

Zambia

Maintenance Orders Act, 1960

Chapter 55

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Zambia

Maintenance Orders Act, 1960

Chapter 55

Commenced on 26 August 1960

[This is the version of this document at 31 December 1996.]

[39 of 1960; 13 of 1994; Government Notice 497 of 1964; Statutory Instrument 72 of 1964]

An Act to make provision for the registration in the High Court or a subordinate court of certain maintenance orders made by the order of those courts; to provide for the enforcement and variation of registered orders; to provide for the attachment of sums falling to be paid by way of wages, salary or other earnings or by way of pension for the purpose of enforcing certain 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 Orders Act^{*}

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"**affiliation order**" means an order made under section 4 of the Bastardy Laws Amendment Act, 1872, of the United Kingdom, adjudging a man to be the putative father of a bastard child and ordering him to pay a sum of money weekly or otherwise to the mother of a bastard child or to any other person who is named in the order;

"**attachment of earnings order**" has the meaning assigned to it by subsection (1) of section eight;

"**defendant**", in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;

"**earnings**", in relation to a defendant, means any sums (other than excepted sums) payable to him —

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service);
- (b) by way of pension (including an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment);

"**employer**" means a person by whom, as a principal and not as a servant or agent, earnings fall to be paid to a defendant, and reference to payment of earnings shall be construed accordingly;

"**excepted sums**" means—

- (a) sums payable by any public department of the government of any country outside Zambia; and

^{*} The provisions of this Act ceased with effect from 28th April, 1995, to apply to the maintenance of children. (See section 43 of Cap. 64)

- (b) pension or allowances payable to the defendant in respect of his disablement or disability;

"**magistrate's court**" means a subordinate court presided over by a senior resident magistrate and a subordinate court presided over by a resident magistrate;

"**maintenance order**" means—

- (a) an order for alimony, maintenance or other payments made or deemed to be made by a court in Zambia under any of the following enactments, that is to say:
- ii(i) sections 19 to 27 of the Matrimonial Causes Act, 1950, of the United Kingdom;
 - i(ii) the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, of the United Kingdom;
 - (iii) section 11 of the Matrimonial Causes Act, 1937, of the United Kingdom; or
 - (iv) section 3 or 4 of the Bastardy Laws Amendment Act, 1872, of the United Kingdom;
- (b) an order registered in a court under the Maintenance Orders (Enforcement) Act or confirmed by a court under that Act;

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and includes any such order which has been discharged if any arrears are recoverable thereunder;

"**prescribed**" means prescribed by rules of court;

"**proper officer**", in relation to the High Court, has the meaning assigned from time to time to the expression by rules of the High Court; and in relation to a subordinate court means the clerk of the court.

- (2) Any reference in this Act to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive such payments either directly or through another person or for transmission to another person.
- (3) Any reference in this Act to proceedings relating to an order includes a reference to proceedings in which the order may be made.
- (4) Any reference in this Act to costs incurred in proceedings relating to a maintenance order shall be construed in the case of a maintenance order made by the High Court as a reference to such costs as are included in an order for costs relating solely to that maintenance order.

Part II – Registration, enforcement and variation of certain maintenance orders

3. Application of Part II

- (1) The provisions of this Part shall have effect for the purpose of enabling maintenance orders to which this Part applies to be registered—
- (a) in the case of an order made by the High Court, in a magistrate's court; and
 - (b) in the case of an order made by a subordinate court, in the High Court or in any other subordinate court;
- and, subject to those provisions, while so registered—
- (i) to be enforced in like manner as an order made by the court of registration; and
 - (ii) in the case of an order registered in a magistrate's court, to be varied by such court.
- (2) This Part applies to maintenance orders made by the High Court or a subordinate court.

- (3) Without prejudice to the provisions of section two, in this Part, unless the context otherwise requires, the following expressions have the following meanings:

"High Court order" and "subordinate court order" mean an order made by the High Court or a subordinate court, as the case may be;

"order" means a maintenance order to which this Part applies;

"original court" and "court of registration", in relation to an order, mean the court by which the order was made or, as the case may be, the court in which the order is registered;

"registered" means registered in accordance with the provisions of this Part, and "registration" shall be construed accordingly;

and, for the purposes of this Part, an order for the payment by the defendant of any costs incurred in proceedings relating to a maintenance order, being an order for the payment of costs made while the maintenance order is not registered, shall be deemed to form part of that maintenance order.

