

CHAPTER 95

INFANTS LAW

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CHAPTER 95

ANSL Cap 70

INFANTS LAW

A Law relating in the capacity and liability of infant and their guardianship and custody.*

[27th, August, 1991]

PART I — PRELIMINARY

1. This Law may be cited as the Infants Law

Short title

2. In this Law—

Interpretation

“court” means High Court;

“guardian” means person who is a guardian of an infant by virtue of the provisions of this Law or a person lawfully appointed to be the guardian of an infant by deed or will or by order of a court of competent jurisdiction,

“infant” or “child” means a person under the age of twenty-one years but for the purposes of Parts III and IV does not include a person who is or has been married:

“maintenance” includes education.

PART II — CONTRACTUAL CAPACITY AND LIABILITY OF INFANTS

3. Sections 16 to 41 of the Contract Law of this State shall apply and be deemed to be part of this Law

Application
of Contract
law, Chapter
30

PART III — SETTLEMENTS BY INFANTS

4. It shall be lawful for every infant, upon or in contemplation of his or her marriage, with the sanction of the court to make a valid and binding settlement or contract for a settlement of all or any part of his or her property or properties on which he or she has any power of appointment whether real or personal and whether in possession, reversion, remainder or expectancy, and every conveyance, appointment and assignment of such real or personal estate or contract to make a conveyance, appointment or assignment thereof, executed by such infant with the approbation of the court, for the purpose of giving effect to such settlement shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

Marriage
settlements

Provided that this section shall be not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

Court
sanction

5. The sanction of the court to any such settlement or contract for a settlement may be given upon petition presented by the infant or his or her guardian in a summary way without the institution of a suit. and if there be no guardian the court may require a guardian to be appointed or not as it shall think fit and the court may also if it shall think fit, require that any

persons interested or appearing to be interested in the property shall be served with notice of such petition

Exemption

6. Nothing in this Part of this Law shall apply to any male infant under the age of twenty years or to any female infant under the age of seventeen years

PART IV - GUARDIANSHIP AND CUSTODY OF CHILDREN

Application
of this Part

7. Nothing in this Part shall apply to children who are subject to the customary law relating to the guardianship of children.

Surviving
mother to
be guardian

8. On the death of the father of a child, the mother, if surviving, shall subject to the provisions of this Law be the guardian of the child, either alone or jointly with any guardian appointed by the father but when no guardian has been appointed by the father or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the mother.

Surviving
father to be
guardian

9. On the death of the mother of a child, the father, if surviving, shall subject to the provisions of this Law, be guardian of the child, either alone or jointly with any guardian appointed by the mother but when no guardian has been appointed by the mother or if the guardian or guardians appointed by the mother is or are dead or refuse or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the father.

Power of
parent to
appoint

10.(I) The father of a child may by deed or will appoint any person to be guardian of the child after his death.

(2) The mother of a child may by deed or will appoint any person to be guardian of the child after her death

(3) Any guardian so appointed shall act jointly with the mother or father as the case may be of the child so long as the mother or father remains alive unless the mother or father objects to his so acting.

(4) If the mother or father so objects, or if the guardian so appointed as aforesaid considers that the mother or father is unfit to have the custody of the child, the guardian may apply to the court, and the court may either refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the child, and in the latter case may make such order regarding the custody of the child and the right of access thereto of his mother or father as, having regard to the welfare of the child, the court may think fit, and may further order that the mother or father pays to the guardian towards the maintenance of the child such monthly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

(5) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly

(6) If under section 8 or 9 a guardian has been appointed by the court to act jointly with the surviving parent, he shall continue to act as guardian after the death of the surviving parent but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

11. Every guardian under sections 8, 9 and 10 shall have all such powers over the estate and the person, on over the estate, as the case may be, of a child as a guardian appointed by will or otherwise has by virtue of the rules of common law or equity

Power of guardian

12. The mother of a child shall have the like powers to apply to the court in respect of any matter affecting the child as are possessed by the father.

Equal rights of mother to apply to court

13. The court may, upon the application of the father or mother of a child, make such order as it may think fit regarding the custody of such child, and the right of access thereto of either parent, having regard to the welfare of the child, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or after the death of either parent, of any guardian under this Law; and in every case may make such order respecting costs as it may think just

Court may make orders as to custody

Either of the
parents may
apply for
the order

14. The power of the court under section 12 of this Law to make an order as to the custody of a child and the right of access thereto may be exercised upon the application of the father of a child in like manner as those powers may be exercised upon application of the mother of the child notwithstanding that the mother of the child is then residing with the father of the child.

Maintenance
orders-
enforcement
and variation

15.(I) Where the court under section 12 of this Law makes an order giving the custody of the child to the mother, then whether or not the mother is then residing with the father, the court may further order that the father shall pay to the mother towards the maintenance of the child such monthly or other periodical sum as the court having regard to the means of the father, may think reasonable

(2) No such order, whether for custody or maintenance shall be enforceable, and no liability thereunder shall accrue, while the mother resides with the father, and any such order shall cease to have effect if for a period of three months after it is made, the mother of the child continues to reside with the father.

