and that person has or those persons have been given an opportunity to be heard.
- (7) In the course of an application referred to in subsection (5), the court may institute any investigation that it deems necessary and order any person to appear before it, and may order one or more of the parents to pay the costs of such investigation or appearance.
- (8) If, in an application made in terms of subsection (5), the applicant proves that there is a risk of immediate harm to the child from continued access by the non-custodian parent, the children's court may make a temporary ex parte order denying access to the non-custodian parent with immediate effect, which order remains in force until such time as the consideration of an application for a court order denying access to the non-custodian parent in terms of subsection (5) is concluded.
- (9) A non-custodian parent who has not voluntarily acknowledged parentage of a child born outside marriage may, in the prescribed form and manner, apply to the children's court for an order granting a right of reasonable access to that child, and the custodian parent or any other person who has custody of the child must be made a party to the proceedings.
- (10) The court may make an order applied for in terms of subsection (9) and subsections (3) and (4) apply to the non-custodian parent who has been granted the right of access to a child.
- (11) Where a non-custodian parent has a right of access in terms of this section and that access is being unreasonably denied or restricted by the custodian parent, the non-custodian parent may apply to the children's court for an order specifying details of such access.
- (12) Subsections (5), (6) and (7) apply to an application made in terms of subsection (11).
- (13) An order restricting or denying access to the non-custodian parent may be varied or withdrawn by the children's court on application by any of the parties listed in subsection (4), and subsections (5), (6), (7) and (8) apply with the necessary changes to any application for variation or withdrawal.

## 15. Children born outside marriage as a result of rape

- (1) Perpetrators of rape which results in the conception of a child outside marriage have no rights to custody, guardianship or access in terms of this Act, unless a competent court, on application made to it, orders otherwise.
- (2) For the purposes of this section, 'rape' means the common law crime of rape and the crime of rape referred to in section 2 of the Combating of Rape Act, 2000 (Act No. 8 of 2000), where the perpetrator has been convicted of the crime.

## 16. Inheritance

- (1) For the purposes of subsection (5), 'rape' means the common law crime of rape and the crime of rape referred to in section 2 of the Combating of Rape Act, 2000 (Act No. 8 of 2000), where the perpetrator has been convicted of the crime.
- (2) Despite anything to the contrary contained in any statute, common law or customary law, a person born outside marriage must, for purposes of inheritance, either intestate or by testamentary disposition, be treated in the same manner as a person born inside marriage.
- (3) It must be presumed that the words "children" or "issue" or any similar term used in a testamentary disposition, apply equally to persons born outside marriage and children born inside marriage, unless there is clear evidence of a contrary intention on the part of the testator.
- (4) Nothing in this section is to be understood or interpreted as affecting the freedom of testamentary disposition.
- (5) With respect to rape which results in the conception of a person born outside marriage, the person who committed the crime has no right to inherit intestate from the person born as a result of the rape, but the person born as a result of the rape may inherit intestate from the perpetrator, and will be deemed to be included in the terms "children" or "issue" or any similar term used in a testamentary disposition.

### **17. Duty to maintain**

- (1) Despite anything to the contrary contained in any law, a distinction may not be made between a person born outside marriage and a person born inside marriage in respect of the legal duty to maintain a child or any other person.
- (2) Despite subsection (1), a person conceived as a result of rape has no legal duty to maintain a parent who was convicted of the rape, nor any legal duty to maintain that parent's relations.

### **18. Domicile**

Despite anything to the contrary contained in any law, a child born outside of marriage is deemed to be domiciled at the place or in the country with which he or she has the closest connection.

### **19. Effect of subsequent marriage of parents**

Any child born of parents who marry each other at any time after the child's birth must be treated as a child born inside marriage in all respects as from the date of birth, regardless of whether the parents could not have legally married each other at the time of the child's conception or birth.

## **Part 5 – CUSTODY AND GUARDIANSHIP OF CHILDREN ON DEATH OF CUSTODIAN OR GUARDIAN**

### **20. Custody on death of custodian**

- (1) Where the custodian of a child dies, and there is no provision in a will or other testamentary disposition naming a custodian or guardian for the child, or where there is, for any other reason, no competent custodian for a child, an application for the appointment of a custodian for the child maybe made in accordance with section 12.

