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**PROTECTION AGAINST DOMESTIC VIOLENCE ACT**

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**NO. 2 OF 2015**

**PROTECTION AGAINST DOMESTIC VIOLENCE ACT**

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**NO. 2 OF 2015**

**PROTECTION AGAINST DOMESTIC VIOLENCE ACT**

[Date of Assent: 14th May, 2015.]

[Date of commencement: 4th June, 2015.]

**AN ACT of Parliament to provide for the protection and relief of victims of domestic violence; to provide for the protection of a spouse and any children or other dependent persons, and to provide for matters connected therewith or incidental thereto**

[Act No. 2 of 2015]

**PART I — PRELIMINARY**

**1. Short title**

This Act may be cited as the Protection Against Domestic Violence Act, 2015.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**alternative residence**” means the premises or accommodation which an applicant is or has been compelled to seek or move into because of domestic violence;

“**applicant**” means—

- (a) a person who applies for a protection order under this Act; or
- (b) a person on whose behalf an application for a protection order under this Act is made;

“**applicant’s representative**” means any one of the following persons who may make an application for a protection order on behalf of an applicant—

- (a) a police officer;
- (b) a social welfare officer;
- (c) an employer of the applicant;
- (d) the guardian of a child or a guardian appointed by the court;
- (e) a relative, neighbour or fellow employee of the applicant;
- (f) a medical practitioner;
- (g) a counsellor;
- (h) a probation officer;
- (i) a non-governmental organization concerned with the welfare of victims of domestic violence;
- (j) a religious leader;
- (k) community elders; or
- (l) any other person or class of persons as may be specified by law.

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to social services;

“**children’s officer**” has the meaning assigned to it in section 37 of the Children Act, 2001;

**"co-respondent"** means a person against whom a protection order made under section 17 applies;

**"court"** means a court having jurisdiction under section 24;

**"domestic relationship"** has the meaning assigned to it in section 4;

**"domestic violence"** has the meaning assigned to it in section 3;

**"Director of Children's Services"** has the meaning assigned to it in section 37 of the Children Act 2001;

**"dwelling house"** includes any mobile home or other means of shelter, placed or erected upon any land and intended for occupation on that land;

**"economic abuse"** includes—

- (a) the unreasonable deprivation of economic or financial resources to which an applicant is entitled or which the applicant requires, including household necessities, medical expenses, school fees, rent, mortgage expenses or other similar expenses; and
- (b) the denial to the applicant of the right to seek employment or engage in any income-generating activity;

**"emotional, verbal or psychological abuse"** means a pattern of degrading or humiliating conduct towards the applicant, including but not limited to the following—

- (a) repeated insults, ridicule or name-calling; and
- (b) repeated threats to cause emotional pain.

**"enforcement officer"** means a police officer or an officer designated as such by the Cabinet Secretary for the purposes of this Act;

**"harassment"** means engaging in a pattern of conduct that induces in an applicant the fear of imminent harm, including—

- (a) watching or loitering outside or near the building or place where the applicant resides, works, carries on business, studies or happens to be;
- (b) repeated contact or attempts to contact the applicant by telephone, electronic means, post or otherwise, whether or not a conversation ensues; and
- (c) sending, delivering or causing the delivery of offensive or abusive documents or offensive objects to the applicant;

**"interim protection order"** means an order made by the court pending the full hearing of a matter and the making of a final order;

**"intimidation"** includes uttering or conveying a threat or causing an applicant to receive a threat which includes a fear of imminent harm to the applicant;

**"medical practitioner"** has the meaning assigned to it in the Medical Practitioners and Dentists Act, Cap. 253;

**"parent"** in relation to a child, includes a step parent, guardian of the child or a person with whom the child normally or regularly resides;

**"physical abuse"** includes any act or threatened act of physical violence towards the applicant;

**"probation officer"** has the meaning assigned to it in section 2 of the Probation of Offenders Act, Cap. 6;

**"property"** in relation to a family member, means—

- (a) the property of the family member;
- (b) the property of any person situated in premises in which the family member lives or works; or
- (c) the property of any person that is being used by the family member;

