

## **CHAPTER 64**

### **AFFILIATION AND MAINTENANCE OF CHILDREN ACT**

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## AN ACT

**to provide for court orders as to paternity; to consolidate the law relating to the maintenance of children; to bring the law of Zambia into conformity with the United Nations Convention on the Rights of the Child dated 20th November, 1989, to which Zambia is a State Party; to abrogate the application of so much of the Maintenance Orders Act, and of the laws of the United Kingdom, as provides for the maintenance of children; and to provide for matters connected with or incidental to the foregoing.**

[28th April, 1995]

Act 13 of 1994,

Act 5 of 1995.

## PART I PRELIMINARY

### 1. Short title

This Act may be cited as the Affiliation and Maintenance of Children Act.

### 2. Interpretation

In this Act, unless the context otherwise requires—

**“affiliation order”** means an order declaring a man to be the father of a child identified in the order;

**“attachment of earnings order”** means an order under section 25;

**“child”** means a person below the age of eighteen years, whether a marital or non-marital child;

**“court”** means a subordinate court or the High Court;

**“custodian”** means a person appointed under this Act or any other law to be the guardian of a child;

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

**“earnings”** in relation to a dependant means any sums (other than expected sums) payable to the dependant—

(a) by way of wages or salary, including a fee, bonus, commission, overtime pay or other emolument payable in addition to wages or salary; or

(b) by way of pension;

**“employer”** means a person by whom, as a principal and not as a servant or agent, any earnings are to be paid;

**“maintenance order”** means an order made under Part III;

**“marital child”** includes—

- (a) a legitimated person within the meaning of the Legitimacy Act;
- (b) an adopted child within the meaning of the Adoption Act; and
- (c) a child of either party to a marriage who has been accepted by the other party as a child of the family;

**“non-marital child”** means a child who is not a marital child;

**“periodic payments order”** means a maintenance order made in accordance with paragraph (a) of sub-section (1) of section 10;

**“proper officer of the court”** means—

- (a) in the case of the High Court, such officer as the Registrar may designate for the purposes of the provision in which the expression occurs; and
- (b) in the case of a subordinate court, the clerk of that court;

**“putative father”** means the man alleged to be the father of a non-marital child;

**“registered”**, in relation to a maintenance order, means registered under Part V;

**“secured periodic payments order”** means a maintenance order made in accordance with paragraph (b) of sub-section (1) of section 10;

**“single woman”** includes a widow, a married woman who is divorced and a woman living apart from her husband.

## **PART II**

### **AFFILIATION ORDERS**

#### **3. Application by single woman**

The court may make an affiliation order on the application of a single woman—

- (a) at any time within twelve months after giving birth to a non-marital child;
- (b) at any time, upon proof that the putative father of the non-marital child has within the period of twelve months next after the birth of the non-marital child paid money for its maintenance; or
- (c) at any time within the period of twelve months next after the return to Zambia of the putative father of the non-marital child, upon proof that he ceased to reside in Zambia within the period of twelve months after the birth of the non-marital child.

#### 4. Application by party to void marriage

The court may, on the application of a single woman who has been delivered of a marital child, make an affiliation order upon proof that before the birth she was a party to a marriage which would have been valid but for the fact that she or the other party were under the age at which either might have legally contracted a marriage.

#### 5. Application by child

The court may, on the application of a non-marital child made through the child's next friend, make an affiliation order, subject to the limitations contained in section 3.

#### 6. Evidence to be given and corroborated

(1) On the hearing of an application for an affiliation order, the court shall hear—

- (a) the evidence of the mother;
- (b) such other evidence as she may produce; and
- (c) any evidence tendered by or on behalf of the putative father.

(2) The court shall not make an affiliation order unless the evidence of the mother is corroborated in some material particular by other evidence.

### **PART III MAINTENANCE ORDERS**

#### 7. Maintenance of affiliated child

The court may, either at the time of making an affiliation order or upon subsequent application for a maintenance order, make a maintenance order in respect of the child concerned.

#### 8. Maintenance of neglected child

(1) The court may on the application of either party to a marriage make a maintenance order on the ground that the other party to the marriage has failed to provide, or to make a proper contribution towards, reasonable maintenance for a marital child.

