

MAURITIUS.

Protection from Domestic Violence Act 1997

Act No. 6 of 1997

27th of May 1997

An Act to provide protection to the victims of domestic violence.

ENACTED by the Parliament of Mauritius as follows:

1. Short title

This Act may be cited as the Protection from Domestic Violence Act 1997.

2. Interpretation

In this Act:

"aggrieved spouse" means the spouse for whose benefit a domestic violence protection order is sought, or is in force;

"Child" in relation to a spouse, includes biological, adopted, step or foster child below the age of eighteen and any other minor in the care or custody of such spouse;

"Court" means the District Court of the area where the aggrieved spouse lives;

"domestic violence" includes any of the following acts committed by a person against his spouse or a child of such spouse:

(a) wilfully causing or attempting to cause physical injury;

(b) wilfully or knowingly placing or attempting to place the spouse in fear of physical injury to himself or to one of his children;

(c) intimidation, harassment, maltreatment, brutality or cruelty;

(d) compelling the spouse by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse has a right to abstain;

(e) confining or detaining the spouse against his will;

(f) any harm or threat to cause harm to a child of the spouse;

(g) causing or attempting to cause damage to the spouse's property;

(h) a threat to commit any act mentioned in paragraphs (a) to (g);

"Enforcement Officer" means any officer of the Ministry of Women, Family Welfare and Child Development, authorised by the Minister to act as enforcement officer and any police officer;

"interim order" means a protection order, an occupation order or a tenancy order of an interim nature;

"Minister" means the Minister responsible for the subject of Women, Family Welfare and Child Development;

"occupation order" means an order issued under section 4;

"property" includes any movable or immovable property of which the spouse has the sole or joint use or possession;

"protection order" means an interim or permanent protection order issued under section 3 restraining a spouse from engaging in conduct which may constitute an act of domestic violence;

"residence" means the premises where the parties are or have been living together as members of the same household;

"respondent spouse" means a person against whom a domestic violence order is sought, or is in force;

"Schedule" means the Schedule to this Act;

"Spouse" means either of a man and a woman who:

(a) are or have been civilly or religiously married to each other;

(b) are living or have lived together as husband and wife; and

(c) whether they have ever lived together or not, are the parents of a common child;

"tenancy order" means an order issued under section 5.

3. Protection order

(1) Any person who has been the victim of an act of domestic violence and who reasonably believes that his spouse is likely to commit any further act of domestic violence against him, may apply to the Court, in Form A of the Schedule to this Act, for a protection order restraining the respondent spouse from engaging in any conduct which may constitute an act of domestic violence and ordering him to be of good behaviour towards the applicant.

(2) On an application being made for a protection order, the court shall cause notice thereof to be served on the respondent spouse who shall further be summoned to appear before Court on such day as may be fixed by the Court (not later than 7 days of the date of the application) to show cause why the order applied for should not be made.

(3) An application for a protection order shall be heard as a civil case between the parties who shall be free to call witnesses in support of their respective case.

(4) In determining an application for a protection order, the court shall have regard to the following:

(a) the need to ensure that the aggrieved spouse is protected from domestic violence;

b. the welfare of any child affected or likely to be affected, by the respondent spouse's conduct;

c. the accommodation needs of the aggrieved spouse, his children as well as those of the respondent and his children;

(d) any hardship that may be caused to the respondent spouse or to any of his children as a result of the making of the order;

(e) any other matter which the Court may consider relevant.

(5) Where a protection order is issued, the court may further:

(a) prohibit the respondent spouse from being on premises on which the aggrieved spouse resides or works;

(b) prohibit the respondent spouse from being on premises specified in the order, being premises frequented by the aggrieved spouse;

(c) prohibit the respondent spouse from approaching within a specified distance of the aggrieved spouse;

(d) prohibit the respondent spouse from contracting, harassing, threatening or intimidating the aggrieved spouse;

(e) prohibit the respondent spouse from damaging property of the aggrieved spouse;

(f) prohibit the respondent spouse from causing or attempting to cause another person to engage in conduct referred to in paragraphs (d) and (e);

(g) specify the conditions on which the respondent spouse may:

- (i) be on premises on which the aggrieved spouse resides, works or which he frequents; or
- (ii) approach or contact the aggrieved spouse or a child of the aggrieved spouse;

(h) *proprio motu*, make a provisional occupation or tenancy order for such time as it thinks fit, where it is satisfied that such an order, although not applied for, is essential for the effective protection of the aggrieved person.

(6) (a) A protection order shall be in Form C of the Schedule and shall remain in force for such period, not exceeding 24 months, as the Court may specify.

(b) Where a protection order contains a prohibition or condition of the kind specified in subsection (5), the court may specify different periods, being periods none of which exceeds 24 months, as the period for which each prohibition or condition is to remain in force.

(7) (a) Where a protection order is in force, either party may apply to the court for a variation or revocation of same.

(b) The spouse moving for such variation or revocation shall cause a copy of an application made under this section to be served on the other spouse.

(c) In determining whether to vary or revoke a protection order the Court shall have regard to the matters specified in subsection (4).