**"protected person"** in relation to a protection order, means—

- (a) the person for whose protection the order is made;
- (b) any child of that person;
- (c) any person for whose benefit the order applies under section 16;

**"protection order"** means the final order made by the court in a matter concerning domestic violence;

**"respondent"** means the person against whom an application for a protection order under this Act is made and includes a person against whom an order under this Act is made;

**"sexual abuse"** has the meaning assigned to it in the Sexual Offences Act, 2006;

**"shared residence"** means the premises at which the parties are, or have been, living as members of the same household;

**"social welfare officer"** means a person registered as a social welfare worker;

**"stalking"** includes pursuing or accosting a person;

**"victim"** means a victim of domestic violence; and

**"virginity testing"** is the practice and process or examination of a female's genitals for tears of the hymen.

### 3. Meaning of domestic violence

In this Act, "violence" means—

- (a) abuse that includes—
  - (i) child marriage;
  - (ii) female genital mutilation;
  - (iii) forced marriage;
  - (iv) forced wife inheritance;
  - (v) interference from in-laws;
  - (vi) sexual violence within marriage;
  - (vii) virginity testing; and
  - (viii) widow cleansing;
- (b) damage to property;
- (c) defilement;

- (ix) depriving the applicant of or hindering the applicant from access to or a reasonable share of the facilities associated with the applicant's place of residence;
- (d) economic abuse;
- (e) emotional or psychological abuse;
- (f) forcible entry into the applicant's residence where the parties do not share the same residence;
- (g) harassment;
- (h) incest;
- (i) intimidation
- (j) physical abuse;
- (k) sexual abuse;
- (l) stalking;
- (m) verbal abuse; or
- (n) any other conduct against a person, where such conduct harms or may cause imminent harm to the safety, health, or well-being of the person.

(2) "Domestic violence", in relation to any person, means violence against that person, or threat of violence or of imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship.

(3) Despite subsection (1)(f), a person psychologically abuses a child if that person—

- (a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or
- (b) puts the child or allows the child to be put at risk of seeing or hearing the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship, but the person who suffers the abuse shall not be regarded as having caused or allowed the child to see or hear the abuse or as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.

(4) Despite subsection (1)—

- (a) a single act may amount to abuse; and
- (b) a number of acts that form part of a pattern of behaviour may amount to abuse, even when some or all of those acts, when considered in isolation, may appear to be minor or trivial.

(5) Behaviour may be psychological abuse for the purposes of subsection (1) even if it does not involve actual or threatened physical or sexual abuse.

(6) Conduct constituting domestic violence does not by that reason alone cease to constitute an offence under any other law and any such conduct may, despite this Act, be dealt with in accordance with any other law.

#### **4. Meaning of domestic relationship**

(1) For the purposes of this Act, a person shall be deemed to be in a domestic relationship with another person if the person—

- (a) is married to that other person



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- (b) has previously been married to that other person;
- (c) is living in the same household with that person;
- (d) has been in a marriage with the other person which has been dissolved or declared null;
- (e) is a family member of that other person;
- (f) is or has been engaged to get married to that person;
- (g) has a child with that other person; or
- (h) has a close personal relationship with the other person.

(2) For the purpose of subsection (1)(c), a person shall not be regarded as sharing a household with another person by reason only of the fact that—

- (a) the person has—
  - (i) a landlord-tenant relationship;
  - (ii) an employer-employee relationship; or
  - (iii) an employee-employer relationship, with that other person; and
- (b) they occupy a common dwelling house (whether or not other people also occupy that dwelling house).

(3) For the purposes of subsection (1)(h), a person shall not be regarded as having a close personal relationship with another person by reason only of the fact that the person has—

- (a) an employer-employee relationship; or
- (b) an employee-employer relationship with that other person.

