



The Rights of Unmarried Biological Fathers in relation to their Child

“I am a 30-year-old single father of a 7-year-old girl. She was born when my girlfriend and I were in a 5-year relationship. A month ago, she got married to another man. This one day I went to pick up my daughter at her mother’s house, but her mother and the husband refused to let me visit my daughter or even have contact with her. I wonder if she is allowed to do this since I am the biological father.”

What is the biological father’s right in this situation?

A biological father has full parental rights in respect of his child in terms of section 20 of the Children’s Act 38 of 2005 (the Act) and may not be refused access to his child, provided that he fulfill one of the following requirements that the Act prescribes.

The requirements:

1. The biological father must be married to the mother or previously married at the time of conception or birth of the child, or got married after conception and before the birth of the child.
2. If the biological father was not married to the mother, section 21 allows unmarried fathers to acquire full parental responsibilities, if at the time of the child’s birth he is living with the mother in a permanent-life relationship.
3. If the biological father cannot prove the above, he can acquire his rights by proving that he consents to be identified as the child’s father whether he lives or has lived with the mother and that he contributed or attempted to contribute to the child’s upbringing and expenses in connection with maintenance.

What if there is a dispute?

If the mother and father disagrees on being in a permanent life partnership or a matter concerning the contribution the child's upbringing and maintenance, they must refer such dispute to a family advocate or a social service professional for mediation.

What can the biological father do if there is a dispute to his status as father?

1. The biological father can apply to court in terms of section 26 to obtain an order that identifies him as the child's father.
2. In cases where the biological father's name is not on the birth certificate, he will not have automatic parental rights in terms of the Children's Act. He can accordingly ask to amend the birth certificate, but if the mother do not consent to such amendment, he can apply to court for an order confirming the paternity of the child.

Is there any other possible protection measures?

- i. The Children's Act do allow the mother and biological father to enter into an agreement providing for the acquisition of such parental rights. Such agreement must be registered with the family advocate. However if the mother is reluctant or unwilling to enter into such agreement, it will be not be a viable option.
- ii. The biological father can apply to the Children's Court or High Court in terms of section 23 for contact and care of the child if the biological father has an interest in the well-being, development and care of the child.
- iii. The father can in terms of section 24 apply to the High Court for an order granting guardianship of the child to the father.

In all other cases, not mentioned, the biological father will have no protection and the mother may refuse access to her child.

The High Court is the upper guardian of the child and the child's interest is paramount in all matters affecting the child. One should always however try to find alternative

protection measures to avoid the high cost of the courts. Therefore if the father's rights are affected he should always first contact a family advocate, thereafter apply to the Children's Court and then to the High Court.

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