

## CHAPTER 5:09

### MAINTENANCE ACT

*Acts 51/1971, 32/1973 (s. 39), 33/1973 (s. 15), 45/1973, 44/1974, 22/1975, 33/1979, 6/1981, (s. 32), 15/1981 (s. 66), 29/1981 (s. 59), 21/1982 (s. 14), 31/1983 (s. 3), 24/1987, 2/1989, 2/1990, 11/1991, 15/1994, 20/1994 (s. 4); 9/1997 (s. 10).; 22/2001 (s. 4), 6/2005 (s. 3).*

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**AN ACT to provide for the making of orders for maintenance of persons; to provide for the enforcement of maintenance orders; and to provide for matters incidental to or connected with the foregoing.**

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Maintenance Act [*Chapter 5:09*].

#### 2 Interpretation

In this Act—

“dependant”, in relation to a responsible person, means any person whom that responsible person is legally liable to maintain;

“direction” means a direction made in terms of subsection (5) of section *six*;

“earnings”, in relation to a responsible person, means any money payable to that person—

- (a) by way of salary, wages, remuneration or allowances and includes any fees, bonus, commission, overtime pay or other emoluments payable in addition thereto; or
- (b) by way of a pension and includes—
  - (i) an annuity, gratuity, commutation of pension or other like allowance or refund of pension contributions, including interest payable thereon, whether the same is payable in respect of past services or otherwise; and
  - (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, howsoever arising, or any diminution in the emoluments, of any office or employment;

“employer”, in relation to a responsible person, means a person, including the State, by whom earnings are payable or are likely to become payable to the responsible person;

“maintenance officer” means a maintenance officer designated in terms of section *twenty-six*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“order”, for the purposes of Part II, means an order made in terms of section *six*;

“probation officer” means a probation officer as defined in section 2 of the Children’s Act [*Chapter 5:06*];

[Definition amended by section 3 of Act 6 of 2005]

“responsible person” means a person who is legally liable to maintain another.

## PART II

### MAINTENANCE ORDERS BY MAINTENANCE COURT

#### 3 Maintenance courts

Every magistrates court shall, within its area of jurisdiction, be a maintenance court for the purposes of this Act.

#### 4 Summons to appear upon complaint of non-support

(1) Upon a complaint on oath being made to a maintenance officer of a maintenance court that a responsible person fails or neglects to provide reasonable maintenance for any dependant of his, the maintenance officer may issue a summons requiring the responsible person to appear before a maintenance court to show cause why an order for the maintenance of the dependant should not be made against him.

(2) A complaint in terms of subsection (1) may be laid by the dependant or by some other person having the care or custody of the dependant or by a probation officer.

#### 5 Inquiry to be held into complaint

(1) On the day specified in the summons issued in terms of subsection (1) of section *four* the maintenance court shall inquire into the matter of the complaint.

(2) An inquiry referred to in subsection (1) shall be held in the presence of the responsible person or in his absence upon proof of the service upon him of the summons requiring him to appear.

#### 6 Making of order

(1) At any inquiry referred to in section *five* the maintenance court may, subject to this Part, make an order against the responsible person for the periodical payment of such sum of money as it considers reasonable for the maintenance of the dependant in respect of whom the complaint in terms of section *four* was made.

(2) A maintenance court shall not make an order in favour of a dependant unless it is satisfied that—

- (a) the person against whom the order is sought is legally liable to maintain the dependant; and
- (b) the person against whom the order is sought is able to contribute to the maintenance of the dependant; and

- (c) the person against whom the order is sought fails or neglects to provide reasonable maintenance for the dependant.
- (3) For the purpose of determining whether or not a person who is subject to customary law is legally liable to maintain another person, a maintenance court shall regard—
  - (a) husbands and wives at customary law as primarily responsible for each other's maintenance;
  - (b) the parents of a child as being primarily and jointly responsible for the maintenance of that child until the child attains the age of majority or becomes self-supporting.
- (4) In making an order the maintenance court shall have regard to—
  - (a) the general standard of living of the responsible person and the dependant, including their social status;
  - (b) the means of the responsible person and the dependant;
  - (c) the number of persons to be supported;
  - (d) whether the dependant or any of his parents is able to work and, if so, whether it is desirable that he or she should do so.
- (5) The maintenance court may direct that the whole or any portion of the payments required to be made in terms of an order shall be paid by the employer of the responsible person from earnings due to that responsible person by the employer:

