

Maintenance of a child in Kenya

An order for maintenance is made when the court, orders a person to make payment for the child's upkeep. Generally, where both parents are married or get married after the child is born, both parents have a duty to maintain the child. Where the parents are not married, a father who has acquired parental responsibility also has the duty to maintain the child. The joint guardians or custodians of a child have duty to jointly maintain the child unless the court orders otherwise.



A parent, guardian or custodian, of the child, can apply to the court for a maintenance order. The court can also make an order for maintenance in the course of other proceedings relating to the child even when no application for maintenance has been made by any person. This includes matrimonial proceedings such as judicial separation or divorce. When making an application for maintenance, the applicant has to file an affidavit of means stating the child's expenditure as well as provide proof of the expenditure.

Factors the court considers in making a maintenance order

When making an order for maintenance, the court considers the following factors:

- i. The income or earning capacity, property and other financial resources the person has or is likely to have in the near future and the financial needs, obligations, or responsibilities, which each party has or is likely to have in the near future;
- ii. The financial needs of the child and the child's current circumstances;
- iii. The income or earning capacity, if any, property and other financial resources of the child;
- iv. Any physical or mental disabilities, illness or medical condition of the child;
- v. The manner in which the child is being or was expected to be educated or trained;
- vi. The circumstances of any of the child's siblings;
- vii. The customs, practices and religion of the parties and the child;



- viii. Whether the respondent has assumed responsibility for the maintenance of the child and if so, the extent to which and the basis on which he has assumed that responsibility and the length of the period during which he has met that responsibility;
- ix. Whether the respondent assumed responsibility for the maintenance of the child knowing the child was not his child, or knowing that he was not legally married to the mother of the child;
- x. The liability of any other person to maintain the child;
- xi. The liability of that person to maintain other children.

Parents, guardians or custodians of a child, may enter into an oral or written agreement for maintenance of a child. The court may vary the terms of the agreement if it is satisfied that such variation is reasonable and in the best interests of the child.

Maintenance can also be extended after a person has attained the age of 18 under the following circumstance:

- i. If the person is or will be involved in education and training which will extend beyond the person's eighteenth birthday;
- ii. If the person is disabled and requires specialized care which will extend beyond the person's eighteenth birthday;
- iii. If the person is suffering from an illness or ailment and will require medical care which will extend beyond the person's eighteenth birthday
- iv. Any other special circumstances exist which would warrant the extension of maintenance.

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