

CHAPTER 5 CIVIL EXECUTION

26. Enforcement of maintenance or other orders

(1) Whenever any person-

(a) against whom any maintenance order has been made has failed to make any particular payment in accordance with that maintenance order; or
(Section 26(1)(a) substituted by section 18(a) of Act 55 of 2003)

(b) against whom any order for the payment of a specified sum of money has been made under section 16(1)(a)(ii), 20 or 21(4) has failed to make such a payment,

such order shall be enforceable in respect of any amount which that person has so failed to pay, **together with any interest thereon-**

- (i) by execution against property as contemplated in section 27;
- (ii) by the attachment of emoluments as contemplated in section 28; or
- (iii) by the attachment of any debt as contemplated in section 30.

(2)

(a) If any maintenance order or any order made under section 16(1)(a)(ii), 20 or 21(4) has remained unsatisfied for a period of ten days from the day on which the relevant amount became payable or any such order was made, as the case may be, the person in whose favour any such order was made may apply to the maintenance court where that person is resident-

- (i) for the authorisation of the issue of a warrant of execution referred to in section 27(1);**
- (ii) for an order for the attachment of emoluments referred to in section 28(1); or**
- (iii) for an order for the attachment of any debt referred to in section 30(1).**

(b) The application shall be made in the prescribed manner and shall be accompanied by-

- (i) a copy of the maintenance or other order in question; and
- (ii) a statement under oath or affirmation setting forth the amount which the person against whom such order was made has failed to pay.

(3) A maintenance court shall not authorise the issue of a warrant of execution or make any order for the attachment of emoluments or any debt in order to satisfy a maintenance order-

- (a) if the payment of maintenance in accordance with that maintenance order has been suspended by an appeal against the order under section 25; or
- (b) if that maintenance court has made an order referred to in section 16(2).

(4) Notwithstanding anything to the contrary contained in any law, **any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under any warrant of execution or any order issued or made under this Chapter in order to satisfy a maintenance order.**

How is a maintenance order enforced when the respondent is in arrears?



Overview of remedies and what you could ask for if the respondent is in arrears

26. Enforcement of maintenance or other orders

- (1) Whenever any person (a) against whom any maintenance order has been made has failed to make any particular payment in accordance with that maintenance order; or (b) against whom any order for the payment of a specified sum of money has been made under section 16(1)(a)(ii), 20 or 21(4) has failed to make such a payment,

such order shall be enforceable in respect of any amount which that person has so failed to pay, **together with any interest thereon-**

- (i) by **execution against property** as contemplated in section 27;
(ii) by the **attachment of emoluments** as contemplated in section 28; or
(iii) by the **attachment of any debt** as contemplated in section 30.:

27. Warrants of execution

(1) The maintenance court may, on the application of a person referred to in section 26(2)(a), authorise the issue of a warrant of execution against the movable property of the person against whom the maintenance or other order in question was made and, **if the movable property is insufficient to satisfy such order, then against the immovable property** of the latter person to the amount necessary to cover the amount which the latter person has failed to pay, together with any interest thereon, as well as the costs of the execution.

(2)

(a) A warrant of execution authorised under this section shall be-

- (i) prepared in the prescribed manner by the person in whose favour the maintenance or other order in question was made;
(ii) issued in the prescribed manner by the clerk of the maintenance court; and
(iii) executed in the prescribed manner by the sheriff or maintenance investigator.

(b) The person in whose favour the maintenance or other order in question was made shall be assisted by the maintenance investigator or, in the absence of a maintenance investigator, by the maintenance officer in taking the prescribed steps to facilitate the execution of the warrant.

(3) A maintenance court may, on application in the prescribed manner by a person against whom a warrant of execution has been issued under this section, set aside the warrant of execution if the maintenance court is satisfied that he or she has complied with the maintenance or other order in question.