Provided that no such direction shall be made against an employer unless—

- (a) in the case of a direction to pay a sum which amounts in the aggregate to less than the minimum wages specified in terms of section 20 ("Minimum wage notices") of the Labour Act [*Chapter 28:01*];  
[Paragraph amended by section 3 of Act 6 of 2005]
- (b) in any other case—
  - (i) he has been given notice of the proposal to make such direction and a reasonable opportunity to appear to show cause why such direction should not be made; or
  - (ii) he consents to the making of the direction.

(6) An order—

- (a) may direct that payments in terms of the order shall be made through the clerk of the maintenance court where the order is for the time being registered in terms of section *eighteen* and, in such event, shall specify the person to whom the clerk of the maintenance court shall transmit payments received;
- (b) may be made as to a lump sum or may apportion the amount which shall be paid in respect of any dependant in whose favour the order was made;
- (c) may include such award as to the maintenance court seems reasonable for the payment of maintenance which is in arrears.

(7) Where a direction is to be made against the State or a fund, the notice referred to in paragraph (b) of the proviso to subsection (5) shall be deemed to have been correctly given if it is served upon such person as may be prescribed:

Provided that, if no such person is prescribed in relation to the State, the notice shall be deemed to have been correctly given if it is served upon the Secretary of the Ministry by which the earnings of the responsible person are payable or are likely to become payable.

## 7 Effect of direction

(1) Notwithstanding subsection (1) of section 51 of the Children's Act [*Chapter 5:06*], a direction shall have precedence over any other order of court requiring payments to be made from the earnings due to the responsible person.

[Subsection amended by section 3 of Act 6 of 2005]

(2) Where a direction has been made against an employer, no part of the earnings due to the responsible person by the employer shall be applied to the settlement of any debt, including set-off, or in accordance with any agreement, expressed or implied, or any arrangement or instruction of any kind whatsoever until all payments due in terms of the direction have been made:

Provided that nothing in this subsection shall be construed as relieving an employer from the obligation to withhold and make payments of employees' tax in accordance with section 73 of the Income Tax Act [*Chapter 23:06*].

(3) Subject to section *eight*, where a responsible person ceases to be entitled to receive any earnings from an employer against whom a direction has been made—

- (a) that direction shall cease to have effect as regards that employer; and
- (b) the responsible person shall make payments which were the subject of the direction and which are due to the dependant.

## 8 Variation or discharge of direction or order

(1) Subject to this section, an application for the variation or discharge of a direction or an order may be made to a maintenance officer of the maintenance court where the order is for the time being registered in terms of section *eighteen*.

(2) An application referred to in subsection (1) shall—

- (a) be on affidavit; and
- (b) state the grounds upon which the variation or discharge is sought.

(3) Subject to subsections (4) and (5), where an application has been made to him in terms of this section, the maintenance officer shall cause a notice to be served on all persons affected by the direction or order, as the case may be, to appear before the maintenance court on a date to be specified in the notice and to show cause why the application should not be granted.

(4) The maintenance officer shall, if he considers that an application made to him in terms of this section is frivolous or vexatious—

- (a) decline to cause a notice to be served in terms of subsection (3); and
- (b) refer the application to the maintenance court.

(5) If the maintenance court considers that an application referred to it in terms of subsection (4)—

- (a) is frivolous or vexatious, it shall summarily and without holding an inquiry in terms of subsection (6) order that the application be dismissed; or
- (b) is not frivolous or vexatious, it shall direct the maintenance officer to cause a notice to be served in terms of subsection (3), and subsections (6) to (8) shall thereafter apply and be followed.