(4) Without limiting the matters to which a court may have regard in determining, for the purpose of subsection (1) (h), whether a person has a close personal relationship with another person, the court shall have regard to—

- (a) the nature and intensity of the relationship (not necessarily a sexual relationship), and in particular—
  - (i) the amount of time the persons spend together;
  - (ii) the place or places where that time is ordinarily spent;
  - (iii) the manner in which that time is ordinarily spent; and
- (b) the duration of the relationship.

## **5. Meaning of family member**

(1) For purposes of this Act, 'family member', means—

- (a) a spouse;
- (b) a child including an adopted child, a step-child and a foster child;
- (c) an adult son or daughter;
- (d) a parent;
- (e) a sibling; or
- (f) any other relative of that person who, in the circumstances of the case, should be regarded as a member of the family.

(2) For the purposes of this section, a relative means—

- (a) a father, mother, grandfather, grandmother, stepmother, stepfather, father-in-law or mother-in-law;

- (b) an uncle, aunt, uncle-in-law or aunt-in-law of that person;
- (c) a nephew or niece of that person; or
- (d) cousin of that person.

## PART II — PROTECTION ORDERS

### **6. Duties of police officers in relation to domestic violence**

(1) A person to whom a complaint of domestic violence is made or who investigates any such complaint shall—

- (a) advise the complainant of all relief measures available to the complainant, including access to shelter, medical assistance or they shall assist the complainant in any other suitable way; and
- (b) advise the complainant of the complainant's right to apply for relief under this Act and how the complainant may lodge a criminal complaint.

(2) Where the complainant so desires, the person to whom the complainant makes a statement may be a person of the same sex as the complainant.

(3) The provisions of this section shall not limit the power of a police officer to enter any premises under this Act or any other law.

(4) The Inspector-General of Police shall ensure the development of procedures regarding matters under this Act including—

- (a) training police officers to deal with family related matters or domestic violence;
- (b) facilitating the reporting process so that complainants may report to the police without fear or otherwise; and
- (c) ensuring that complaints are processed expediently and efficiently.

### **7. Information on offences involving domestic violence**

(1) Any person who reasonably suspects that an offence of domestic violence is being or has been committed may give such information to the police officers or any other person in authority.

(2) Any person who attacks, intimidates or harms a person who reports domestic violence commits an offence.

(3) No action or proceeding, including disciplinary action, may be instituted or maintained against a person in respect of the disclosure of information made by the person to a person named under subsection (1).

(4) Subsection (3) does not apply to any person who provides false information maliciously intended to injure another person.

(5) In any proceeding under this Act, no witness shall be required to identify, or provide information that might lead to the identification of, a person who assisted or disclosed information about domestic violence.

(6) In any proceedings under this Act, the court may order that information that identifies, or might lead to the identification of a person who assisted or disclosed the information concerning any violence is removed or concealed from any documents to be produced or inspected in connection with the proceedings.

**8. Application for protection order**

(1) A person who is in a domestic relationship with another person may apply to the Court for a protection order in respect of that other person.

(2) Where the person who is eligible to apply for a protection order is a child, the application may be made by a representative in accordance with section 9 (2).

(3) Where the person who is eligible to apply for a protection order is a person to whom section 10 applies, the application may be made by an applicant's representative in accordance with that section.

(4) An applicant's representative may, with the leave of the court, with or without the consent of the applicant, make an application for a protection order or any other order the court considers fit to award.

(5) An applicant's representative who makes an application under subsection (4) shall seek the leave of the court together with such other orders as the court deems fit to award in the circumstances.

(6) Where the person who is eligible to apply for a protection order is not a child but is unable, in the circumstances specified in section 10 (1) (b), to make the application personally, an application may be made on that person's behalf by a representative appointed in accordance with section 11.

**9. Application by children**

(1) Subject to subsection (2), a child may make an application for a protection order under this Act.