4. Registration of orders

- (1) A person entitled to receive payments under a High Court order may apply for the registration of the order to the original court, and the court may, if it thinks fit, grant the application.
- (2) Where an application for the registration of such an order is granted—
- (a) no proceedings shall be begun, and no writ, warrant or other process shall be issued, for the enforcement of the order before the registration of the order or the expiration of the prescribed period from the grant of the application, whichever first occurs; and
 - (b) the original court shall, on being satisfied within the period aforesaid by the person who made the application that no such proceedings or process begun or issued before the grant of the application remain pending or in force, cause a certified copy of the order to be sent to the clerk of a subordinate court within whose area of jurisdiction the defendant appears to be;
- but if at the expiration of the period aforesaid the original court has not been so satisfied, the grant of the application shall become void.
- (3) A person entitled to receive payments under a subordinate court order who considers that the order could be more effectively enforced if it were registered may apply for the registration of the order to the original court, and the court shall grant the application on being satisfied in the prescribed manner that, at the time when the application was made, 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 was due thereunder and unpaid.
- (4) Where an application for the registration of a subordinate court order is granted—
- (a) no proceedings for the enforcement of the order shall be begun before the registration takes place and no warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the grant of the application;
 - (b) any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the grant of the application, unless the defendant has then already been detained in pursuance of the warrant; and
 - (c) the original court shall, on being satisfied in the prescribed manner that no process for the enforcement of the order issued before the grant of the application remains in force, cause a certified copy of the order to be sent to the prescribed officer of the High Court where the application is for registration in the High Court or, where the application is for registration in another subordinate court, to the clerk of that subordinate court.

- (5) The officer or clerk of a court who receives a certified copy of an order sent to him under this section shall cause the order to be registered in that court.
- (6) Where a maintenance order is registered in any court under this Part, any provision of the order by virtue of which sums payable thereunder are required to be paid through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered.
- (7) Where a maintenance order is registered under this Part, the court shall, unless it is satisfied that it is undesirable to do so, order that all payments to be made under the maintenance order (including any arrears accrued before the date of the registration) shall be made through the proper officer of the court of registration.
- (8) An order made by a subordinate court under subsection (7) may be varied or revoked by a subsequent order.
- (9) Where, by virtue of the provisions of this section or any order made thereunder, payments under a maintenance order cease to be or become payable through or to any officer or person, the person liable to make the payments shall, until he is given the prescribed notice to that effect, be deemed to comply with the maintenance order if he makes payments in accordance with the maintenance order and any order under this section of which he has received such notice.
- (10) In this section, "certified copy", in relation to an order of the court, means a copy certified by the proper officer of the court to be a true copy of the order or of the official record thereof.
- (11) An order which is for the time being registered under this Part in any court shall not be registered thereunder in any other court.

5. Enforcement of registered orders

- (1) Subject to the provisions of this section, a registered order shall be enforceable in all respects as if it has been made by the court of registration and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of a registered order may be taken accordingly.
- (2) Subject to the provisions of subsection (3), an order registered in a subordinate court shall be enforceable as if it were an affiliation order; and the provisions of any law with respect to the enforcement of affiliation orders (including laws relating to the accrual of arrears and the remission of sums due) shall apply accordingly.
- (3) Where an order remains or becomes registered after the discharge of the order, no proceedings shall be taken by virtue of that registration except in respect of arrears which were due under the order at the time of the discharge and have not been remitted.

6. Variation of orders registered in subordinate courts

- (1) The provisions of this section shall have effect with respect to the variation of orders registered in subordinate courts, and references in this section to registered orders shall be construed accordingly.
- (2) Subject to the following provisions of this section—
 - (a) the court of registration may exercise the same jurisdiction to vary any rate of payments specified by a registered order (other than jurisdiction in a case where a party to the order is not present in Zambia when the application for variation is made) as is exercisable, apart from this subsection, by the original court; and
 - (b) a rate of payments specified by a registered order shall not be varied except by the court of registration.