(6) On the day specified in the notice referred to in subsection (3) the maintenance court shall inquire into the application or may refer the inquiry to the maintenance court of the province or district where the person in whose favour the order or direction, as the case may be, was made, is residing.

(7) If the maintenance court holding an inquiry in terms of subsection (6) is satisfied that—

- (a) there are no longer any reasons for the direction or order remaining in force, it may discharge the direction or order; or
- (b) the means or circumstances of any of the parties have altered since the making of the direction or order or any variation thereof, it may vary the direction or order subject to subsections (3), (4), (5), (6) and (7) of section *six* which shall apply, *mutatis mutandis*, in relation to any such variation; or
- (c) the manner in which payments are to be made under the order or direction should be altered, it may vary the order or direction appropriately, subject to subsections (5), (6) and (7) of section *six*, which shall apply, *mutatis mutandis*, in relation to any such variation.

(8) An inquiry referred to in subsection (6) shall be held in the presence of the responsible person or in his absence upon proof of the service upon him of the notice referred to in subsection (3).

## **9 Application for direction against employer**

(1) Any person in whose favour an order has been made may apply to the maintenance officer of the maintenance court where the order is for the time being registered in terms of section *eighteen* for a direction to be made against the employer of the responsible person.

(2) Upon an application referred to in subsection (1) being made to him, the maintenance officer shall issue a notice upon the responsible person and the employer, calling upon them to appear before the maintenance court on a date to be specified in the notice and to show cause why the direction should not be made or to consent to the making of the direction.

(3) On the date specified in the notice referred to in subsection (2) and in the presence of the employer and the responsible person or in the absence of either or both of them and upon proof of the service of a notice upon the absent party or parties, as the case may be, the maintenance court shall inquire into the matter and may make a direction against the employer to make such payments in terms of the order, including any arrears, as the court may specify.

## **10 Adultery**

Where a spouse is proved to have committed adultery before or after the making of an order and such adultery has not been condoned, the maintenance court may refuse to make an order for maintenance in favour of such spouse or may discharge an order for maintenance made in favour of such spouse.

## **11 Termination of order**

(1) Subject to subsection (4), an order made in favour of a child shall, with respect to that child, cease if and when—

- (a) the child dies or is adopted by another person; or
- (b) in respect of the marriage between his parents, an order of divorce or judicial separation or decree of nullity is made which includes an order for the maintenance of the child; or
- (c) the child marries; or
- (d) subject to subsection (2), the child attains the age of eighteen years.

(2) A maintenance court where an order is for the time being registered may, upon an application being made to it by or on behalf of a child who attains the age of eighteen years and in whose favour an order has been made and upon due inquiry to which section *eight* shall apply, *mutatis mutandis*, extend the order for such period and on such terms as the maintenance court thinks fit.

(3) Subject to subsection (4), an order made in favour of a wife shall, with respect to the wife, cease if and when—

- (a) the wife dies or remarries; or
- (b) an order of divorce or decree of nullity is made in respect of the marriage; or
- (c) an order of judicial separation is made which includes an order for the maintenance of the wife.

(4) Where an order has been made in favour of more than one person and the amount due to each person under the order has not been apportioned, the order shall not cease with respect to any of those persons in circumstances specified in subsection (1) or (3) but shall remain in force until varied or discharged in accordance with section *eight*.

## **12 Variation and rescission of directions, orders, etc., made in absence of person**

(1) Where a direction or order has been made, varied, extended or discharged or an application for such direction, order, variation, extension or discharge has been refused in the absence of—

- (a) any person affected thereby; or
- (b) the applicant therefor;

such person or applicant, as the case may be, may apply to the maintenance officer of the maintenance court where the order concerned is for the time being registered in terms of section *eighteen* or, if there is no such order, where the order was discharged or the application was heard, as the case may be, to vary or rescind the direction, order, variation, extension or discharge or to rehear the application.

(2) An application made to a maintenance officer in terms of subsection (1) shall—

- (a) be on affidavit; and
- (b) state the reasons why the applicant did not appear at the inquiry; and
- (c) state the grounds on which the variation, rescission or rehearing is sought.