(2) A child may make the application for a protection order through—

- (a) parent or guardian;
- (b) a children officer;
- (c) the Director of Children's Services;
- (d) a police officer;
- (e) a probation officer;
- (f) a conciliator;
- (g) any other person with the leave of the court;
- (h) social welfare officer;
- (i) a person acting on behalf of—
  - (i) a church or any other religious institution; or
  - (ii) a non-governmental organization concerned with the welfare of victims of domestic violence; or
- (j) a relative or neighbour.

(3) Where an application has been made under subsection (2) by a person, other than a parent or guardian of a child, no orders shall be issued by the court unless the parent or guardian of the child has been served or the court is satisfied that reasonable efforts to serve such parent or guardian have failed.

(4) Nothing in subsection (2) prevents a child on whose behalf an application for a protection order is made by a representative from being heard in the proceedings,

and where the child expresses views on the need for and outcome of the proceedings, the court shall take account of those views to the extent that it thinks fit, having regard to the age and maturity of the child.

(5) Subject to sections 10 and 11, a minor who has attained the age of eighteen years may, with the leave of the court, make the application on his her own behalf, without a next friend or guardian *ad litem*, and orders may be made on the application, and enforced, as if the minor were of full age.

#### **10. Application by person lacking capacity**

(1) The provisions of this section shall apply to any other person (not being a child) who—

- (a) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or
- (b) has the capacity to understand the nature, and foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of such matters.

(2) Where a person to whom this section applies is eligible to apply for a protection order, an application may be made on that person's behalf by—

- (a) a police officer;
- (b) an applicant's representative; or
- (c) any other person with the leave of the court.

#### **11. Application on behalf of certain persons**

(1) This section applies to a person entitled to a protection order who is incapable of applying for a protection order and for whom it is necessary to make a protection order.

(2) Any person may apply to the court to be appointed as a representative of the person referred to in subsection (1) for the purposes of applying for a protection order.

(3) The court may appoint a representative for the person referred to in subsection (1) if it satisfied that—

- (a) the representative has reasonably ascertained the wishes of the victim;
- (b) the victim consents to being represented;
- (c) the appointment of the representative is in the best interest of the victim;
- (d) the representative accepts his appointment in writing; and
- (e) there is no conflict of interest between the victim and the representative.

#### **12. Application without notice for protection order**

(1) An interim protection order may be made on an application without notice and outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that delay would be caused by proceedings on notice or might entail—

- (a) a risk of harm; or
- (b) undue hardship to the applicant or child of the applicant's family.

(2) Without limiting the matters to which the court may have regard when determining whether to grant a protection order on an application without notice, the court shall have regard to—

- (a) the perception of the applicant or a child of the applicant's family, of the nature and seriousness of the respondent's behaviour; and
- (b) the effects of that behaviour on the applicant or a child of the applicant's family.

(3) An interim order may, where appropriate, contain any direction, prohibition or award which may be contained in a protection order issued under section 19.

(4) Whenever a court issues an interim protection order, the court shall issue a summons to appear in respect of the respondent which shall be attached to the order.

(5) Where an application is made under this section and the court is satisfied *prima facie* that the respondent has committed, is committing or threatening to commit an act of domestic violence but that the circumstances do not justify or require the issue of an interim protection order, the court may issue a notice requiring the respondent to show cause why a protection order should not be made:

Provided that an interim protection order shall remain in force until it is replaced by a protection order or varied or revoked by a competent court.

(6) Section 22 applies to any person who fails to comply with the terms and condition of an interim protection order.

### **13. Power to make protection order**

(1) The court may make a protection order if it is satisfied that—

- (a) the respondent is using, or has used, domestic violence against the applicant, or a child of the applicant's family or both; and
- (b) the making of an order is necessary for the protection of the applicant or a child of the applicant's family or both.

(2) For the purpose of subsection (1)(a), a respondent who aids or abets another person to engage in behaviour that, if engaged in by the respondent, would amount to domestic violence against the applicant or a child of the applicant's family or both, shall be regarded as having engaged in that behaviour personally.