(3) In deciding what constitutes reasonable maintenance for the purposes of this section, the court shall have regard to the matters mentioned in section 11.

#### 9. Maintenance of child on divorce, nullity or separation

(1) The court may make a maintenance order in respect of a marital child on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation, or at any time thereafter.

(2) In the case of a decree of divorce or of nullity of marriage, the order may be made whether or not the decree has been made absolute.

#### 10. Types of maintenance orders

(1) A maintenance order may take any of the following forms, that is to say:

(a) an order that the defendant shall, for the benefit of a specified child, pay to a specified person or to the child itself, specified periodic payments for a specified term;

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(b) an order that the defendant shall, for the benefit of a specified child, secure to the satisfaction of the court the making, to a specified person or to the child itself, of specified periodic payments for a specified term.

(2) In addition, a maintenance order may specify that the defendant shall, for the benefit of a specified child, pay to a specified person or to the child itself, a specified lump sum.

(3) Where the court—

(a) makes an order under this section for the payment of a lump sum; and

(b) directs that—

(i) payment of that sum or any part of it shall be deferred; or

(ii) that sum or any part of it shall be paid by instalments;

the court may order that the amount deferred, or the instalments, shall carry interest at a rate specified by the order, from a specified date (not being a date earlier than the date of the order) until the date when payment thereof is effected.

#### 11. Matters for consideration when making maintenance order

(1) It shall be the duty of the court before making any maintenance order to have regard to all the circumstances of the child concerned.

(2) Without limiting the generality of sub-section (1), the court shall have regard to the following matters:

(a) the welfare of the child while an infant, including any preliminary expenses;

(b) the income, earning capacity, property and other financial resources which each interested person has, or is likely to have, in the foreseeable future, including, in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a person to take steps to acquire;

- (c) the financial needs, obligations and responsibilities which each interested person has or is likely to have in the foreseeable future;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage, in the case of persons who are divorcing;
- (e) the age of the child and of each interested person;
- (f) any physical or mental disability of the child;
- (g) the contributions which each person has made, or is likely in the foreseeable future to make, to the welfare of the child, including any contribution made or to be made by looking after the home or caring for the child;
- (h) the financial needs of the child;
- (i) the income, earning capacity, property and other financial resources, if any, of the child; and
- (j) the manner in which the child was being, and in which its parents expected it to be, educated or trained.

## 12. Duration of maintenance order

- (1) A maintenance order shall not be made in favour of a child who has attained the age of eighteen years.
- (2) The term to be specified in a periodic payments or secured periodic payments order in favour of a child may begin with the date of the making of an application for the order in question or any later date but shall not extend beyond the date of the child's eighteenth birthday.
- (3) Sub-sections (1) and (2) shall not apply if it appears to the court that—
  - (a) the child is or will be receiving instructions in some profession or vocation (or would be, if an order were made without complying with either or both of those sub-sections), whether or not he is or will be in gainful employment as well; or
  - (b) there are special circumstances which justify the making of an order notwithstanding either or both of those provisions.
- (4) Any periodic payments order in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the child in respect of whom the order is made, except in relation to any arrears due under the order on the date of the death.

## 13. Variation or discharge of maintenance order

- (1) The court shall have power to vary or discharge a maintenance order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.
- (2) In exercising its power under this section, the court shall take into account the same matters as it is required to take into account when it makes a maintenance order.

#### 14. Persons to whom payments to be made

(1) Subject to the other provisions of this Act, the person entitled to any payment to be made under a maintenance order shall be the child's mother, father or custodian.

(2) When making or varying a maintenance order, the court may order that the money shall be paid into court and then paid to the mother, father or custodian in such manner and subject to such conditions as it may direct.

(3) A custodian who is entitled to receive moneys under a maintenance order shall have the same power to recover them as the mother or father would have had.

### **PART IV CUSTODY OF CHILDREN**

#### 15. Custody and access

(1) Where the court makes a maintenance order in respect of a child, the court shall also have power to make whatever order it thinks fit with respect to the custody of the child, and the right of access thereto of either parent, but the power conferred by this sub-section and any order made in exercise of that power shall have effect only during any period while the maintenance order is in force.