*[The word "maybe" should appear as two words: "may be".]*

- (2) A parent with sole custody of a child may, by will or other testamentary disposition, appoint any other person as a custodian of the child, and where a will or other testamentary disposition appoints a guardian without naming a custodian, that guardian is the custodian of the child unless a competent court, on application made to it, directs otherwise.
- (3) Where a parent shares joint custody with another parent because the parents are or were married, or in terms of any law or agreement, the surviving parent acquires sole custody upon the death of the other

parent, unless a competent court, on application made to it, directs otherwise.

- (4) Where no custodian or guardian is appointed by will or other testamentary disposition, a person appointed as a guardian in terms of section 21 is the custodian of the child unless a competent court, on application made to it, directs otherwise.

## 21. Guardianship on death of guardian

- (1) For the purposes of this section, "social worker" means a social worker as defined in section 1 of the Social and Social Auxiliary Workers' Professions Act, 1993 (Act No. 22 of 1993).

*[The Social and Social Auxiliary Workers' Professions Act 22 of 1993 was repealed on 1 October 2004, before this Act was passed. This provision should refer to section 1 of the Social Work and Psychology Act 6 of 2004.]*

- (2) On the death of one of two equal guardians, the surviving guardian does, unless a competent court directs otherwise, acquire sole guardianship over a child.
- (3) A person with sole guardianship of a child may, by testamentary disposition, appoint another person as the sole guardian of that child.
- (4) Where there is no provision in a will or other testamentary disposition naming a guardian for a child, or where there is for any other reason no competent guardian for a child, a guardian can be registered for the child by means of the procedure contained in this section.
- (5) Any person who has a genuine interest in a child, whether or not related to the child, and who wants to be appointed as a guardian of the child, must be in the prescribed form and manner apply for guardianship of the child to the clerk of the children's court.
- (6) An application made in terms of subsection (5) must -
- (a) be supported by such information and documents as may be prescribed including a statement to the effect that close family members of the child have been consulted and do not dispute the application;
  - (b) in the prescribed form and manner, be served on the parent, custodian, primary caretaker or any other person who has an interest in the welfare of the child requesting such persons to make representations on the application.
- (7) On receipt of an application made in terms of subsection (5), the clerk of the children's court must as soon as reasonably possible, refer the application to the commissioner who -
- (a) must summon the applicant or applicants for questioning;
  - (b) may summon other relevant persons for questioning; and
  - (c) may order an investigation to be carried out by a social worker.
- (8) On receipt of an application made in terms of subsection (5), the commissioner must consider the application, any supporting information and documents and any representations made by the parties and the commissioner may -
- (a) approve the application and direct the clerk of the children's court to issue a certificate of guardianship to the applicant; or
  - (b) refuse the application and give written reasons for the refusal.
- (9) The clerk of the children's court must cause a copy of the certificate issued in terms of subsection (8) to be filed at the court in question and with the Master of the High Court.
- (10) The appointment of a guardian in terms of this section takes place separately from disposition of any property belonging to the deceased guardian of the child and is not dependent on the existence of any inheritance for the child.

- (11) Preference for appointment as guardian in terms of this section must be given to close family members of the child, or to a person who is the custodian or primary caretaker of the child, subject to the best interests of the child.
- (12) Any person who has a genuine interest in the welfare of a child may, in the prescribed form and manner, lodge a complaint to the clerk of the children's court, to alert the court to the fact that a guardian is not acting in the best interests of the child.
- (13) When a complaint made in terms of subsection (12) is received, the children's court must order an investigation to be carried out by a social worker and the social worker must, subject to the directives or conditions set by the court, investigate the complaint and, in the manner prescribed, report to the court.
- (14) After considering the report of the social worker, the children's court may alter the appointment of guardianship as it sees fit and if necessary issue a new certificate of guardianship in accordance with subsection (8).

## **Part 6 – CHILDREN OF VOID OR VOIDABLE MARRIAGES**

### **22. Status**

The status of any child conceived or born of a voidable marriage is not affected by the annulment of that marriage by a competent court.