(3) Without limiting section 3(4)(b), the matters that the court may consider in determining, for the purpose of subsection (1) (b), whether the making of an order is necessary for the protection of the applicant or a child of the applicant's family, or both where some or all of the behaviour in respect of which the application is made appears to be minor or trivial when viewed in isolation, or appears unlikely to recur, are whether the behaviour forms part of pattern of behaviour in respect of which the applicant or a child of the applicant family or both need protection.

(4) For the avoidance of doubt, an order may be made under subsection (1) where the need for protection arises from risk of domestic violence of a different type from the behaviour found to have occurred for the purpose of paragraph (a) of that subsection.

(5) Without limiting the matters that the court may consider when determining whether to make a protection order, the court shall have regard to—

- (a) the perception of the applicant, or a child of the applicant's family or both, of the nature and seriousness of the behaviour in respect of which the application is made; and
- (b) the effect of that behaviour on the applicant, or a child of the applicant's family, or both.

#### **14. Counselling**

(1) The Court may, taking into account the circumstances of each case, direct the parties to participate in counselling and conciliation programmes or any other programme that is acceptable to the Court.

(2) The counselling provided shall be aimed at ensuring respect for the law prohibiting domestic violence, the promotion of a protective environment for all within the family and the promotion of harmonious domestic relations between and among the parties.

#### **15. Existence of other proceeding not to preclude granting of protection order**

(1) A court shall not decline to make a protection order merely because of the existence of other proceedings (including, but not limited to, proceedings relating to custody of, or access to, a minor) between or relating to the parties, whether or not those proceedings also relate to any other person.

(2) Despite the provisions of subsection (1), an application for a protection order shall not be a bar to criminal proceedings against a respondent.

#### **16. Protection of dependants**

(1) Where the court makes a protection order, the order shall apply for the benefit of any child of the applicant's family.

(2) Subject to subsection (3), where the court makes a protection order, it may direct that the order also apply for the benefit of a particular person with whom the applicant has a domestic relationship.

(3) No direction may be made pursuant to subsection (2) in respect of a person unless the court is satisfied that—

- (a) the respondent is engaging, or has engaged, in behaviour that, if the respondent and the person were or, as the case may be, had been in a domestic relationship, would amount to domestic violence against the person;
- (b) the respondent's behaviour towards the person is due, in whole or in part, to the applicant's domestic relationship with the person;
- (c) the making of a direction under this section is necessary for the protection of the person; and
- (d) where practicable, the person consents to the direction being made.

(4) Section 12 (2) and (5) shall apply, with the necessary modifications, in respect of an application for a direction pursuant to subsection (2).

#### **17. Protection from co-respondents**

(1) Subject to subsection (2), where the court makes a protection order against the respondent, the court may also direct that the order apply against a person who aids and abets the respondent.

(2) Section 12 (2) to (5) shall apply, with the necessary modification, in respect of an application for a direction pursuant to subsection (1).

### **18. Mutual orders**

Nothing in this Act shall be construed as preventing the court, in the course of determining an application, from granting a protection order, in favour of the respondent even though no application has been made by the respondent.

### **19. Contents of protection order**

(1) A protection order may direct that a respondent shall not do any one or more of the following—

- (a) physically or sexually abuse or threaten to abuse the protected person;
- (b) damage, or threaten to damage, any property of the protected person;
- (c) engage, or threaten to engage, in behaviour including intimidation or harassment, which amounts to psychological abuse of the protected person;
- (d) encourage any person to engage in behaviour against the protected person where the behaviour, if engaged in by the respondent would be prohibited by the order;
- (e) engage, or threaten to engage, in behaviour including intimidation, harassment or stalking which amounts to emotional, verbal or psychological abuse of the protected person;
- (f) engage, or threaten to engage, in economic abuse of the protected person; or
- (g) engage, or threaten to engage, in cultural or customary rites or practices that abuse the protected person.