(3) Any orders so made may, on the application either of the father or mother of the child, be varied or discharged by a subsequent order.

Court may
remove
guardian

16. The court may, in its discretion, on being satisfied that it is for the welfare of the child, remove from office any guardian, and may also, if the court shall deem it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

Dispute
between joint
guardian

17. Where two or more persons act as joint guardians of a child and they are unable to agree on any question affecting the welfare of the child any of them may apply to the court for discretion and the court may make such order regarding the matters in difference as it may think proper.

18. The powers of the court under section I7 of this Law to make orders regarding matters in difference between persons acting .as joint guardians an infant shall. where one of the said persons is the mother or father of the infant includes power—

Power of
court during
dispute by
guardians

(a) to make such orders regarding the custody of the infant and the right of access thereto, of his mother or father having regard to the welfare of the infant, as the court may think fit

(b). to order the mother or father to pay towards the maintenance of the infant such monthly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable: and

(c) to vary or discharge any order previously made under the said section

19. The powers conferred on the court by section 8 or 9 of this Law in cases where an appointed guardian is to be sole guardian of an infant to the exclusion of his mother or father may be exercised at any time and shall include power to vary or discharge any order previously made by virtue of these powers

Power may
be exercised
at any time

20.(1) No agreement contained in any seperation deed made between the father and the mother of a child shall be held to be invalid by reason only of its providing that the father of such child shall give up the custody or control thereof to the mother

Separation
deed giving
custody to
mother

(2). The court shall not enforce any such agreement if it is of opinion that it will not be for the benefit of the child to give effect thereto

21. Where the parent of a child applies to the court for a writ or order for the production of the child, and the court is of opinion that the person has abandoned or deserted the child, or that he has otherwise so conducted himself that the court should refuse to enforce his right to the custody of the child, that the court may, in its discretion, decline to issue the writ or make the order

Power of
court as to
production
of child

Power of the court
to order repayment
& of costs of
bringing up child

22. If at the time of the application for a writ or order for the production of the child, the child is being brought up by another person, the court may, in its discretion if it orders the child to be given up to the parent, further order that the parent shall pay to such person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the court to be just and reasonable, having regard to the circumstances of the case.

Conduct of
parents
affecting
court orders

23, . Where the parent has—
(a) abandoned or deserted his child; or
(b) allowed his child to be brought up by another person at that person's expense for such a length of time and under circumstances as to satisfy the court that the parent was unmindful of his parental duties; the court shall not make an order for the delivery of the child to the parent, unless the parent has satisfied the court that, having regard to the welfare of the child he or she is a fit person to have the custody of the child.

Power of
court as
in child's
religious
education

24. Upon any application by the parent for the production or custody of a child, if the court is of opinion that the parent ought not to have the custody of the child and that the child is being brought up in different religion to that in which the parent has a legal right to require that the child should be brought up, the court shall have power to make such order as it may think fit to secure that the child is brought up in the religion in which the parent has a legal right to require that the child should be brought up.

Wishes of
child

25. Nothing contained in sections 21 and 24 shall interfere with or affect the power of the court to consult the wishes of the child in considering what order ought to be made under the last preceding section, or diminish the right which any child now possesses to the exercise of its own free choice.

Definition of
"parent" and
"person"

26. For the purposes of sections 21 to 24 “parent” includes any person at law liable to maintain such child or entitled to its custody; and “person” includes any local government, school or institution.

PART V — MISCELLANEOUS AND SUPPLEMENTARY

27.(1) Where the court has made any order for the payment of money in pursuance of this Law the court shall, in addition to any other powers for enforcing compliance with the order, have power in any case where there is any pension or income payable to the person against whom the order is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as the court may think fit of any such pension or income, be attached and paid to the person named by the court

Enforcement
of Court order

(2) Such further order as mentioned in subsection (1) of this section shall be an authority to the person by whom such pension or income is payable to make the payment so ordered.

(3) The receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

28.(1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Law shall give notice of any change in his address to such person (if any) as may be specified in the order.

Change of
address

(2) Any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine of fifty naira.

29. Where in any proceedings before any court the custody or upbringing of a child or the administration of any property belonging to or held on trust for a child, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration, whether from any other point of view the claim the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration

Principles for
decision on
questions of
custody

or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

Saving of
jurisdiction
of the court

30. Notwithstanding the provisions of this Law any order lawfully made by any court relating to the guardianship or custody of an infant before the commencement of this Law and in force at the time of the commencement thereof shall continue in force, so far as the same may not be rendered inapplicable by this Law, until other provision shall be made under and by virtue of this Law

Saving of
existing
orders

31 Nothing in this Law shall restrict or affect the jurisdiction of the court to appoint or remove guardians by virtue of the High Court Law or any other written law.