

What are the rights and responsibilities of the unmarried father?

More than any other parent, unmarried fathers often experience a wide range of problems when it comes to exercising contact with their child born from an extra-marital relationship. What are the rights and responsibilities of such a father, and how can they be enforced?

As a starting point, it is important to mention that the Children's Act, Act 38 of 2005 ("the Act"), which is regarded as one of the most progressive pieces of legislation worldwide, provides comprehensive protection to both children and parents. This Act also includes protection for the unmarried father as stipulated in Section 21(1)(b) of the Act.

Section 21(1)(b) deals specifically with the rights and responsibilities of the unmarried father. The section is aimed at fathers, who were never married to the mother of their child, but have a sincere interest in their child and wish to be a part of the child's life. The section places these fathers on equal footing with any other father.

In terms of Section 21, an unmarried father can obtain full parental rights and responsibilities in either of two scenarios.

An unmarried father will firstly be entitled to share parental rights and responsibilities with the child's mother, if the parents at the time of the child's birth, lived together or were involved in a permanent life partnership with one another.

Alternatively, the unmarried father may obtain parental rights and responsibilities, irrespective of whether he and the mother stayed together. This he can do if he consents to be identified as the child's father and has in good faith contributed or attempted to contribute to the upbringing and maintenance of the child for a reasonable period.

Section 21 furthermore states that where the parties dispute whether the father

has indeed satisfied the aforesaid requirements, such a dispute must be referred to mediation by the Family Advocate, a social worker or any other suitably qualified person.

Our Children's Courts, which were called into existence by the provisions of the Children's Act, with the purpose of giving effect to it, are assisted by experts like social workers or the office of the Family Advocate regularly. The aforementioned persons act as independent experts and render services to the court, being ruled by Magistrates, who are jurists, and are not always in the best position to determine the best interests of a minor child.

An unmarried father, with a genuine interest in his child, whose rights are being questioned or frustrated in any way, does, therefore, have a right of recourse. The Children's Act makes special provision for this class of parent, to ensure that they are not placed at an unreasonable disadvantage and may they obtain rights equal to those of the mother of the child.

It is, however, important to remember that, in all matters concerning the care, protection and wellbeing of a child, the child's best interests are of paramount importance - more so than the rights of either of the parents.

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