(2) Without limiting the provisions of subsection (1) but subject to section 20, it shall be a condition of every protection order that at any time other than when the protected person and the respondent are, with the express consent of the protected person, living in the same dwelling house, the respondent shall not do any one or more of the following—

- (a) watch, loiter near, or prevent or hinder access to or from, the protected person's place of residence, business, employment, educational institution, or other place that the protected person visits often;
- (b) stalk the protected person or stop or accost the protected person in any place;
- (c) without the protected person's express consent, enter or remain on any land or building occupied by the protected person;
- (d) where the protected person is present on any land or building, enter or remain on that land or building, in circumstances that constitute a trespass; or
- (e) make any other contact with the protected person (whether by telephone correspondence, or otherwise), except such contact that is —

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- (i) reasonably necessary in any emergency;
- (ii) permitted under any order or written agreement relating to custody of, or access to, any minor; or
- (iii) permitted under any special condition of the protection order.

(3) Without prejudice to the provisions of this section, the court may in an order under this section—

- (a) subject to subsection (6), grant to any protected person the right of exclusive occupation of the shared residence or a specified part thereof by excluding the respondent from the shared residence or the specified part thereof, regardless of whether the shared residence is solely owned or leased by the respondent or jointly owned or leased by the parties;
- (b) require the respondent to permit any protected person to enter the shared residence, or to enter the residence of the respondent accompanied by any enforcement officer for the purpose of collecting the personal belongings of the protected person or persons;
- (c) require the respondent to permit any protected person to have the continued use of necessities which had previously been ordinarily used by the protected person or persons; or
- (d) give such other directions as may be necessary and incidental for the proper carrying into effect of any order made under paragraph (a), (b) or (c).

(4) Before making an order which restricts the respondent's access to any premises, the court shall take into account—

- (a) the need to ensure that the protected person is protected from violence;
- (b) the welfare of any child affected by the order; and
- (c) the accommodation needs of all persons affected by the order.

(5) Without prejudice to the provisions of this section, where an exclusion order has been made under this section, the court may—

- (a) direct the respondent to pay all expenses or emergency monetary relief in respect to the applicants needs and those of any child or dependant of the respondent;
- (b) award temporary custody of any child or dependant of the respondent to any person or institution and regulate access by the respondent to such child or dependant;
- (c) direct the respondent to afford the applicant or dependant access to their place of residence and use of the facilities associated therewith; and
- (d) direct the respondent to do or omit to do any act or thing which the court considers necessary or desirable for the well-being of the applicant or a dependant of the applicant.

(6) Except so far as the exercise by the respondent of a right to occupy the shared residence, or to enter the alternative residence, may be suspended restricted, prohibited or restrained, by virtue of an order under subsection (3) (a) or (b), a protection order shall not affect any title or interest that the respondent or any other person might have in the said premises.



(7) The court shall not make an order excluding the respondent from the whole of a shared residence that is solely or jointly owned or leased by the respondent unless it is satisfied that there is no other way to secure the personal safety of any protected person for the time being, and such order, where made, shall, in the case where the shared residence is jointly owned or leased by the parties, be—

- (a) revoked if a suitable alternative residence is found for the protected person or persons; or
- (b) revoked or varied upon the court being otherwise satisfied that it is no longer necessary for securing the personal safety of the protected person or persons.

(8) Where, pursuant to a direction made under section 18, a protection order applies against a co-respondent, the provisions of this section shall, with necessary modifications, apply in respect of the co-respondent.

## **20. Further provisions relating to prohibitions of contact**

(1) The contents of a protection order specified in section 19 (2) in this section referred to as "the non-contact condition" shall have effect except where the protected person and the respondent are with the express, voluntary consent of the protected person living in the same dwelling house, taking into account the vulnerability relating to the protected person .

(2) The non-contact condition shall automatically be suspended for any period during which the protected person and the respondent, with the express, free and voluntary consent of the protected person, live in the same dwelling house.

(3) Where the non-contact condition is suspended in accordance with subsection (2), and the protected person subsequently withdraws his or her consent to the respondent living in the same dwelling house then (unless the protection order has been sooner discharged) the non-contact conditions shall automatically revive.