- (3) A rate of payments specified by a registered order shall not be varied by virtue of subsection (2) so as to exceed whichever of the following rates is the greater, that is to say:
 - (a) the rate of payments specified by the order as made or last varied by the original court; or
 - (b) in the case of payments for the maintenance of a person as a party to a marriage (including a marriage which has been dissolved or annulled), ten kwacha a week and, in the case of payments for the maintenance of a child or children, three kwacha a week in respect of each child.
- (4) If it appears to the court to which an application is made by virtue of subsection (2) for the variation of a rate of payments specified by a registered order that, by reason of the limitations imposed on the court's jurisdiction by subsection (3) or for any other reason, it is appropriate to remit the application to the original court, the first-mentioned court shall so remit the application, and the original court shall thereupon deal with the application as if the order were not registered.
- (5) Nothing in subsection (2) shall affect the jurisdiction of the original court to vary a rate of payments specified by a registered order if an application for the variation of that rate is made to that court—
 - (a) in proceedings for a variation of provisions of the order which do not specify a rate of payments; or
 - (b) at a time when a party to the order is not present in Zambia.
- (6) No application for any variation of a registered order shall be made to any court while proceedings for any variation of the order are pending in any other court.
- (7) Where a subordinate court, in exercise of the jurisdiction conferred by subsection (2), varies or refuses to vary a registered order, an appeal from the variation or refusal shall lie to the High Court.

7. Cancellation of registration

- (1) If a person entitled to receive payments under a registered order desires the registration to be cancelled, he may give notice under this section.
- (2) Where the original court varies or discharges an order registered in a subordinate court, the original court may, if it thinks fit, give notice under this section.
- (3) Where a subordinate court discharges an order registered in the High Court and it appears to the subordinate court, whether by reason of the remission of arrears by that court or otherwise, that no arrears under the order remain to be recovered, the subordinate court shall give notice under this section.
- (4) Notice under this section shall be given to the court of registration; and where such notice is given—
 - (a) no proceedings for the enforcement of the registered order shall be begun before the cancellation of the registration and no writ, warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the giving of the notice;
 - (b) where the order is registered in a subordinate court, any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the giving of the notice, unless the defendant has then already been detained in pursuance of the warrant; and
 - (c) the court of registration shall cancel the registration on being satisfied in the prescribed manner—
 - (i) that no process for the enforcement of the registered order issued before the giving of the notice remains in force; and

- (ii) in the case of an order registered in a subordinate court, that no proceedings for the variation of the order are pending in a subordinate court.
- (5) On the cancellation of the registration of an order, any order made in relation thereto under subsection (7) of section four shall cease to have effect, but until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the order if he makes payments in accordance with any order under the said subsection (7) which was in force immediately before the cancellation and of which he has notice.

Part III – Attachment of earnings orders

8. Powers of courts to make orders attaching earnings of defaulters under maintenance orders

- (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".
- (2) A court shall not make an attachment of earnings order if it appears to the court 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.
- (3) An attachment of earnings order shall—
- (a) specify the normal deduction rate, that is to say, the rate at which the court making or varying the attachment of earnings order thinks it reasonable that the earnings to which that order relates should be applied from time to time in satisfying the requirements of the maintenance order, not exceeding the rate appearing to that court to be necessary for the purpose of—
 - (i) securing payment of the sums falling due from time to time under the maintenance order; and
 - (ii) securing payment within a reasonable period of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order which are payable by the defendant;
 - (b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and the needs of persons for whom he must or reasonably may provide, the court aforesaid thinks it reasonable that the relevant earnings within the meaning of the Schedule should not be reduced by a payment made in pursuance of the attachment of earnings order;
 - (c) designate the officer to whom any payment under the Schedule is to be made, being—
 - (i) if the order is made by the High Court, the proper officer of the High Court; and
 - (ii) if the order is made by a magistrate's court, the clerk of that court; and

- (d) contain, so far as they are known to the court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.
- (4) An attachment of earnings order shall not come into force until the expiration of fourteen days from the date when a copy of the order is served on the person to whom the order is directed.

9. Powers of courts to make attachment of earnings orders in proceedings under other Acts

Without prejudice to the powers to make attachment of earnings orders conferred by the last foregoing section, where proceedings are brought in the High Court or a magistrate's court under section four of the Debtors Act (which authorises the committal to prison of persons refusing or neglecting to pay certain debts which they have had the means to pay) in respect of a default in making payments under a maintenance order, and it appears to the court that, at the date when the proceedings were begun, such an amount as is mentioned in paragraph (a) of subsection (1) of section eight was due under the maintenance order and unpaid and that the defendant is a person to whom earnings fall to be paid, then, subject to subsection (2) of that section, the court may, if it thinks fit, make an attachment of earnings order instead of making any other order to enforce the making of payments under the maintenance order.