(3) Where an application has been made to him in terms of subsection (1), the maintenance officer shall cause a notice to be served on all persons likely to be affected by or as a result of the application, calling upon them to appear before the maintenance court on a date to be specified in the notice and to show cause why the application should not be granted.

(4) On the date specified in the notice referred to in subsection (3) the maintenance court shall inquire into the application or may refer the inquiry to the appropriate maintenance court of the province or district where the person in whose favour the order or direction was or had been made or is sought, as the case may be, is residing.

(5) The maintenance court holding an inquiry in terms of subsection (4) may, subject to subsections (3), (4), (5), (6) and (7) of section *six* which shall apply, *mutatis mutandis*, grant the application.

(6) An inquiry referred to in subsection (4) shall be held in the presence of the responsible person or in his absence upon proof of service upon him of the notice referred to in subsection (3).

## **13 Procedure at inquiries in terms of this Part**

At any inquiry in terms of this Part—

- (a) any person may appear in person or be represented by a legal practitioner;
- (b) save where provision otherwise exists in regulations made in terms of section *thirty-two*, the proceedings shall be conducted in such manner and on such principles as the maintenance court thinks best fitted to do substantial justice and the maintenance court may call such witnesses as it considers necessary for the purpose;
- (c) the maintenance court shall have power to issue a subpoena for the attendance of any witness, to call for the production of any book or document and to examine any witness on oath;
- (d) the maintenance court may direct that the proceedings be conducted in private;
- (e) a record of the proceedings shall be kept;
- (f) the maintenance court may adjourn the proceedings from time to time;
- (g) the proceedings may be held in the absence of any person in whose favour an order or direction has been made or is sought, as the case may be, if the maintenance court is satisfied that such person or any other person having the care or custody of such person has been given notice of the inquiry.

## **14 Witness failing to attend**

(1) If any person who has been subpoenaed to give evidence or to produce any book or document before a maintenance court holding an inquiry in terms of this Part fails to attend or to remain in attendance until duly excused by the maintenance court from such further attendance and it appears to the maintenance court from the return of the person charged with the service of the subpoena or from evidence on oath that the subpoena was duly served upon such person and if no sufficient cause for such failure seems to the maintenance court to exist, the maintenance court may issue a warrant for the arrest of such person and he shall thereupon be arrested by any police officer to whom such warrant is delivered and shall be brought before the maintenance court to give his evidence or to produce the book or document.



(2) A person referred to in subsection (1) shall be liable to be sentenced summarily by the maintenance court to pay a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) If any person who has been subpoenaed to give evidence or to produce any book or document before a maintenance court holding an inquiry in terms of this Part refuses, without sufficient cause, the onus of proof whereof shall rest upon him, to be sworn as a witness or, having been sworn, to answer fully and satisfactorily any question lawfully put to him or refuses or fails to produce any such book or document, the maintenance court may order that person to be detained in custody, as if he were a prisoner awaiting trial, for any period not exceeding eight days unless he sooner consents to do what is required of him.

(4) If a person referred to in subsection (3), upon being brought before the maintenance court at any adjourned hearing, again refuses or fails to do what is required of him, the maintenance court may, if it thinks fit, again adjourn the inquiry and order that he be detained for a like period and so again from time to time until such person consents to do what is required of him.

(5) Any person referred to in subsection (3) who refuses or fails to do what is required of him shall, in addition to being detained in custody as provided in this section, be liable to be sentenced summarily by the maintenance court to pay a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **15 Witness giving false evidence**

A person who in a complaint referred to in section *four* or in an affidavit referred to in section *eight* or a witness who, after being duly sworn at an inquiry held in terms of this Part, makes a statement of fact material to the question under consideration or to be considered by the maintenance court, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **16 Contempt of maintenance court**

If any person wilfully insults the maintenance court during an inquiry held by it in terms of this Part or wilfully interrupts the inquiry or otherwise wilfully disturbs the peace or order of such inquiry the maintenance court may—

- (a) order that person to be removed and detained in custody until the conclusion of the inquiry on that day;
- (b) summarily impose upon that person a fine not exceeding level three or imprisonment for a period not exceeding one month or both such fine and such imprisonment.