(4) A maintenance court may, on application in the prescribed manner by a person against whom a warrant of execution has been issued under this section-

- (a) in summary manner enquire into the circumstances mentioned in subsection (5); and
(b) if the maintenance court so decides, suspend the warrant of execution and make an order-

- (i) for the attachment of emoluments referred to in section 28(1); or
 - (ii) for the attachment of any debt referred to in section 30(1).
- (5) At the enquiry the maintenance court shall take into consideration-
- (a) the existing and prospective means of the person against whom the warrant of execution has been issued;
 - (b) the financial needs and obligations of, or in respect of, the person maintained by the person against whom the warrant of execution has been issued;
 - (c) the conduct of the person against whom the warrant of execution has been issued in so far as it may be relevant concerning his or her failure to satisfy the maintenance or other order in question; and
 - (d) the other circumstances which should, in the opinion of the court, be taken into consideration.
- (6)
- (a) Any person who wishes to make an application under subsection (3) or (4) shall give notice in the prescribed manner of his or her intention to make the application to the person in whose favour the maintenance or other order in question was made, which notice shall be served at least 14 days before the day on which the application is to be heard.
 - (b) The maintenance court may call upon-
 - (i) the person who has made the application to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or
 - (ii) the person in whose favour the maintenance or other order in question was made to adduce such evidence, either in writing or orally, in rebuttal of the application as the maintenance court may consider necessary.

How is a maintenance order enforced when the respondent is in arrears?



Execution against property as contemplated in section 27

- Court order that allows the applicant to seize the respondent's movable property (such as a car or furniture) and sell it to pay off the arrears
 - Sheriff of the court judicially attach goods
 - Certain goods cannot be attached
 - Value of goods attached >R3000: newspaper
- Movable property sold in execution of process of the court shall be sold publicly and for cash by the sheriff



• Steps to be followed • Documents needed • How long is a WOE valid • Stay of WOE • When suspended?

28. Attachment of emoluments

- (1) A maintenance court may—
- (a) on the application of a person referred to in section 26(2)(a);
 - (b) when such court suspends the warrant of execution under section 27(4)(b);
 - (c) when such court suspends the order for the attachment of debt under section 30(1); and
 - (d) where applicable, after hearing the evidence, either in writing or orally, of the employer of the person in question,

make an order for the attachment of any emoluments at present or in future owing or accruing to the person against whom the maintenance or other order in question was made to the amount necessary to cover the amount which the latter person has failed to pay, together with any interest thereon, as well as the costs of the attachment or execution, which order shall authorise any employer of the latter person to make on behalf of the latter person such payments as may be specified in the order from the emoluments of the latter person until such amount, interest and costs have been paid in full: Provided that nothing precludes the court from making an order in terms of this subsection if it is of the opinion that any further postponement of the enquiry in order to obtain the evidence of the person referred to in paragraph (d) will give rise to an unreasonable delay in the finalisation of the enquiry, to the detriment of the person or persons to be maintained.

- (2)
- (a) An order under this section may at any time, on good cause shown, be suspended, amended or rescinded by the maintenance court.
 - (b) Any person who wishes to make an application for the suspension, amendment or rescission of an order under this section shall give notice in the prescribed manner of his or her intention to make the application to the person in whose favour that order was made, which notice shall be served at least 14 days before the day on which the application is to be heard.
 - (c) The maintenance court may call upon-
 - (i) the person who has made the application to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or
 - (ii) the person in whose favour an order under this section was made to adduce such evidence, either in writing or orally, in rebuttal of the application as the maintenance court may consider necessary.

29. Notice relating to attachment of emoluments

- (1) In order to give effect to an order for the attachment of emoluments referred to in section 28(1), the maintenance officer shall, within seven days after the day on which such order was made by the maintenance court or whenever it is afterwards required, in the prescribed manner cause a notice, together with a copy of such order, to be served on the employer concerned

directing that employer to make the payments specified in the notice at the times and in the manner so specified.

(2) Whenever any person to whom the notice relates leaves the service of the employer, that employer shall, within seven days after the day on which he or she so leaves the service, give notice thereof in the prescribed manner to the maintenance officer of the court where the order in question was made.

(3) Any employer on whom a notice has been served for the purposes of satisfying a maintenance order shall give priority to the payments specified in that notice over any order of court requiring payments to be made from the emoluments due to the person against whom that maintenance order was made.

