

The Equality Court

FORM 2 Guide

INSTITUTION OF PROCEEDINGS IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000)

PART A: PARTICULARS OF COMPLAINANT

Surname: [Your Surname]

Full names: [Your Full Names]

ID. No./Date of birth: [Your ID Number/Date of Birth]

Residential address: [Your Residential Address]

Residential telephone number: [Your Residential Telephone Number]

Cellular telephone number: [Your Cellular Telephone Number]

Work address: [Your Work Address]

Work telephone number: [Your Work Telephone Number]

Fax number: [Your Fax Number]

Physical address (where documents can be served): [Your Physical Address]

Preferred method in which the form is to be served: [Choose one: Registered post, E-mail, Fax, Sheriff, Clerk]

Correspondence contact details: [Your Correspondence Contact Details]

E-mail address: [Your Email Address]

**PART B: PARTICULARS OF PERSON ACTING IN TERMS OF SECTION 20(1)(b) - (f)
ON BEHALF OF ANOTHER PERSON/ASSOCIATION/BODY**

[Leave this section blank if you are acting on your own behalf]

PART C: PARTICULARS OF RESPONDENT(S)

Name of person(s)/organisation(s) against whom/which proceedings are instituted:

1. [Mother's Full Name], ID No./Date of birth: [Mother's ID Number/Date of Birth]
2. [Legal Representative 1 Full Name], ID No./Date of birth: [Legal Representative 1 ID Number/Date of Birth], [Law Firm Name]
3. [Legal Representative 2 Full Name], ID No./Date of birth: [Legal Representative 2 ID Number/Date of Birth], [Law Firm Name]
4. Children's Court for the District of [District Name]
5. High Court of South Africa, [Division Name]

[Provide the relevant contact details, addresses, and preferred method of service for each respondent]

**PART D: PARTICULARS OF PERSON APPEARING ON BEHALF OF
COMPLAINANT**

[Provide the details of your legal representative, if applicable]

PART E: PARTICULARS OF COMPLAINT AND RELIEF SOUGHT

Nature of complaint:

The complaint relates to the systemic discrimination against fathers in the allocation of parental rights and responsibilities by the Children's Court, facilitated by the mother and her legal representatives, and the failure of the High Court to address this issue as the upper guardian of all minor children. The specific incidents of discrimination include:

1. The application of the maternal preference rule by the Children's Court, which unfairly favours mothers in custody and parental rights cases, violating the equality clause in the Constitution and the best interests of the child principle.
2. The mother's actions in denying the father equal parental rights and responsibilities, and the legal representatives' facilitation of this unconstitutional stance.
3. The imposition of additional burdens on fathers seeking to enforce their parental rights, such as the payment of damages and the requirement to prove their suitability as parents, which are not applied to mothers.
4. The High Court's failure to exercise its oversight powers and address the systemic discrimination against fathers in the Children's Court, despite its role as the upper guardian of all minor children.

These discriminatory practices have resulted in the father being denied equal parental rights and responsibilities, and the child being deprived of the full involvement and care of both parents, which is detrimental to their best interests and well-being.

How has it affected you?

The discrimination against fathers in the Children's Court has caused immense emotional distress, financial strain, and damage to the father-child relationship. The father has been unjustly deprived of his constitutional right to equality and the

opportunity to be an active and equal participant in his child's life. The child has been denied the benefits of a nurturing relationship with their father, which is crucial for their emotional, psychological, and social development.

Documents:

[List and attach any relevant documents, such as court orders, affidavits, correspondence, or other evidence that supports your complaint]

Relief sought:

1. A declaratory order that the maternal preference rule and the discriminatory practices against fathers in the Children's Court are unconstitutional and invalid.
2. An order directing the Children's Court and the High Court to apply the law in a manner that upholds the equality clause and the best interests of the child principle, without unfair discrimination against fathers.
3. An order compelling the mother and her legal representatives to respect and facilitate the father's equal parental rights and responsibilities.
4. An order for the payment of damages by the respondents, jointly and severally, for the emotional distress, financial loss, and other harm suffered by the father and the child as a result of the discriminatory practices.
5. An order directing the respondents to issue a public apology acknowledging the discriminatory nature of their actions and committing to rectify their practices.
6. Any other relief that the court deems just and equitable.