(2) In making any order as to custody or access, the court shall regard the welfare of the child as the paramount consideration, and shall not take into account whether from any other point of view the claim of the father in respect of custody is superior to that of the mother, or vice versa.

(3) If the court is satisfied that—

- (a) the mother or father of a child is not a fit and proper person to have custody of the child;
- (b) the mother or father of a child has died or become of unsound mind or is serving a term of imprisonment of more than six months; or
- (c) there are exceptional circumstances making it impracticable for the child to be entrusted to the custody of either of its parents;

the court may, at the time of making a maintenance order or at any time thereafter, appoint any other person as custodian of the child.

(4) The appointment of a custodian under this section may be made on the application of—

- (a) The Minister responsible for community development and social welfare, or of any person authorised in that behalf by the Minister in writing either generally or specially; or
- (b) the father or mother;

and such an appointment may be revoked and another person appointed as custodian.



## 16. Declarations of unfitness for custody

(1) Where the court makes an affiliation order, or grants or makes absolute a decree of divorce, or grants a decree of judicial separation, it may include in the order or decree a declaration that either party to the proceedings is unfit to have the custody of a child.

(2) Where such a declaration is made, then, if the party to whom the declaration relates is a parent of any child, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(3) Where an order in respect of a marital child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(4) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

## PART V REGISTRATION OF MAINTENANCE ORDERS

## 17. Interpretation of Part V

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

**“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;

**“court of registration”**, in relation to a maintenance order, means the court in which the order is, or is to be, registered;

**“High Court order”** means a maintenance order made by the High Court;

**“original court”**, in relation to a maintenance order, means the court by which the order was made;

**“subordinate court order”** means a maintenance order made by a subordinate court;

**“registered”** means registered in accordance with the provisions of this Part, and **“registration”** shall be construed accordingly.

(2) 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 a part of that maintenance order.

## 18. Registration of High Court orders

(1) A person entitled to receive payments under a High Court order may apply to the original court for the registration of the order in a subordinate 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 begin, and no writ, warrant or other process shall be issued, for the enforcement of the order before registration of the order or before the expiry of the prescribed period (in this Part referred to as the "registration period") from the grant of the application, whichever first occurs; and

(b) the original court shall, on being satisfied within the registration period 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.

(3) If at the expiration of the registration period the original court has not been satisfied as referred to in paragraph (b) of sub-section (1), the grant of the application shall become void.

(4) The proper officer of the court of registration shall, upon receipt of a certified copy of an order sent to him under this section, cause the order to be registered in that court.

## 19. Registration of subordinate court orders

(1) A person entitled to receive payments under a subordinate court order, who considers the order could be more effectively enforced if it were registered in the High Court or another subordinate court, may apply to the original court for the registration of the order, and the court shall grant the application being satisfied in the prescribed that, at the time when the application was made, the amount due under the first mentioned order was unpaid.

(2) 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 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 proper officer of the court of registration.

(3) The proper officer of the court of registration shall, upon receipt of a certified copy of an order sent to him under this section, cause the order to be registered in that court.

## 20. Effect of registration

(1) Where a maintenance order is registered in any court under this part—

(a) any provisions 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 to them shall be of no effect so long as the order is registered in that court; and

(b) 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.

(2) An order made under paragraph (b) of sub-section (1) may be varied or revoked by a subsequent order.

(3) Where, by virtue of the provisions of this section or any order made under this section, payments under a maintenance order cease 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.

## 21. Registration not to be duplicated

An order which is for the time being registered in any court shall not be registered in any other court.

## 22. Enforcement of registered order

(1) Subject to the provisions of this section, a registered order shall be enforceable in all respects as if it had been made by the court of registration and as if that court had jurisdiction to make it; and proceedings for or with respect to the enforcement of a registered order may be taken accordingly.

(2) 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.

## 23. 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) 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 the original court.

(3) A rate of payments specified by a registered order shall not be varied except by the court of registration.