[Cap. 77]

10. Restriction of issue of orders, etc., of commitment on making of attachment of earnings orders

Where an attachment of earnings order is made, no order or warrant of commitment shall be issued in consequence of any proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order.

11. Variation and discharge, etc., of attachment of earnings orders

- (1) The court by which an attachment of earnings order has been made may, if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.
- (2) An attachment of earnings order shall cease to have effect—
 - (a) upon the grant of an application under section four for the registration of the related maintenance order under Part II, notwithstanding that in the case of an application under subsection (1), the grant may subsequently become void under this subsection;
 - (b) where the related maintenance order is registered under Part II, upon the giving of notice with respect thereto under section seven;
 - (c) upon the making of an order of commitment for the enforcement or the issue of a warrant of commitment for the enforcement of the related maintenance order or upon the exercise for that purpose of any power conferred on a subordinate court to postpone the issue of such a warrant;
 - (d) upon the discharge of the related maintenance order while it is not registered under Part II;and where an attachment of earnings order ceases to have effect as aforesaid, the proper officer of the prescribed court shall give notice of the cessation to the person to whom the order was directed:
Provided that where the related maintenance order is discharged as mentioned in paragraph (d) and it appears to the court discharging the order that arrears thereunder will remain to be recovered after the discharge, that court may, if it thinks fit, direct that this subsection shall not apply.
- (3) Where notice is given to a court in pursuance of subsection (4) of section twelve, the court shall discharge the attachment of earnings order to which the notice relates.

- (4) Where at any time it appears to the officer designated in pursuance of paragraph (c) of subsection (3) of section eight by an attachment of earnings order made by the High Court that—
- (a) the aggregate of the payments made for the purposes of the related maintenance order by the defendant (whether under the attachment of earnings order or otherwise) exceeds the aggregate of the payments required up to that time by the maintenance order; and
 - (b) the normal deduction rate specified by the attachment of earnings order (or where two or more such orders are in force in relation to the maintenance order, the aggregate of the normal deduction rates specified by those orders) exceeds the rate of payments required by the maintenance order; and
 - (c) no proceedings for the variation of discharge of the attachment of earnings order are pending;

the said officer shall give the prescribed notice to the person to whom he is required to pay sums received under the attachment of earnings order and to the defendant, and the court which made that order—

- (i) shall make the appropriate variation order unless the defendant requests the court in the prescribed manner and before the expiration of the prescribed period to proceed under paragraph (ii) and the court decides to proceed thereunder;
- (ii) if the court decides to proceed under this paragraph, shall make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks fit.

In this subsection and in subsection (5), "the appropriate variation order" means an order varying the attachment of earnings order in question by reducing the normal deduction rate specified thereby so as to secure that that rate (or, in the case mentioned in paragraph (b), the aggregate of the rates therein mentioned) is the same as the rate of payments required by the maintenance order or is such lower rate as the court thinks fit having regard to the amount of the excess mentioned in paragraph (a).

- (5) Where at any time it appears to the officer designated as aforesaid by an attachment of earnings order made by a magistrate's court that the conditions specified in paragraphs (a) to (c) of subsection (4) are satisfied, that officer shall make an application to that court for the appropriate variation order, and the court—
- (a) shall grant the application unless the defendant appears at the hearing thereof and requests the court to proceed under paragraph (b) and the court decides to proceed thereunder;
 - (b) if the court decides to proceed under this paragraph, shall make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks fit.
- (6) An order varying an attachment of earnings order shall not come into force until the expiration of seven days from the date when a copy of the first-mentioned order is served on the person to whom the attachment of earnings order is directed; and where an attachment of earnings order ceases to have effect under subsection (2), or is discharged otherwise than under subsection (3), the said person shall not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date when the notice required by subsection (2) or, as the case may be, a copy of the discharging order is served on him.

12. Liabilities of persons to whom attachment of earnings orders are directed

- (1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law but subject to the following provisions of this Act, comply with the order or, if the order is subsequently varied under the last foregoing section, with the order as so varied.

