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KWARA STATE INFANTS LAW

A Law relating to the capacity and liability of infants and to their guardianship and custody.

[KWS 23 of 1991, No. 4 of 2006.]

[Date of commencement: 1 *st* October, 1987]

1. **Short title**

This Law may be cited as the Kwara State Infants Law.

2. **Commencement**

This Law shall be deemed to have come into operation on the 1st day of October, 1987.

3. **Interpretation**

In this Law unless the context otherwise requires—

"Court" means the High Court;

"guardian" means the person who is 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 orders of a court of competent jurisdiction;

"infant" means a person under the age of eighteen years but for the purposes of Parts II and III does not include a person who is or has been married;

"maintenance" includes education;

"necessaries" means goods, services or other items suitable to the condition of life of an infant and to his actual requirements at the time of the sale, delivery or provision of the goods, services or other items; and

"State" means the Kwara State of Nigeria.

PART I

Contractual Capacity and Liability of Infants

4. When contracts by infants are void

All contracts, whether by specialty or by simple contract (except any contract into which an infant may enter by virtue of this Law or any other written law or by the rules of common law or equity) henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities) and all accounts stated with infants shall be absolutely void.

5. No action to be brought on ratification of infant's contract

No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.

6. Avoiding contract for payment of loan advanced during infancy

(1) If any infant who has contracted a loan which is void in law agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan and is not a new advance, such agreement and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement or otherwise in relation to the payment of money representing or in respect of such loan shall, so far as it relates to money which represents or is payable in respect of such

loan and is not a new advance, be void absolutely as against all persons whomsoever.

(2) Where an infant, after attaining full age pays any money by way of interest, commission or otherwise in respect of such a loan as mentioned in subsection (1), he shall be entitled to a refund of such money.

(3) For the purpose of this section any interest, commission or other payment in respect of such loan shall be deemed to be part of this loan.

7. Certain contracts binding on an infant to remain binding unless repudiated

Where an infant enters into a valid contract under which he acquires an interest in a subject-matter of a permanent nature with continuing or recurring obligations attached to such interest, the contract remains valid and binding on the infant after full age unless he repudiates it during infancy or within a period of not more than one year after attaining full age.

PART II

Settlements by Infants

8. Marriage settlements

(1) 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 eighteen years:

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

(2) 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 is no guardian the court may also 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 should be served with notice of such petition.

PART III

Guardianship and Custody of Children

9. Application of Part III

Nothing in this Part shall apply to children who are subject to Islamic Law or to children who are the issue of a marriage under customary law only.

10. Right of surviving parent as to guardianship

(1) 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 and 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.

(2) 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 and when no guardian has been appointed by the mother or if the guardian or guardians appointed by the mother 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 father.

11. Power of father and mother to appoint testamentary guardians

(1) 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 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 pay 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 10 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.

12. Power of guardians

Every guardian under sections 10 and 11 shall have such powers over the estate and the person, or 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.

13. Equal right of either parent to apply to court

Either parent of a child shall have like powers to apply to the court in respect of any matter whatsoever affecting the child.

14. The Court may make orders as to custody

(1) 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 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.

(2) The power of the Court under subsection (1) of this section 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.

(3) Where the Court under subsection (1) of this section 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.

(4) 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.

(5) 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.

15. Power of Court to remove guardian

The court may, in its discretion, on being satisfied that it is for the welfare of the child, remove from his 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.

16. Disputes between joint guardians

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 its direction, and the court may make such order regarding the matters in difference as it may think proper.

(2) The power of the court under subsection (1) of this section to make orders regarding matters in difference between persons acting as joint guardians of an infant shall, where one of the said persons is the mother or father of the infant, include power—

- (a) to make such orders regarding the custody of the infant and the right of access thereto of his mother or father as having regard to the welfare of the infant 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 subsection.

(3) The powers conferred on the court by section 12 of this Law in cases where an appointed guardian is to be the 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 in virtue of those powers.

17. Separation deed giving custody to mother not invalid

(1) No agreement contained in any separation 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.

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

18. Power of court as to production of child

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 the opinion that the parent 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, the Court may, in its discretion, decline to issue the writ or make the order.

19. Power of court to order repayment of costs of bringing up child

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.

20. Court in making order to have regard to conduct of parent

Where the parent has—

(a) abandoned or deserted his child; and

(b) allowed his child to be brought up by another person at that person's expense for such a length of time and under such 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.

21. Power of court as to child's religious education

Upon any application by the parent for the production or custody of a child, if the Court is of the opinion that the parent ought not to have the custody of the child, and that the child is being brought up in a religion contrary to the wish of the parent, the Court shall have power to make such order as it may think fit to secure that the child be brought up in the religion in which the parent wishes that the child should be brought up.

22. Power of Court to consult child's wishes

Nothing contained in sections 18 and 21 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 exercise of his own free choice.

23. Definition of "parent" and "person"

For the purposes of sections 18 to 21 **"parent"** includes any person at law liable to maintain such child or entitled to its custody; **"person"** includes any local government, school or institution.

PART IV

Miscellaneous and Supplementary

24. Enforcement of order for payment of money by attachment of income

(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.

(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.

25. Notice of change of address by person ordered to pay money penalty

(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.

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

[No. 4 of 2006, Schedule.]

26. Principle on which questions relating to custody, up-bringsings etc. of children are to be decided

Where in any proceeding 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 of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother or the claim of the mother is superior to that of the father.

27. Saving of existing orders

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.

28. Saving of jurisdiction of the court and Islamic Law and customary law

(1) 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.

(2) Nothing in this Law shall apply to transactions governed by Islamic law or customary law.

CHAPTER K27

KWARA STATE INFANTS LAW

SUBSIDIARY LEGISLATION

No subsidiary legislation