(4) A rate of payments specified by a registered order shall not be varied by virtue of sub-section (2) so as to exceed the rate of payments specified by the order as made or last varied by the original court.

(5) If it appears to the court to which an application is made by virtue of sub-section (2) or (3) for the variation of a rate of payments specified by a registered order that, by reason of limitations imposed on the court's jurisdiction by sub-section (4) 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.

(6) Nothing in this section 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.

(7) 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.

(8) Where a subordinate court, in exercise of the jurisdiction conferred by this section, varies or refuses to vary a registered order, an appeal from the variation or refusal shall lie to the High Court.

#### 24. 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 to it under paragraph (b) of sub-section (1) of section 20 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 that paragraph which was in force immediately before the cancellation of which he has notice.

## **PART VI**

### **ATTACHMENT OF EARNINGS ORDERS**

## 25. Attachment of earnings orders

(1) If, on the application of a person entitled to receive payments under a maintenance order, it appears to a court by which payment of any arrears under the order is enforceable—

(a) that, when the application was made, there were payments due under the order that were unpaid; and

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

then the court may, if it thinks fit, by order (to be known as an attachment of earnings order) require 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 part thereof such payments as may be specified in the order.

(2) The order shall—

(a) specify the normal deduction rate, which shall not exceed the rate appearing to the court to be necessary for the purpose of securing—

(i) payment of the sums falling due from time to time under the maintenance order; and

(ii) payment within a reasonable period of any sums already due and unpaid under the maintenance order and of any costs incurred in proceedings relating to the maintenance order which are payable by the defendant;

(b) specify the protected earnings rate, having regard to the resources and needs of the defendant and the needs of persons for whom he must or reasonably may provide;

(c) designate the proper officer to whom any payment is to be made; 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.

(3) 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.

(4) In this section—

**“normal deduction rate”** means the rate at which attached earnings should be applied from time to time in satisfying the requirements of the maintenance order;

**“protected earnings rate”** means the rate below which earnings should not be reduced by a payment made in pursuance of an attachment of earnings order.

## 26. Orders in proceedings under other Acts

Without prejudice to the powers to make attachment of earnings orders conferred by section 25, where proceedings are brought in a court under section 4 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—

(a) at the date when the proceedings were begun, any payment was due under the maintenance order and unpaid; and

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

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.

## 27. Restriction of issue of other process

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.

## 28. Variation of order on application of party

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.

## 29. Variation of order to correct excess of payments

(1) Where at any time it appears to the proper officer to whom payments under an attachment of earnings order made by the High Court are to be paid that—

(a) the aggregate of the payments made for the purpose 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;

(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 or discharge of the attachment of earnings order are pending;

the 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.

(2) The court which made the order shall—

(a) make the appropriate variation order; or

(b) if it thinks fit, at the request of the defendant made to the court in the prescribed manner and before the expiration of the prescribed period, make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks just.

(3) Where at any time it appears to the proper officer to whom payments under an attachment of earnings order made by a subordinate court are to be paid that the conditions specified in paragraphs (a) to (c) of sub-section (1) are satisfied, that officer shall make an application to that court for the appropriate variation order, and the court shall—

(a) grant the application; or

(b) if it thinks fit, where the defendant appears at the hearing of the application and requests the court to do so, make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks just.

(4) In this section "**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 ensure that the rate (or, in the case mentioned in paragraph (b) of sub-section (1), 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 just, having regard to the amount of the excess mentioned in paragraph (a) of sub-section (1).

### 30. Notice to be given of variation

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 thereof is served on the person to whom the attachment of earnings order is directed.

### 31. Discharge of order on cancellation of registration of related maintenance order

Where notice is given to a court under section 24, the court shall discharge the attachment of earnings order to which the notice relates.

### 32. Order discharged in certain circumstances

(1) An attachment of earnings order shall cease to have effect—

(a) upon the grant of an application for the registration of the related maintenance order;

(b) where the related maintenance order is registered, upon the giving of notice with respect to it under section 24;

(c) upon the making of an order of commitment 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; or

(d) upon the discharge of the related maintenance order while it is not registered:

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 direct that this sub-section shall not apply.