- (2) Where on any occasion on which earnings fall to be paid to a defendant, there are in force two or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with the Schedule, the employer shall—
 - (a) deal with those orders according to the respective dates on which they came into force, disregarding any later order until any earlier order has been dealt with;
 - (b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payment under the Schedule in pursuance of any earlier order.
- (3) An employer who, in pursuance of an attachment of earnings order, makes a payment under the Schedule shall give to the defendant a statement in writing specifying the amount of that payment.
- (4) A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of four weeks immediately preceding that time been the defendant's employer shall forthwith give notice in writing in the prescribed form to the court which made the order.
- (5) A person to whom an attachment of earnings order is directed shall, where the defendant ceases thereafter to be employed by him, within fourteen days of such cessation give notice thereof to the court which made the order.

13. Powers of courts to obtain statements of earnings, etc.

- (1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing—
 - (a) order the defendant to give to the court, within such period as may be specified by the order, a statement signed by him of—
 - (i) the name and address of his employer, or of each of his employers if he has more than one;
 - (ii) such particulars as to the defendant's earnings as may be so specified; and
 - (iii) such prescribed particulars as may be so specified for the purpose of enabling the defendant to be identified by any employer of his;
 - (b) order any person appearing to the court to be an employer of the defendant to give to the court, within such period as may be specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be so specified.
- (2) A document purporting to be such a statement as is mentioned in subsection (1) shall, in any such proceedings as are so mentioned, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

14. Powers of courts to determine whether payments are earnings

- (1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed or of the defendant or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified by the application are earnings for the purposes of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection.
- (2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) shall not incur any liability for failing to comply with the order as respects any payments of the class or description specified by the application which are made by him to the defendant while the application, or any appeal in consequence thereof, is pending:

Provided that this subsection shall not apply as respects such payments if the said person subsequently withdraws the application or, as the case may be, abandons the appeal.

15. Miscellaneous provisions as to payments under attachment of earnings orders

- (1) The officer to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum in accordance with rules of court to such person entitled to receive payments under the related maintenance order as is specified by the attachment of earnings order.
- (2) Any sums received by virtue of an attachment of earnings order by the person aforesaid shall be deemed to be payments made by the defendant so as to discharge first any sums for the time being due and unpaid under the related maintenance order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the maintenance order which were payable by the defendant when the attachment of earnings order was made or last varied.
- (3) On any occasion on which an employer makes a payment under the Schedule in respect of a defendant, the employer may, notwithstanding anything in any other law, retain for his own use out of any balance of the defendant's earnings remaining after the making of that payment the sum of five ngwee or, if on that occasion the employer makes such payments in pursuance of two or more attachment of earnings orders relating to the defendant, the sum of five ngwee in respect of each such payment.

16. Application to earnings paid by the government, etc.

- (1) In relation to earnings falling to be paid by the Government, this Act shall have effect subject to the following modifications, that is to say:
 - (a) the earnings shall be treated as falling to be paid by the chief officer for the time being of the department, office or other body concerned; and
 - (b) section seventeen shall not apply except in relation to a failure by the defendant to comply with an order under section thirteen.
- (2) If any question arises, in connection with any proceedings relating to an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this section, or as to who for those purposes is the chief officer thereof, that question shall be referred to and determined by the Minister responsible for finance, but the said Minister shall not be under any obligation to consider a reference under this subsection unless it is made by a court.
- (3) A document purporting to set out a determination of the Minister responsible for finance under subsection (2) and to be signed by an official of the Ministry of Development and Finance shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and deemed to contain an accurate statement of such a determination unless the contrary is shown.
- (4) The provisions of this Act shall apply in relation to a pension or other allowance granted under the European Officers' Pensions Act, notwithstanding the provisions of section fourteen of that Act.

