

**CHAPTER 28:05
DOMESTIC VIOLENCE**

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Act 10, 2008,
S.I. 71, 2008.

An Act to provide for the protection of survivors of domestic violence and formatters connected therewith.

[Date of Commencement: 30th April, 2008]

**PART I
*Preliminary (ss 1-6)***

1. Short title

This Act may be cited as the Domestic Violence Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"applicant" means any person who alleges to have been subjected to an act of domestic violence;

"child" includes biological, adopted, step or any child in the care or custody of the applicant or respondent;

"court" means a magistrates court of any rank, and includes a customary court which has been authorised, by statutory instrument, to hear a matter under this Act;

"domestic relationship" means a relationship between an applicant and the respondent in any of the following ways-

- (a) they are or were married to each other;
- (b) they are or were cohabiting;
- (c) they are a child of the applicant or respondent;
- (d) they are family members;
- (e) they would be family members related by affinity if the persons referred to in paragraph (b) were, or could be married to each other;
- (f) they share or shared the same residence; or
- (g) they are or were in an engagement, dating including an actual or perceived romantic, intimate or sexual relationship;

"domestic violence" means any controlling or abusive behavior that harms the health or safety of the applicant and includes-

- (a) physical abuse or threat thereof;
- (b) sexual abuse or threat thereof;
- (c) emotional, verbal or psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) damage to property;

- (h) where the applicant and the respondent do not stay in the same home, entry into the applicant's home without his or her consent;
- (i) unlawful detainment; or
- (j) stalking;

"economic abuse" means-

- (a) the deprivation or threat thereof of economic resources to which the applicant is entitled under the law, or which the applicant requires out of necessity, including household necessities for the applicant and any child, and mortgage bond repayments or rental payments of the residence; or
- (b) the disposal, alienation or threat thereof of household effects or other property in which the applicant has an interest;

"emotional, verbal or psychological abuse" means the systematic and deliberate breaking down or destroying of an applicant or child's mental well-being by using verbal or physical forms of communication such as but not limited to-

- (a) insults, ridicule or name calling;
- (b) threats to cause emotional pain; or
- (c) the exhibition of obsessive possessiveness or jealousy which is such as to constitute a serious invasion of the applicant's privacy, liberty, integrity or security;

"harassment" means engaging in a pattern of conduct that constitutes fear of harm including-

- (a) loitering outside of or near the building or place where the applicant resides, works, carries on business, studies or happens to be;
- (b) making telephone calls or inducing another person to make telephone calls to the applicant, whether or not a conversation ensues; or
- (c) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the applicant's home or work;

"intimidation" means uttering, conveying or causing any person to receive a threat, which induces fear;

"Minister" means the Minister on whose portfolio the Act falls under;

"order" means an interim order, restraining order, occupation order or tenancy order;

"residence" means the premises where the applicant and the respondent have been living together in a domestic relationship;

"respondent" means any person who is or has been in a domestic relationship with the

applicant and against whom the applicant seeks to obtain or has obtained an order under this Act;

"sexual abuse" means but is not limited to any sexual conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the applicant;

"stalking" means conduct which is intended to create apprehension of imminent or future bodily harm or death to the applicant or a member of the family of the applicant, or an intimate partner of the applicant; and

"unlawful detainment" means confining a person without the person's consent.

3. Jurisdiction of courts

(1) A court shall have jurisdiction to grant an order under this Act within the area in which-

- (a) the applicant resides, carries on business or is employed;
- (b) the respondent resides, carries on business or is employed; or
- (c) the cause of action arose.

(2) The court shall not require a minimum period in relation to an action lodged under subsection (1) (a) or (b).

4. Lodging and hearing of application

(1) An application for an order under this Act-

- (a) may be brought outside ordinary court hours or on a day which is not an ordinary court day; and
- (b) shall be heard within seven days from the date it was lodged.

(2) Without prejudice to the generality of subsection (1) (b), an application for an interim order under this Act shall be heard on the same day it is made.

5. Service of documents

Service of any documents of the court under this Act, shall be-

- (a) effected by the clerk of the court, member of the Botswana Police Service, member of the Local Police or a Deputy Sheriff who shall deliver a certified copy of the documents to the respondent; and
- (b) at the expense of the State.

6. Nature of proceedings

(1) Proceedings under this Act shall be heard-

- (a) as a civil case between the parties and each party shall be free to call witnesses; and
- (b) in camera.

(2) Without prejudice to the generality of subsection (1) (b), a party to the proceedings may request the presence of any specified person during the proceedings.

PART II **Orders (ss 7-13)**

7. Application for an order

(1) An applicant may make an application to the court in such form as may be prescribed, for-

- (a) an interim order;
- (b) a restraining order;
- (c) a tenancy order; or
- (d) an occupancy order.

(2) An application in terms of subsection (1) shall be accompanied by an affidavit of the applicant in which shall be stated-

- (a) the nature of the relationship between the applicant and the respondent;
- (b) the facts on which the application is based;
- (c) the existence of an immediate threat of danger to the applicant or property;
- (d) the nature of the order applied for; and
- (e) the name of the police station at which the applicant is likely to report any breach of an order made under this Act.