### **23. Safeguarding of interests of dependent and minor children of void or voidable marriages**

- (1) A voidable marriage may not be annulled until the competent court concerned has enquired into and considered the safeguarding of the interests of any child or dependent child of that marriage, and for the purposes of this Act or any law relating to divorce, proceedings to annul the marriage must be regarded as proceedings for the granting of a decree of divorce.
- (2) In case of a void marriage involving any child or dependent child or children, a competent court must enquire into the best interests of the child or children and make provision for safeguarding the interests of the child or children born of that a marriage.
- (3) A reference in any law to -
  - (a) a maintenance order;
  - (b) an order relating to the custody or guardianship of, or access to, a child; or
  - (c) the rescission, suspension or variation of such orders,must be construed as including references to any similar orders made in terms of subsection (1) or (2).

## **Part 7 – CHILDREN BORN OF ASSISTED REPRODUCTION TECHNIQUES**

### **24. Status of children born of artificial insemination or in vitro fertilisation**

- (1) Whenever the gamete or gametes of any person, other than a married woman or her husband, have been used with the consent of both such woman and her husband for artificial insemination or in vitro fertilisation, any child born as the result of such techniques is, for all purposes, deemed to be the biological child of such woman and her husband.
- (2) For the purposes of subsection (1), it must be presumed, until the contrary is proved, that both such woman and her husband have granted the relevant consent.
- (3) For the purposes of this section -
  - (a) "artificial insemination", in relation to a woman, means the introduction, other than by natural

means, of a male gamete or gametes into the internal reproductive organs of such woman for the purpose of reproduction, otherwise than in accordance with a surrogacy agreement;

- (b) "in vitro fertilisation", in relation to a woman, means the placing of the product of a union of a male and female gamete or gametes which have been brought together outside the human body into the womb of such woman for the purpose of reproduction, otherwise than in accordance with a surrogacy agreement; and
- (c) "gamete" means either of the two generative cells essential for human reproduction.

## Part 8 – MISCELLANEOUS

### 25. Regulations

- (1) The Minister may make regulations in relation to any matter required or permitted to be prescribed by this Act or that may be necessary or expedient in order to achieve the objects of this Act and, without derogating from the generality of this subsection, the Minister may make regulations relating to the following matters:
  - (a) prescribing the fees to be paid for proceedings instituted in terms of this Act or for any expenses incurred which a party is liable to pay in terms of this Act;
  - (b) other means by which paternity can be acknowledged apart from formal registration of birth; and
  - (c) generally the manner of conducting any investigation or hearing in terms of this Act.
- (2) The Minister may, after consultation with the Minister responsible for justice, make rules relating to the following matters:
  - (a) the procedural rules for proceedings held in children's courts in terms of this Act;
  - (b) the form and manner in, and time within, which reviews or appeals as contemplated in section 5 and 6 are to be made to the High Court;
  - (c) the manner in which affected persons are to be notified of any proceedings brought in terms of this Act; and
  - (d) the form and manner in which applications are to be made under this Act.
- (3) Regulations or rules made under this section may -
  - (a) create an offence for any contravention thereof or any failure to comply with a provision thereof; and
  - (b) prescribe penalties in respect of any such offence not exceeding a fine of N\$5 000 or imprisonment for a period not exceeding one year.

### 26. Application of this Act

- (1) Subject to subsection (2), this Act applies to all children or persons, where applicable, and to all matters relating to children or persons, where applicable, irrespective of whether the children or persons, where applicable, were born or the matters arose before or after the coming into operation of the Act.
- (2) Despite subsection (1) -
  - (a) section 16 applies only to estates in which the deceased person died after the coming into operation of this Act; and

*[The applicability of section 16 on the inheritance rights of children born outside marriage through section 26(2) is implicitly extended by Frans v Paschke & Others 2007 (2) NR 520 (HC), which held that the common law rule saying that children born outside marriage may not inherit intestate from their fathers is unconstitutional with effect from 21 March 1990.]*

- (b) this Act does not affect any order or decision made by a competent court in respect of a matter governed by this Act except that such order or decision may, on application made to a children's court, be revoked, varied or substituted in terms of this Act.

## **27. Short title and commencement**

- (1) This Act is called the Children's Status Act, 2006, and it comes into operation on a date to be fixed by the Minister by notice in the Gazette.
- (2) Different dates may be determined under subsection (1) in respect of the coming into operation of different provisions of this Act.