(8) Where the Court is satisfied that there is a serious risk of harm being caused to the applicant before the application may be heard and that the circumstances revealed in the application are such as to warrant the intervention of the Court even before the respondent spouse is heard, the court may:

(a) issue an interim protection order in Form B of the Schedule to this Act, restraining the respondent spouse from engaging in any conduct which may constitute an act of domestic violence and ordering him to be of good behaviour towards his spouse;

(b) order the Commissioner of Police to provide Police protection to the applicant until such time as the interim order is served on the respondent spouse or for such time as the particular circumstances of the case may justify.

(9) Where an interim protection order is issued, the District Clerk shall immediately take steps to have a copy thereof served on the respondent spouse who shall further be summoned to appear before Court on such day as may be fixed by the Court to show cause why the said order should not be confirmed, varied or discharged.

(10) An interim protection order shall, unless the Court directs otherwise, remain in force until such time as the Court pronounces itself on the application for the protection order.

4. Occupation order

(1) Any person who has been the victim of an act of domestic violence and who reasonably believes that his spouse is likely to commit any further act of domestic violence against him, may apply to the Court in Form D of the Schedule to this Act, for an occupation order granting him the exclusive right to live in the residence belonging to him, the respondent spouse or both of them.

(2) On the application being made for an occupation order, the Court shall cause notice thereof to be served on the respondent spouse who shall further be summoned to appear before Court on such day as may be fixed by the Court (not later than seven days of the date of the application) to show cause why the order applied for should not be made.

(3) An application for an occupation order shall be heard as a civil case between the parties who shall be free to call witnesses.

(4) The Court shall, on being satisfied that it is necessary for the protection of the aggrieved spouse or of a child of the aggrieved spouse and that it is in the best interest of the family, make an occupation order in Form F of the Schedule, for a period not exceeding 24 months.

(5) (a) Where an occupation order is in force, either party may apply to the Court for a variation or revocation of same.

(b) The spouse moving for such variation or revocation shall cause a copy of an application made under this section to be served on the other spouse.

(c) In determining whether to vary or revoke an occupation order the Court shall have regard to the matters specified in subsection (4).

(6) Where the Court is satisfied that there is a serious risk of harm being caused to the applicant before the application may be heard and that the circumstances revealed in the application are such as to warrant the intervention of the Court even before the respondent spouse is heard, the Court may issue an interim occupation order in Form E of the Schedule granting the applicant the exclusive right to live in and occupy the residence.

(7) An interim occupation order shall, unless the Court directs otherwise, remain in force until such time as the Court pronounces itself on the application for the protection order.

(8) Where the interim occupation order is issued, the District Clerk shall immediately take steps to have a copy thereof served on the respondent spouse who shall further be summoned to appear before Court on such day as may be fixed by the Court to show cause why the said order should not be confirmed, varied or discharged.

5. Tenancy order

(1) Any spouse who has been the victim of an act of domestic violence and who reasonably believes that his spouse is likely to commit any further act of domestic violence against him, may apply to the Court, in Form G of the Schedule to this Act for a tenancy order so that the tenancy of the residence occupied by him should vest in him.

(2) On an application being made for a tenancy order, the Court shall cause notice thereof to be served on the respondent spouse who shall further be summoned to appear before Court on such day as may be fixed by the Court (not later than seven days of the date of the application) to show cause why the order applied for should not be made.

(3) An application for a tenancy order shall be heard as a civil case between the parties who shall be free to call witnesses.

(4) The Court shall not make a tenancy order in Form I of the Schedule unless it is satisfied that such an order is necessary for the protection of the aggrieved spouse and/or of a child of the aggrieved spouse and that it is in the best interest of the family.

(5) (a) Where a tenancy order is in force, either party may apply to the Court for a variation or revocation of same.

(b) The spouse moving for such variation or revocation shall cause a copy of an application made under this section to be served on the other spouse.

(c) In determining whether to vary or revoke a tenancy order the Court shall have regard to the matters specified in subsection (4).

(6) Where the Court is satisfied that there is a serious risk of harm being caused to the applicant before the application may be heard and that the circumstances revealed in the application are such as to warrant the intervention of the Court even before the respondent spouse is heard, the Court may issue an interim tenancy order in Form H of the Schedule granting the applicant the exclusive right to live in the residence.

(7) An interim tenancy order shall, unless the Court directs otherwise, remain in force until such time as the Court pronounces itself on the application for the tenancy order.

(8) Where an interim tenancy order is issued, the District Clerk shall immediately take steps to have a copy thereof served on the respondent spouse who shall further be summoned to appear before Court on such day as may be fixed by the Court to show cause why the said order should not be confirmed, varied or discharged.

6. Effect of tenancy order

(1) On the taking effect of a tenancy order, the aggrieved spouse shall, subject to subsection (2), be deemed to become the tenant of the dwelling house subject to the terms and conditions of the tenancy in force at the time of the making of that order.

(2) Except where the Court orders otherwise, the spouse who, before the tenancy order was, by the terms of the contract of tenancy, responsible for the payment of the rent, shall continue to be so responsible.