[Cap. 266]

[As amended by S.I. No. 72 of 1964]

17. Offences

- (1) A person who—
 - (a) fails to comply with subsection (1) or (4) of section twelve or an order of a subordinate court under section thirteen; or

- (b) gives such a notice as is mentioned in subsection (4) of section twelve, or a statement in pursuance of such an order as aforesaid, which he knows to be false in a material particular; or
- (c) recklessly gives such a notice or statement which is false in a material particular;

shall, subject to subsection (2), be liable on summary conviction to a fine not exceeding three hundred penalty units and in the case of a second or subsequent conviction (being, in the case of a failure to comply with subsection (1) of section twelve, a second or subsequent conviction relating to the same attachment of earnings order) to a fine not exceeding seven hundred and fifty penalty units

- (2) It shall be a defence for a person charged with failing to comply with subsection (1) of section twelve to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

[As amended by Act [No. 13 of 1994](#)]

Part IV – Miscellaneous and supplemental

18. Special provisions for subordinate courts

- (1) Notwithstanding anything in this Act, the clerk of a subordinate court who is entitled to receive payments under a maintenance order for transmission to another person shall not apply for an attachment of earnings order, or (except as required by section eleven) an order discharging or varying an attachment of earnings order, in respect of those payments, unless he is requested in writing to do so by a person entitled to receive the payments through him; and where the clerk is requested as aforesaid—
 - (a) he shall comply with the request unless it appears to him unreasonable in the circumstances to do so;
 - (b) the person by whom the request was made shall have the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person;

and, for the purposes of paragraph (b), any application made by the clerk as required by section eleven shall be deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made.

- (2) An application to a magistrate's court for an attachment of earnings order or an order discharging or varying an attachment of earnings order or for a determination under section fourteen shall be made by complaint.
- (3) For the purposes of the issue of a summons under a complaint made to a magistrate's court—
 - (a) the power to make an order in pursuance of a complaint by the defendant for the discharge or variation of an attachment of earnings order shall be deemed to be a power to make an order against the person in whose favour the attachment of earnings order was made; and
 - (b) the power to make an attachment of earnings order, or an order discharging or varying an attachment of earnings order, in pursuance of a complaint by any other person shall be deemed to be a power to make an order against the defendant.
- (4) On making a determination under subsection (1) of section fourteen the court may in its discretion make such order as it thinks just and reasonable as to the payment by any of the persons mentioned

in that subsection of the whole or any part of the costs of the determination and costs ordered to be paid under this subsection shall—

- (a) in the case of costs to be paid by the defendant to the person in whose favour the attachment of earnings order in question is made, be deemed to be a sum due under the related maintenance order; and
 - (b) in any other case, be enforceable as a civil debt.
- (5) Any complaint referred to in this section may be made at any time notwithstanding any limitations of time contained in any other law.
- (6) A subordinate court by which payment of any arrears under a maintenance order is enforceable shall have jurisdiction to issue and entertain complaints under this Act against any person resident in Zambia, whether within or without the territorial jurisdiction of the subordinate court.

19. Rules

For the purposes of this Act, rules may be made under the provisions of the High Court Act and of the Subordinate Courts Act.

[Cap. 27; Cap. 28]

Schedule (Sections 8, 12 and 15)

Payments under attachment of earnings orders

1. The provisions of this Schedule shall have effect in respect of each occasion (in this Schedule referred to as a "pay-day") on which any earnings to which an attachment of earnings order relates fall to be paid.
2. In this Schedule, the following expressions have the following meanings respectively:

"normal deduction" and "protected earnings", in relation to any pay-day, mean the amount which would represent a payment at the normal deduction rate specified by the order or, as the case may be, at the protected earnings rate so specified in respect of the period between the pay-day in question and either the last preceding pay-day or, where there is no last preceding pay-day, the date last before the pay-day in question on which the employer became the defendant's employer;

"relevant earnings", in relation to any pay-day, means the amount of the earnings aforesaid falling to be paid on the pay-day in question after the deduction from those earnings of any deductions falling to be deducted by the employer under any law, and deductions lawfully made by an employer in pursuance of a request in writing requiring or authorising deductions to be made for the purposes of the payment of income tax or of contributions to a medical aid scheme.
3. If the relevant earnings exceed the sum of—
 - (a) the protected earnings; and
 - (b) so much of any amount by which the relevant earnings falling to be paid on any previous pay-day fell short of the protected earnings for the purposes of that pay-day as has not been made good by virtue of this sub-paragraph on any other previous pay-day;

the employer shall, so far as that excess permits, pay to the officer designated for the purpose in the order —

 - (i) the normal deduction; and
 - (ii) so much of the normal deduction for any previous pay-day as was not paid on that pay-day and has not been paid by virtue of this sub-paragraph on any other previous pay-day.