(2) Where an attachment of earnings order ceases to have effect as provided by sub-section (1), the proper officer of the prescribed court shall give notice of the cessation to the person to whom the order was directed.

(3) Where notice is given to a court in pursuance of sub-section (4) of section 33, the court shall discharge the attachment of earnings order to which the notice relates.

(4) Where an attachment of earnings order ceases to have effect as provided by sub-section (1), or is discharged otherwise than under sub-section (3), the person to whom the order is directed 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 sub-section (2) or, as the case may be, a copy of the discharging order, is served on him.

### 33. Liability under orders

(1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law but subject to the other provisions of this Act, comply with the order or, if the order is subsequently varied, 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 order, 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; and

(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 order in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under that order 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 that make the order.

### 34. Powers of court 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) obtain—

(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 his employer; and

(b) order any person appearing to the court to be an employer of the defendant to give to the court, within a period 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 a statement of the kind mentioned in sub-section (1) shall, in any proceedings mentioned in that sub-section, be received in evidence and be deemed to be such a statement without further proof, unless the contrary is shown.

### 35. Powers of court 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, or a particular class or description of such payments, 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 sub-section.

(2) A person to whom an attachment of earnings order is directed who makes an application under sub-section (1) shall not incur any liability for failing to comply with the order in relation to 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 still on foot and undetermined.

### 36. Miscellaneous provisions as to payments

(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 the person specified by the attachment of earnings order as being the person entitled to receive payments under the related maintenance order.

(2) Any sums received, by virtue of an attachment of earnings order, by the person entitled to them shall be deemed to be payments made by the defendant so as to discharge—

(a) 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

(b) 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) Notwithstanding anything in any other law, an employer may retain the prescribed amount for his own use out of any balance of the defendant's earnings, to defray his reasonable costs of compliance with an attachment of earnings order.

### 37. Earnings paid by the government

(1) In relation to earnings falling to be paid by the Government, this Act shall have effect subject to the following modification, 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 38 shall not apply except in relation to a failure by the defendant to comply with an order under section 34.

(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 whom for those purposes is the chief officer thereof, that question shall be referred to and determined by the Minister responsible for finance.

(3) A document purporting to set out a determination of the Minister responsible for finance under sub-section (2) and to be signed by an official of the Ministry responsible for community development and social welfare shall, in any proceedings mentioned in that sub-section, be admissible in evidence and shall be deemed to contain an accurate statement of such a determination unless the contrary is shown.

(4) The provisions of this Act shall extend to apply to a pension or other allowance granted under any law in Zambia.

### 38. Offences

(1) A person who—

(a) fails to comply with an attachment of earnings order or any order of the court given under this Part; or

(b) gives a notice or statement in pursuance of such an order, knowing the same to be false in a material particular;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding six months or to both.

(2) It shall be a defence for a person charged with an offence by virtue of paragraph (a) of sub-section (1) to prove that he took all reasonable steps to comply with the order in question.

[S 38 am by Act 13 of 1994.]

## **PART VII MISCELLANEOUS**

### 39. 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 under section 29) 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; but where such a request is made—

(a) he shall comply with the request; and

(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 purpose of paragraph (b), any application made by the clerk as required by section 29 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) 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 outside the territorial jurisdiction of the subordinate court.

#### 40. Regulations and rules

(1) The Minister may, by statutory instrument, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Chief Justice may, by statutory instrument, make rules, not inconsistent with the regulations, for the better carrying into effect of this Act.

#### 41. English law to cease to apply

Except for any claim for affiliation or maintenance or other cause which was instituted before the commencement of this Act, the Bastardy Laws Amendment Act, 1872, of the United Kingdom and any provision of the England law providing for the maintenance or custody of children, shall cease to apply in Zambia.

#### 42. Transitional provision

An order made under any law referred to in section 41, to the extent that it could have been made under this Act if this Act had been in force at the time it was made, shall be deemed to have been made under this Act, and may be varied or discharged accordingly.

#### 43. Certain laws of Zambia to cease to apply to maintenance of children

The Maintenance Orders Act and the Maintenance Orders (Enforcement) Act shall cease to apply to the maintenance of children or orders made in respect thereof.