(3) Where the clerk of the court is satisfied that the application meets the requirements of subsection (1), he or she shall forward the application to a presiding officer.

(4) An application made under subsection (1) may be supported by an affidavit sworn by a person who has knowledge of the matter or any material aspect thereof.

(5) An application under this section shall be brought by the applicant, except in circumstances where the applicant is-

- (a) a minor;
- (b) mentally challenged;
- (c) unconscious; or
- (d) under the influence of an intoxicating substance.

(6) Notwithstanding the provisions of subsection (1) and (5), the application may be brought on behalf of the applicant by a counsellor, health service provider, member of the Botswana Police Service, Local Police, social worker, teacher, District Commissioner or any other person, with leave of the court.

(7) An application under this section shall be served personally on the respondent at least three days prior to the hearing.

8. Consideration of application

In considering an application for an order under this Part, the court may require oral evidence which shall be recorded.

9. Interim order

(1) The court shall issue an interim order *ex parte* where it is satisfied that-

- (a) domestic violence has occurred;
- (b) there is a serious risk of harm being caused to the applicant or child; or
- (c) the order will ensure immediate protection of the applicant.

(2) An interim order may-

- (a) direct a member of the Botswana Police Service, Local Police or Deputy Sheriff to-
 - (i) remove, immediately or within a specified time, the applicant, a child or the respondent from the residence; or
 - (ii) accompany, within a specified time, a specified person to the residence to supervise the removal of personal belongings of the applicant, child or the respondent;
- (b) prohibit the respondent from-
 - (i) committing an act of domestic violence;
 - (ii) entering specific parts of the residence;
 - (iii) entering the applicant's residence, work place or any other place of safety or refuge; or
 - (iv) communicating with or contacting the applicant or other specified persons; or
- (c) make any other provision that the court considers necessary to provide for the immediate protection of the applicant or child.

(3) Without prejudice to the generality of subsection (2), the court may authorise the issue of a warrant of arrest of the respondent where it is satisfied that the applicant or child is under imminent danger from the respondent.

(4) An interim order shall be served personally upon the respondent and shall provide for a return date upon which the respondent may be heard.

10. Occupation order

An occupation order shall grant the applicant or child the exclusive or non-exclusive right to live in the residence occupied or belonging to the applicant, the respondent or to the applicant and the respondent, for a specified or indefinite period.

11. Tenancy order

A tenancy order shall grant the applicant or child the exclusive or non-exclusive tenancy of the residence occupied by the applicant, the respondent or by both the applicant and the respondent, with such order as to payment of rental or mortgage as shall be just.

12. Validity of order

An order issued under this Act shall remain in force unless it expires or is revoked under section 13.

13. Variation and revocation of order

(1) An applicant or respondent may make an application in such form as may be prescribed, to vary or set aside an order made under this Act.

(2) An application made in accordance with subsection (1) shall be served on the respondent.

(3) The court shall, where it is satisfied by oral evidence that the application-

(a) is made freely and voluntarily; and

(b) in the best interest of the parties and children, vary or revoke an order made under this Act.

PART IV **General (ss 14-21)**

14. Third party interest in property subject to order

Where a person has an interest in the property which is subject to an order under this Act, the person shall be given notice of the application and shall be entitled to appear and be heard in the matter as if he or she were a party to the application.

15. Effect of order on interest in property

(1) An order made under this Act shall not affect the title to or an ownership interest in any real or personal property jointly held by the parties or solely held by one of the parties.

(2) Where a lease agreement to a residence is in the name of the respondent, and the applicant, who is not party to the agreement is granted an occupation or tenancy order, the

landlord shall not evict the applicant on the basis that the applicant is not party to such lease agreement.

(3) Unless the court directs otherwise, where an order is granted and before the order was made, the respondent was responsible for the payment of the mortgage or the rent, he or she shall continue to be so responsible.

16. Use of furniture, household effects, etc

(1) The court may when granting an order under this Act, grant to the applicant for such period and on such terms and conditions as the court deems fit, the use of any-

- (a) furniture, household appliances or household effects;
- (b) vehicle;
- (c) joint cheque book;
- (d) bank cards;
- (e) medical insurance cards;
- (f) identification documents; or
- (g) other personal effects in the residence to which the order relates.

(2) An order under this section may be varied or revoked in accordance with section 13.

17. Rights not diminished by Act

An order under this Act shall not diminish any other action against the respondent.

18. Appeals

The provision in respect of appeals contained in the High Court Act and the Customary Courts Act shall apply to proceedings in terms of this Act.

19. Offence and penalty

A person who contravenes an order issued under this Act shall be guilty of an offence and is liable to a fine not exceeding P5,000 or to imprisonment for a term not exceeding two years or to both.

20. Register of applications, etc.

The registrar of the court shall maintain, in such form as may be prescribed, a register of all applications filed under this Act and all orders made thereunder.

21. Regulations

The Minister may make regulations for any matter which is required to be prescribed or for

the better carrying out of the provisions of this Act.