(4) The non-contact condition may—

- (a) become suspended in accordance with subsection (2) on one or more occasions; or
- (b) revive in accordance with subsection (3) on one or more occasions.

(5) Where, pursuant to a direction made under section 17, a protection order applies against a co-respondent, the provisions of this section shall with necessary modifications, apply in respect of the co-respondent.

(6) References in this section to the consent of a protected person, or to the withdrawal of a protected person's consent, includes, as the case requires, the—

- (a) free and voluntary consent of a person (other than the respondent or, as the case may be, the co-respondent) who is specified, in a special condition of the protection order, on the protected person's behalf, in relation to the matter; and
- (b) withdrawal of consent by such a person in respect of an application for a direction pursuant to subsection (2).

(7) In this section, where the protected person is a child, the court may, if satisfied that it is in the best interests of the child so to do, declare any purported consent to be null and void.

**21. Duration of protection order**

A protection order shall remain in force for such period as may be specified by the court and may be reviewed, from time to time, depending on the circumstances.

**22. Breach of protection order**

A respondent who has been served with a copy of a protection order and who contravenes the order in any respect, commits an offence and is liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a period not exceeding twelve months, or to both.

**23. Arrest for breach of protection order**

(1) A police officer may, without warrant, if he or she believes on reasonable ground that any person has committed an offence under section 22, arrest and detain the person.

(2) Without limiting the provisions of subsection (1), in exercising the powers conferred by that subsection, a police officer shall take into account—

- (a) the risk to the safety of the protected person or property;
- (b) the seriousness of the act that constitutes a breach; and
- (c) the time that has lapsed since the alleged breach was committed.

**PART III — MODE OF APPLICATION****24. Application by victims of domestic violence**

(1) Jurisdiction for any proceedings under this Act shall be vested in the Resident Magistrates' Courts.

(2) An application for a protection order shall be lodged with the court and, where directed by the court shall—

- (a) be supported by the affidavit of any person who can depone to matters which are relevant to the application; and
- (b) require the police, a social worker, probation officer, medical practitioner, children officer or other appropriate person or authority to investigate the acts or omissions of the domestic violence and forward findings directly to court as may be directed by the Court.

(3) If the applicant is not represented by an advocate, the court shall inform the applicant of the—

- (a) reliefs available under this Act;
- (b) effect of any order which may be granted and the means provided by the law for its enforcement under this Act;
- (c) right to lodge a criminal complaint against the respondent if a criminal offence has been committed by the respondent; and
- (d) right to claim compensation for any loss suffered or injury caused by any act of domestic violence.

**25. Applications by other parties**

Where the application for a protection order is made by a person other than the actual victim of domestic violence, the person making the

application shall, as soon as reasonably practicable after the making of the application, cause a copy thereof to be served on the victim personally or, where the victim is a child or physically, mentally, intellectually or sensory challenged person, on the parent or guardian of the child or such challenged person.

#### **26. Procedure in third party applications**

In any case where an application for a protection order is made by a person, other than the actual victim of domestic violence, the court shall not commence or continue the hearing of the application if the victim, or if the victim is a child or a physically, mentally, intellectually or sensory challenged person, the person referred to under section 10 (2), objects to the application being heard and determined.

#### **27. Explanation of order**

(1) Where the court proposes to make a protection order and the respondent is before the court, the court shall, before making the order, explain to the respondent —

- (a) the purpose, term and effect of the proposed order;
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (c) the means by which the proposed order may be varied or revoked.

(2) No order under subsection (1) shall be invalid for the reason only that the court did not explain any particular matter contained in the order to the respondent.

#### **28. Persons who may be present during proceedings**

(1) No person shall be present during the hearing of any proceeding under this Act except—

- (a) an officer of the court;
- (b) parties to the proceedings and their advocates, if any;
- (c) a representative, if any;
- (d) witnesses; and
- (e) any other person whom the court permits to be present.

(2) A witness shall leave the courtroom if so directed by the court.