### **17 Review of summary penalties**

Where the maintenance court orders the detention or imprisonment of a person in terms of section *fourteen* or *sixteen*, such detention or imprisonment shall be deemed to be a sentence referred to in paragraph (a) of subsection (1) of section 57 of the Magistrates Court Act [Chapter 7:10], and the record of the proceedings in the maintenance court shall accordingly be forwarded for review by a judge of the High Court in accordance with that section.

## **PART III**

### **ENFORCEMENT OF VARIOUS ORDERS FOR MAINTENANCE**

### **18 Registration of orders**

(1) The clerk of the maintenance court shall register—

- (a) all orders made in terms of section *six* by the maintenance court;
- (b) all orders transmitted to the maintenance court in terms of section *twenty*;
- (c) all orders tendered for registration in terms of subsection (2).

(2) An order of the High Court or any other court, other than a maintenance court, for the payment of sums of money towards the maintenance of a person may, without prejudice to any other remedies that may be available for the enforcement of that order, be tendered by any person against whom or in favour of whom it was made for registration to the clerk of the appropriate maintenance court of the province or district where the person against whom the order was made resides.

(3) Subject to subsection (4), where an order referred to in subsection (2) has been registered, sections *seven*, *eight*, *nine*, *nineteen*, *twenty*, *twenty-one* and *twenty-two* shall apply, *mutatis mutandis*, in relation to such order—

- (a) as if it were an order made in terms of section *six*; and
- (b) in the case of an order of the High Court, notwithstanding that such order permits or authorizes a variation of any of the terms thereof only by way of application to the High Court;

and where any such order which has been made in favour of a child has ceased or is due to cease upon the child having attained or attaining a specified age, the maintenance court may, upon application being made to it and upon due inquiry to which section *eight* shall apply, *mutatis mutandis*, extend the order for such period and subject to such conditions as it may think fit.

(4) Where a maintenance court varies, extends or discharges an order of the High Court referred to in subsection (2)—

(a) it shall as soon as possible cause the record of the proceedings to be forwarded to the registrar of the High Court for review by a judge in chambers who may—

(i) confirm, vary or set aside the order of the maintenance court; or

(ii) set aside the order of the maintenance court and remit the matter to that court with instructions to take such further proceedings as the judge may direct and thereafter to make such order as it thinks fit;

(b) the order of the maintenance court shall be suspended pending the review thereof in terms of paragraph (a).

(5) The clerk of the maintenance court shall alter his register referred to in subsection (1) to reflect therein any variation, extension, discharge or transmission of the order to another court.

(6) The clerk of the maintenance court shall give notice to every person affected thereby of any direction, order or award made by a maintenance court, or any variation, extension, rescission or discharge thereof:

Provided that any failure to comply with this subsection shall not affect the validity of any such direction, order, award, variation extension, rescission or discharge.

## **19 Order to make future payments through clerk of court**

(1) Where an order, other than an order which requires payments to be made through a clerk of the maintenance court, has been registered in terms of section *eighteen* and an affidavit is lodged with a maintenance officer of the maintenance court where the order is registered stating that the order is not being complied with, the maintenance officer may issue a notice to the person against whom the order was made requiring him to appear before the maintenance court on a date to be specified in the notice and show cause why he should not be ordered to make all payments in terms of the order through the clerk of the maintenance court or to consent to an order being made against him to do so.

(2) On the date specified in the notice referred to in subsection (1), if the person against whom the order was made—

(a) does not appear and upon proof of the service of the notice upon him; or

(b) consents thereto; or

(c) does not show cause to the contrary;

the maintenance court may direct that all payments in terms of the order, including any payments which are in arrears, shall be made through the clerk of the maintenance court where the order is for the time being registered in terms of section *eighteen*.