PART F: PARTICULARS OF INSTITUTIONS/BODIES APPROACHED

Particulars of institutions/bodies previously approached in respect of the complaint:

1. Complaint to the Magistrates Commission regarding the conduct of magistrates in applying the maternal preference rule and discriminating against fathers.
2. Complaint to the Legal Practice Council against the mother's legal representatives for facilitating the discriminatory practices and breaching their ethical duties.
3. Complaint to the National Prosecuting Authority regarding the potential criminal liability of the mother and legal representatives for parental child abduction or kidnapping.
4. Submission to the South African Law Reform Commission requesting an investigation into the discriminatory practices in the Children's Court and the need for legal reform.
5. Complaint to the Public Protector regarding the unconstitutional and discriminatory practices in the Children's Court and the High Court's failure to address the issue.

The response of the institutions/bodies mentioned above:

[Provide a summary of the responses received from each institution/body, if any]

PART G: AFFIDAVIT

I, [Your Full Name], hereby make oath and say that:

1. I am an adult male residing at [Your Address]. I am the complainant in this matter, and the facts contained herein are within my personal knowledge and belief, unless otherwise stated or indicated by the context.
2. I am the biological father of [Child's Full Name], born on [Child's Date of Birth]. The child's biological mother is [Mother's Full Name].
3. Since the birth of my child, I have been subjected to systemic discrimination by the Children's Court in the allocation of parental rights and responsibilities. The court has consistently applied the maternal preference rule, which unfairly favors mothers in custody and parental rights cases, violating the equality clause in the Constitution and the best interests of the child principle.
4. The mother of my child, [Mother's Full Name], has actively denied me equal parental rights and responsibilities, and her legal representatives, [Legal Representative 1 Full Name] and [Legal Representative 2 Full Name], have facilitated this unconstitutional stance.
5. I have been subjected to additional burdens in seeking to enforce my parental rights, such as the payment of damages and the requirement to prove my suitability as a parent, which are not applied to mothers. This differential treatment is discriminatory and unjust.
6. Despite my efforts to assert my parental rights and challenge the discriminatory practices in the Children's Court, the High Court, as the upper guardian of all minor children, has failed to exercise its oversight powers and address the systemic discrimination against fathers.
7. The discriminatory practices have caused me immense emotional distress, financial strain, and damage to my relationship with my child. I have been

unjustly deprived of my constitutional right to equality and the opportunity to be an active and equal participant in my child's life.

8. My child has been denied the benefits of a nurturing relationship with their father, which is crucial for their emotional, psychological, and social development. The discriminatory practices in the Children's Court are detrimental to the best interests and well-being of my child.
9. I have approached various institutions and bodies, including the Magistrates Commission, the Legal Practice Council, the National Prosecuting Authority, the South African Law Reform Commission, and the Public Protector, to address the discriminatory practices and seek redress. However, the responses received have been inadequate, and the systemic discrimination persists.
10. I have attached the following documents in support of my complaint:
 - a. [List and describe the relevant documents, such as court orders, correspondence, or other evidence]
 - b. [List and describe any additional supporting documents]
11. I am instituting these proceedings in the Equality Court as a last resort to challenge the unconstitutional and discriminatory practices in the Children's Court and to seek relief that upholds the principles of equality and the best interests of the child.
12. I pray that this Honourable Court grants the relief sought in my complaint, including declaratory orders, mandatory orders, damages, and any other relief that the court deems just and equitable.

DEPONENT

I certify that:

- a. The Deponent acknowledged to me that:
 - i. He knows and understands the contents of this declaration;
 - ii. He has no objection to taking the prescribed oath; and
 - iii. He considers the prescribed oath as binding on his conscience.
- b. The Deponent thereafter uttered the words "I swear that the contents of this declaration are true, so help me God."
- c. The Deponent signed this declaration in my presence at _____ on this _____ day of _____ 20____.

COMMISSIONER OF OATHS

Full names:

Designation:

Area:

Address:

This affidavit template follows the structure and content of the complaint, providing a personal account of the father's experiences of discrimination in the Children's Court, the involvement of the mother and her legal representatives, and the High Court's failure

to address the issue. The affidavit also highlights the emotional, financial, and relational impact of the discriminatory practices on the father and the child.

By signing the affidavit before a Commissioner of Oaths, the father attests to the truthfulness of the contents of the complaint and the supporting documents, lending credibility to the application to the Equality Court.

By approaching the Equality Court as the final step in the legal strategy, after engaging with other relevant institutions and bodies, the father aims to comprehensively challenge the systemic discrimination and seek relief that addresses the unconstitutional practices and upholds the principles of equality and the best interests of the child.