

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2013/HP/1790**

BETWEEN:

**MARGARET KAYANIKA**

AND

**MORGAN KAYANIKA**



**APPLICANT**

**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 29<sup>th</sup> DAY OF  
JANUARY, 2018**

*For the Applicant : Mrs B. Musukwa Mulenga, National Legal Aid Clinic for  
Women*

*For the Respondent : No appearance*

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## **R U L I N G**

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LEGISLATION REFERRED TO:

**1. The Maintenance Orders Act, Chapter 55 of the Laws of Zambia**

This is a ruling on an application made by the Applicant for attachment of earnings, pursuant to Section 8 of the Maintenance Act, Chapter 55 of the Laws of Zambia. Counsel stated that they relied on the affidavit filed in support of the application on 17<sup>th</sup> October, 2017, as well as the amended summons filed on 1<sup>st</sup> November, 2017.

It was Counsel's submission that it was clear from the affidavit that the Respondent had neglected to maintain the Applicant and the children of the family as provided in the consent order dated 27<sup>th</sup> March, 2014. On

the affidavit in opposition to the application that was filed by the Respondent, Counsel stated that it did not meet the requirements set out in Section 8 (2) of the Maintenance Orders Act, Chapter 55 of the Laws of Zambia, and prayed that the application be granted.

I have considered the application. The affidavit in support of the application shows that the parties executed a consent order before Mrs Justice Chisanga on 27<sup>th</sup> March, 2014, wherein it was agreed that the Respondent would meet the basic needs of the Applicant and the children of the family in relation to the minimum basic food basket for an average family, by paying a sum of K1, 000.00 per month and school fees for the children of the family, Kaula Kayanika and Kapanga Kayanika.

However the Respondent had not been consistent with the payment of the maintenance, and in 2014 he paid the said maintenance from February to December, and in 2015 he only paid maintenance from January to May, and had since failed to pay the said maintenance., despite being in gainful employment as a Local Court Magistrate at the Matero Local Court.

The Respondent in the affidavit in opposition filed on 11<sup>th</sup> January, 2018 stated that his failure to meet the maintenance agreed in the consent order had been due to the Applicant deliberately creating barriers when it came to communicating the children's actual requirements, and refusing to discuss the same. Further that the Applicant had been insulting him as well as ridiculing him, and had created emotional pain to him by not talking to him, and had been harassing him and denying him use of his personal things such as his laptop.

He also deposed that the Applicant had been engaged in part time jobs and ran a minibus business with her sister in law. That he rents a house in Linda Compound at K1100.00 a month, and has loans and his monthly pay is K2, 168.14 as shown on the payslip exhibited as 'MK1'.

The application was made pursuant to Section 8 of the Maintenance Orders Act, Chapter 55 of the Laws of Zambia. The Section provides and I quote;

***“8. (1) If, on the application of a person entitled to receive payments under a maintenance order, it appears to the High Court or a magistrate's court by which payment of any arrears under the order is enforceable-***

***(a) that, at the time when the application was made, there was due under the order and unpaid an amount equal to not less, in the case of an order for weekly payments, than four or, in any other case, than two of the payments required by the order; and***

***(b) that the defendant is a person to whom earnings fall to be paid;***

***then, subject to subsection (2), the court may, if it thinks fit, by an order or orders require the person to whom the order in question is directed, being a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or that part thereof payments in accordance with the Schedule; and any such order is in this Act referred to as an "attachment of earnings order".*”**

It is not in dispute that maintenance is due to be paid by the Respondent in this matter, as a consent order was executed on 27<sup>th</sup> March, 2014 in which it was agreed that the Respondent would be paying K1, 000.00 per month as maintenance for the Applicant and the children. That the said maintenance has been due to be paid from June, 2015 and therefore the circumstances of the case are such that the matter qualifies for the order to be granted, as there are more than two payments due to be made.

Section 8 (2) of the Maintenance Orders Act provides that a court shall not make an attachment of earnings order if it appears that the failure of the defendant to make payments in accordance with the maintenance order in question was not due to his wilful refusal or culpable neglect.


Counsel for the Applicant argued that the reasons advanced by the Respondent for failing to pay the maintenance do not meet the requirement in Section 8 (2) of the Act stated above. The reasons advanced by the Respondent relate to the Applicant not cooperating with him and their general lack of communication. The consent order executed by the parties is clear on what the payments agreed were for. There was therefore no need for the Respondent to fail to pay as agreed, as even without the Applicant spelling out the exact needs for the children he should have paid, as amount due as maintenance was agreed. The Respondent obtained loans from Izwe, Bayport and Barclays Bank which are being deducted as seen on his November payslip exhibited as 'MK1' to the affidavit in opposition, yet he neglected to pay the maintenance agreed despite obtaining the loan sums.

The Applicant has shown that the Respondent wilfully neglected to pay the maintenance due, and pursuant to Section 8 (3) of the Maintenance Orders Act I order that the agreed amount of K1, 000.00 as maintenance

per month shall be attached, and be the deducted amount from the Respondent's salary every month and paid to the Applicant commencing January, 2018. I further direct that the arrears of maintenance due from June 2015 to December 2017, being a period of thirty one months, totaling K31, 000.00 shall be secured and paid to the Applicant by way of deduction from the Applicant's salary in the amount of K500.00 per month starting March, 2018, when the Izwe loan will cease to be deducted in the amount of K871.00 every month.

By virtue of this order the Registrar of the High Court is directed to ensure that the said attached maintenance order is effected from the salary of Morgan Kayanika a Local Court Magistrate based at the Matero Local Court. The Respondent shall bear the costs of the proceedings.

**DATED THE 29<sup>th</sup> DAY OF JANUARY, 2018**

  
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**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**