(3) Nothing in this section shall limit any other power of the court to hear proceedings in private or to exclude any person from the court.

#### **29. Evidence**

In any proceedings under this Act, and during hearing in the first instance or during hearing of an appeal, or otherwise, the court may receive any evidence it thinks fit, for the fair determination of the case.

#### **30. Appeal by respondent**

(1) The respondent may appeal to the High Court against the making of a protection order or any term thereof within thirty days of the date of the order.

(2) An appeal under subsection (1) shall not stay the operation of the order unless the respondent moves the court for an order of stay.

(3) The court which made the order may, on the application of the respondent and taking into account the circumstances of the case, stay the operation of the order or any term thereof pending the decision of the appeal.

**31. Restriction on reports of proceedings**

(1) In proceeding under this Act, no person shall publish or cause to be published—

- (a) in any newspaper or broadcast proceedings containing the locality or any particulars calculated to lead to identification of the particular venue of the court or the name, address or any particulars calculated to lead to the identification on the victim or any other person in the proceedings either as a party to the proceedings or as a witness in the proceedings; or
- (b) in a newspaper or by television or by any other means, any picture of the victim or other person concerned in the proceedings.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is on conviction liable —

- (a) in any newspaper or broadcast proceedings containing the locality or any particulars calculated to lead to identification of the particular venue of the court or the name , address or any particulars calculated to lead to the identification on the victim or any other person in the proceedings either as a party to the proceedings or as a witness in the proceedings; or
- (b) in a newspaper or by television or by any other means, any picture of the victim or other person concerned in the proceedings.

(3) The provisions of this section shall not apply to the publication of any report in any publication that—

- (a) is of a *bonafide* professional or technical nature; and
- (b) is intended for the circulation among members of the legal or medical professions.

(4) A publication under this section shall be made thirty days after the final determination of proceedings.

**PART IV — MISCELLANEOUS PROVISIONS****32. Compensation**

(1) Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court hearing a claim for compensation may award such compensation in respect of the injury or damage or loss as it deems just and reasonable.

(2) The court hearing a claim for such compensation may take into account—

- (a) the pain and suffering of the victim, and the nature and extent of the physical or mental injury suffered;
- (b) the cost of medical treatment for such injuries;
- (c) any loss of earnings arising therefrom;
- (d) the amount or value of the property taken or destroyed or damaged;
- (e) necessary and reasonable expenses incurred by or on behalf of the victim when the victim is compelled to separate or be separated from the respondent due to the domestic violence, such as—
  - (i) lodging expenses to be contributed to a safe place or shelter;
  - (ii) transport and moving expenses;

- (iii) the expenses required in setting up a separate household which, subject to subsection (3), may include amounts representing such housing loan payments or rental payments or part thereof, in respect of the shared residence, or alternative residence, as the case may be, for such period as the court considers just and reasonably necessary;
- (f) the financial position of the victim as well as that of the respondent;
- (g) the relationship that exists between the parties and the reasonableness of requiring the respondent to make or contribute towards such payments; or
- (h) the possibility of other proceedings being taken between the parties and the matter being more appropriately dealt with under the relevant laws relating to the financial provision of spouses or former spouses and other dependants.

### **33. General provisions as to offences**

(1) Where any offence, other than one referred to in this Act, is committed by a respondent upon an applicant during or in furtherance of the commission of any act of domestic violence, the court convicting the respondent thereof shall have regard to such circumstances as aggravating the offence committed, when assessing the sentence to be imposed.

(2) For the avoidance of doubt, a prosecution under this Act or any other law shall not prevent the applicant from seeking protection or redress under this Act.

### **34. Provision on delegated powers**

(1) The Rules Committee established under section 81 of the Civil Procedure Act shall make rules to regulate any matter of practice or procedure under this Act.

(2) Without prejudice to the generality of subsection (1), such rules may prescribe—

- (a) the procedure to be followed and the forms to be used under this Act;
  - (b) the time within which documents are to be filed and served under this Act; and
  - (c) the contents of orders to be issued under this Act.
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