7. Provisions relating to occupation orders and tenancy orders

(1) Before any permanent occupation or tenancy order is made, notice of the application shall be given to any person having an interest in the property which may be affected by the order and any such person shall be entitled to appear and be heard in the matter as if he were a party to the application.

(2) Where an application is made for an occupation order or tenancy order the Court may treat the application as one for occupation or tenancy, as appropriate, to ensure the right which the aggrieved spouse in fact needs for his protection.

8. Power to make ancillary order in respect of furniture

(1) On or after making any occupation or tenancy order, the Court may, subject to subsection (2), make an order granting to the aggrieved spouse the use, for such period and on such terms and conditions as the Court thinks fit, of all or any furniture, household appliances, and household effects in the residence to which the order relates.

(2) Notwithstanding the provisions of subsection (1), an order made under this section –

(a) may, on the application of one of the parties, be varied or discharged;

(b) shall, unless the Court otherwise directs, be deemed to be made for a period corresponding to the occupation or tenancy order to which it is ancillary;

(c) shall, irrespective of the terms of the order, expire when the occupation or tenancy order expires or is discharged.

9. Proceedings to be in camera

The hearing of any proceedings under this Act shall, subject to the provisions of section 10 (10) of the Constitution, be held in camera.

10. Registry

(1) The Registry of the Court shall maintain a record of all applications filed pursuant to this Act and of all protection, occupation and tenancy orders issued by the Court.

(2) The record shall contain:

(a) the names, address, age, sex and relationship of the parties;

(b) the domestic violence alleged, whether it involved any weapon or resulted in personal injuries and whether the injuries inflicted required medical treatment;

(c) the effective date and terms of each order issued; and

(d) the address of the property concerned by the order and, where applicable, the name of the landlord.

11. Powers and duties of Enforcement Officers

(1) Where an Enforcement Officer reasonably suspects that a person is the victim of an act of domestic violence he shall, as soon as possible, cause an investigation to be made into the matter.

(2) Where it is reported to an Enforcement Officer that a person has been or is likely to be the victim of an act of domestic violence, he shall immediately cause an entry to be made in the Police Station Occurrence Book or such other record maintained for that purpose and shall, as soon as possible, cause an investigation to be made in the matter.

(3) Where, after investigation, the officer reasonably believes that action should be taken to protect the victim of an act of domestic violence from any further violence, he shall:

(a) explain to the aggrieved spouse his rights to protection against domestic violence; and

(b) provide or arrange transportation for the aggrieved spouse to an alternative residence or a safe place of shelter, if such transportation is required;

(c) provide or arrange transportation for the aggrieved spouse to the nearest hospital or medical facility for the treatment of injuries, if such treatment is needed;

(d) assist the aggrieved spouse to file a complaint regarding the domestic violence;

(e) accompany and assist the aggrieved spouse to his or her residence or previous residence for the collection of his personal belongings.

(4) An Enforcement Officer may, with the consent of an aggrieved spouse, file on his behalf an application for an interim or permanent protection, occupation or tenancy order and shall to that effect swear an affidavit reciting the facts on which he relies to make the application on behalf of the aggrieved spouse.

12. Information to Enforcement Officers and exclusion of liability

(1) Any person who has reason to believe that an act of domestic violence has been, is being or is likely to be committed, may give information in respect thereof to an Enforcement Officer.

(2) No liability, civil or criminal, shall be incurred for information given in good faith for the purpose of subsection (1).

13. Offence

(1) Any person who wilfully fails to comply with any interim or permanent, protection order, occupation order, tenancy order or an ancillary order made under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and imprisonment for a period not exceeding 2 years.

(2) Any person who commits an offence under subsection (1) may be arrested by the Police.

14. Jurisdiction

Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a District Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided under this Act.

15. Service of documents

Where it appears to the Court that it is not reasonably possible to serve a copy of an application under this Act personally, the Court may make an order for substituted service.

16. Appeals

(1) Subject to subsection (2), an appeal shall lie to the Judge in Chambers against any decision concerning a protection, occupation or tenancy order in the same way as an appeal lies from a decision of a District Court in the exercise of its civil jurisdiction.

(2) No appeal shall lie against any decision concerning interim protection orders, interim occupation orders or interim tenancy orders.

(3) An appeal against an order shall not have for effect to suspend its operation until the decision of the Judge in Chambers or the Appellate court.

17. Costs

(1) Notwithstanding any other enactment no costs shall be allowed in any proceedings under this Act, nor shall any aggrieved person appealing against any decision under section 16(1) be required to furnish any recognizance to prosecute the appeal.

(2) Notwithstanding any other enactment, all civil, judicial, and extra judicial acts, and all documents made use of or produced before the Court, in any matter arising out of or brought under this Act shall be exempt from registration and stamp duties and from the payment of any fees.

18. Regulations

the Minister may make such regulations as he thinks fit for the purposes of this Act.

19. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a day to be fixed by Proclamation.

(2) Different days may be fixed for the coming into operation of different provisions of this Act.