(3) Where an order, other than an order which requires payments to be made through the clerk of the maintenance court, has been registered in terms of section *eighteen* and the person who is required to make payments thereunder lodges with the maintenance officer of the maintenance court where the order is registered a request that all payments in terms of the order be directed to be made through the clerk of the maintenance court, the maintenance officer may issue a notice to the party in whose favour the order was made to appear before the maintenance court on a date to be specified in the notice and to show cause why all payments in terms of the order should not be directed to be made through the clerk of the maintenance court or to consent to such direction being made.

(4) On the date specified in the notice referred to in subsection (3), if the person in whose favour the order was made—

(a) does not appear and upon proof of the service of the notice upon him; or

(b) consents thereto; or

(c) does not show cause to the contrary;

the maintenance court may direct that all payments in terms of the order, including any payments which are in arrears, shall be made through the clerk of the maintenance court where the order is for the time being registered in terms of section *eighteen*.

(5) A direction given by a maintenance court under this section may be varied in terms of section *eight*.

## **20 Transmission of order to another province or district**

(1) The clerk of the maintenance court may certify under his hand an order registered by him in terms of section *eighteen* and may transmit such order to the appropriate maintenance court of the province or district in which the person who is required to make payments in terms of the order is residing.

(2) On receipt of an order transmitted in terms of subsection (1) the clerk of the maintenance court concerned shall register the order in terms of section *eighteen*.

(3) When an order has been registered as required by subsection (2), the clerk of the maintenance court shall deliver a notice in writing to the person required to make payments in terms of the order informing him that the order has been registered at his court and, if such be the case in terms of the order, that in future all payments in terms of the order are required to be made through the clerk of that maintenance court.

## 21 Termination of employment and change of address to be notified

(1) Where a responsible person is discharged from, or terminates his employment with, an employer against whom a direction has been made, such employer shall, within seven days, notify in writing the clerk of the maintenance court where the order to which the direction relates is registered in terms of section *eighteen* of such discharge or termination.

(2) A responsible person against whom an order which has been registered in terms of section *eighteen* has been made shall notify in writing the clerk of the maintenance court where the order is registered of the particulars of any change of his address or employment, within seven days of any such change.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

## 22 Civil enforcement of direction or order

(1) Every direction or order registered in terms of section *eighteen* shall have the effect of a garnishee order or a civil judgment respectively of the magistrates court in favour of the clerk of the maintenance court where the direction or order is registered, and the provisions of the Magistrates Court Act [*Chapter 7:10*] and rules made thereunder relating to the enforcement of a garnishee order or a civil judgment, as the case may be, shall apply, *mutatis mutandis*, to that direction or order.

(2) The clerk of the maintenance court shall, on behalf of the person in whose favour a direction or an order registered in terms of section *eighteen* has been made, take such steps for the civil enforcement of the direction or order as may be necessary.

## 23 Criminal offence for failing to comply with maintenance order

(1) Subject to subsection (1), any person against whom an order to which this section applies has been made who fails to make any particular payment in terms of the order shall be guilty of an offence and liable to imprisonment for a period not exceeding one year.

(2) If a person is convicted of the offence referred to in subsection (1), the court may, in addition to any penalty which it may impose, order that all payments in terms of the order, including any payments which are in arrears, shall be made through the clerk of the appropriate maintenance court of the province or district where the convicted person resides.

(3) Subject to subsection (4), a person who has been convicted or acquitted of an offence referred to in subsection (1) and who fails—

(a) within two months after such conviction or acquittal; or

(b) if upon such conviction he was sentenced to and has undergone imprisonment, other than periodical imprisonment, within two months after his release from such imprisonment;

to make payments in terms of the order shall be liable to be prosecuted again under subsection (1) and his previous conviction or acquittal shall not be a bar to his conviction on the later charge.

(4) Proof that any failure which is the subject of a charge under this section was due to a lack of means and that such lack of means was not due to—

(a) unwillingness to work; or

(b) misconduct; or

(c) the incurring of debts or obligations which in all the circumstances of the case are unreasonable;

shall be a good defence to any such charge:

Provided that, if the court finds that the person charged was able to pay a portion of any particular payment and failed to do so, such proof shall not be a defence in relation to the portion of the particular payment which the person was able to pay.

(5) This section shall apply to—

(a) an order made in terms of section *six*;

(b) an order of the High Court or any other court other than a maintenance court for the payment of a sum of money towards the maintenance of any person;

(c) a contribution order made under the Children's Act [*Chapter 5:06*];

[Paragraph amended by section 3 of Act 6 of 2005]

(d) a maintenance order registered or confirmed under the Maintenance Orders (Facilities for Enforcement) Act [*Chapter 5:10*];

(e) a maintenance order made in terms of subsection (3) of section 5 of the Guardianship of Minors Act [*Chapter 5:08*].

(6) In any prosecution for a contravention of this section—

(a) a certificate alleging the essential details of an order for the payment of maintenance shall, if purporting to have been signed by a person describing himself as the registrar of the High Court, or a clerk of a maintenance court where the order is for the time being registered in terms of section *eighteen*, be received in any court on production by the prosecutor as *prima facie* proof of the facts therein stated;



- (b) where payment in terms of an order for the payment of maintenance must be made through the clerk of a maintenance court, a certificate alleging the fact of default of any such payment shall, if purporting to have been signed by a person describing himself as a clerk of the maintenance court, be received in any court on production by the prosecutor as *prima facie* proof of the facts therein stated;
- (c) whenever it is necessary to establish the means of a person, a sworn statement purporting to be made by the employer or former employer of such person giving particulars of the person's earnings and of any deductions therefrom shall be received in any court on production by the prosecutor as *prima facie* proof of the facts therein stated.

## **24 Criminal offence for failing to comply with direction**

Any person who fails to comply with any direction made against him shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

## **25 Release from imprisonment on payment of arrears**

(1) Where a person who has been imprisoned in respect of a conviction by a magistrates court for an offence which involves the failure to comply with an order for the payment of maintenance pays all arrears of maintenance outstanding or makes arrangements for the payment of all such arrears, he may make application in writing to a magistrate of the court which convicted him for his release from prison stating that all such arrears have been paid or, as the case may be, the details of the arrangements made for the payment of all such arrears.

(2) Upon an application being made to him in terms of subsection (1), the magistrate shall cause a copy thereof and notice of the date on which he proposes to inquire into the matter of the application to be given to the public prosecutor.

(3) On the date fixed for the determination of the application the magistrate shall, by order under his hand, direct that the applicant be brought before him and, after affording the applicant and the public prosecutor an opportunity of being heard and upon being satisfied that—

- (a) all arrears of maintenance have been paid or, as the case may be, arrangements, which in the opinion of the magistrate are adequate, have been made for the payment of all such arrears; and
- (b) the applicant *bona fide* intends to make further payments in terms of the order requiring him to pay maintenance; and
- (c) it is desirable in the circumstances to do so;

may order the release of the applicant from the imprisonment imposed upon him in respect of the offence referred to in subsection (1) and shall suspend, for a period not exceeding three years, the remainder of the sentence of imprisonment imposed upon the applicant in respect of that offence on condition that the applicant makes future payments in terms of the order.

(4) Any person who is aggrieved by the refusal of a magistrate to make an order of release from imprisonment in terms of subsection (2) may appeal against such refusal to the High Court, and the Magistrates Court Act [Chapter 7:10] and the High Court Act [Chapter 7:06] and the rules made thereunder shall apply, *mutatis mutandis*, to such appeal as if it were an appeal against sentence in a criminal case by the magistrate.

[Subsection as amended by section 10 of Act 9 of 1997]

## **PART IV**

### **GENERAL**

## **26 Maintenance officers**

The Minister may designate to be maintenance officers for maintenance courts—

- (a) any public officer; or
- (b) any person appointed subject to any law relating to the Public Service.

## **27 Appeals from decisions of maintenance courts**

(1) Any person who is aggrieved by the decision of a maintenance court in respect of any direction, order or award made in terms of this Act or any variation, extension or discharge thereof or the refusal to make any such direction, order, award, variation, extension, rescission or discharge, may appeal against such decision to the High Court.

[Subsection as amended by section 10 of Act 9 of 1997]

(2) The Magistrates Court Act [Chapter 7:10] and the High Court Act [Chapter 7:06] and the rules made thereunder shall apply, *mutatis mutandis*, to any appeal made under subsection (1) as if it were an appeal against the judgment in a civil suit by a magistrate.

[Subsection as amended by section 10 of Act 9 of 1997]

(3) The noting of an appeal in terms of this section shall not, pending the determination of the appeal, suspend the decision appealed against unless the maintenance court, on application being made to it, directs otherwise, and for such purposes the maintenance court may give such directions as it thinks fit, including, but without derogation from the generality of the foregoing, a direction that, pending the determination of the appeal—

- (a) the whole or any portion of the maintenance be paid to or for the benefit of the dependant concerned; or
- (b) the whole or any portion of the maintenance be paid into court; or
- (c) payment of the whole or any portion of the maintenance be suspended for such period as the court may specify.

(4) On an appeal in terms of this section, the court may, if it allows the appeal, make such order as it thinks fit relating to the repayment of any sums of money paid towards the maintenance of any person pending the determination of the appeal.

## **28 Reciprocity with other states**

Where the Minister is satisfied that in any other State there is a law in force recognizing the orders of a maintenance court under this Act and providing for their enforcement against a responsible person in the jurisdiction of such other State, it shall be lawful for the Minister to make reciprocal regulations providing for the recognition and enforcement in Zimbabwe of orders made in such other State under any law similar to this Act.

## **29 Service of process**

(1) Unless provision to the contrary exists in any regulations made under section *thirty-two*, a summons, notice, subpoena or other process connected with any proceedings under this Act shall be served without fee by the police officer to whom it is directed, in the manner prescribed for the service of civil process in rules made under the Magistrates Court Act [*Chapter 7:10*].

(2) Any writ of attachment in execution of an order which has been registered in terms of section *eighteen* shall be executed by the messenger of the court in the manner provided for in the rules relating to the court where the order is registered and the messenger's fees and charges for the execution shall be paid out of the proceeds of the sale of any property attached in execution and shall be levied in addition, and in preference, to the sum payable under the order.

## **30 Payment of expenses of witnesses**

A maintenance court may, if it thinks fit, order the payment from moneys appropriated for the purpose by Act of Parliament of allowances to any person attending any inquiry held in terms of this Act in accordance with the tariff prescribed.

## **31 Awards as to expenses**

(1) Where, in terms of this Act, a maintenance court makes an order or direction or orders any variation, extension, rescission or discharge thereof or refuses to make any such order, direction, variation, extension, rescission or discharge, it may, where it appears just to do so, in addition to the order of the court, make an award of such amount as it may specify against any person in favour of another in respect of the reasonable expenses incurred by the latter, directly or indirectly, in connection with the proceedings concerned:

Provided that in making any such award the maintenance court shall have regard to the means of the person against whom the award is intended to be made.

(2) An award in terms of subsection (1) shall have the effect of a civil judgment of a magistrates court, and the provisions of the Magistrates Court Act [*Chapter 7:10*] and rules made thereunder relating to the enforcement of judgments shall apply, *mutatis mutandis*, to such award.

(3) The clerk of a maintenance court which has made an award in terms of subsection (1) shall, on behalf of the person in whose favour the award was made, take all such steps for the civil enforcement of the award as may be necessary.

## **32 Regulations**

(1) The Minister may by regulation prescribe all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In the exercise of the powers conferred upon him by subsection (1) the Minister may provide for any of the following—

- (a) the form of any process, certificate or register issued or kept in terms of this Act;
- (b) the procedure to be followed in maintenance courts;
- (c) the records to be kept by the maintenance courts;
- (d) guidelines for the assessment by the court of amounts of money to be paid towards the maintenance of a person.