(4) If any employer on whom a notice has been served for the purposes of satisfying a maintenance order has failed to make any particular payment in accordance with that notice, that maintenance order may be enforced against that employer in respect of any amount which that employer has so failed to pay, and the provisions of this Chapter shall, with the necessary changes, apply in respect of that employer, subject to that employer's right or the right of the person against whom that maintenance order was made to dispute the validity of the order for the attachment of emoluments referred to in section 28(1).

How is a maintenance order enforced when the respondent is in arrears?



Attachment of emoluments as contemplated in section 28

- This is a court order that allows for the attachment of the respondent's salary, earnings or wages on a monthly basis to pay off the arrears
- Employer placed in stead of debtor with obligation to deduct
 - May deduct a 5% admin fee of every deduction
- Money paid over directly to complainant on a monthly basis
 - Penalties for non-payment for employer



• Steps to be followed • Documents needed • Evidence by employer • EAO suspended, amended or rescinded • service of documents

30. Attachment of debts

(1) A maintenance court may-

(a) on the application of a person referred to in section 26(2)(a); or

(b) when such court suspends the warrant of execution under section 27(4)(b),

make an order for the **attachment of any debt at present or in future owing or accruing to the person against whom the maintenance or other order in question was made** to the amount necessary to cover the amount which the latter person has failed to pay, together with any interest thereon, as well as the costs of the attachment or execution, which order shall direct

the person who has incurred the obligation to pay the debt to make such payment as may be specified in that order within the time and in the manner so specified.

(2)

(a) An order under this section may at any time, on good cause shown, be suspended, amended or rescinded by the maintenance court.

(b) Any person who wishes to make an application for the suspension, amendment or rescission of an order under this section shall give notice of his or her intention to make the application to the person in whose favour that order was made, which notice shall be served at least 14 days before the day on which the application is to be heard.

(c) The maintenance court may call upon-

(i) the person who has made the application to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or

(ii) the person in whose favour an order under this section was made to adduce such evidence, either in writing or orally, in rebuttal of the application as the maintenance court may consider necessary.

(3) An order made under subsection (1) may be enforced as if it were a civil judgment of the court.

How is a maintenance order enforced when the respondent is in arrears?



Attachment of any debt as contemplated in section 30

- An order by court so that any debt owed to the respondent (non-paying party) could be attached by the sheriff so that it could be paid to the complainant
- The debt must be owed by a third party to the defaulting party, or to be owed in the future or accruing. The Court can grant an Order that such debt is attached to pay the arrear maintenance.



• Steps to be followed • Documents needed • What types of debt • Loan accounts payable in future?

CHAPTER 6 OFFENCES AND PENALTIES

31. Offences relating to maintenance orders

(1) Subject to the provisions of subsection (2), any person who fails to make any particular payment in accordance with a maintenance order shall be **guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to such imprisonment without the option of a fine.**

(2) If the **defence** is raised in any prosecution for an offence under this section that **any failure to pay maintenance in accordance with a maintenance order was due to lack of means** on the part of the person charged, he or she shall not merely on the grounds of such defence be entitled to an acquittal if it is proved that the failure was due to his or **her unwillingness to work or misconduct.**

(3) If the name of a person stated in a maintenance order as the person against whom the maintenance order has been made corresponds substantially to the name of the particular person prosecuted for an offence under this section, any copy of the maintenance order certified as a true copy by a person who purports to be the registrar or clerk of the court or other officer having the custody of the records of the court in the Republic where the maintenance order was made, shall on its production be prima facie proof of the fact that the maintenance order was made against the person so prosecuted.

(4) If a person has been convicted of an offence under this section, the maintenance officer may, notwithstanding anything to the contrary contained in any law, furnish that person's personal particulars to any business which has as its object the granting of credit or is involved in the credit rating of persons.

How is a maintenance order enforced when the respondent is in arrears?



Contempt of court (Criminal)

31. Offences relating to maintenance orders

(1) Subject to the provisions of subsection (2), any person who fails to make any particular payment in accordance with a maintenance order shall be **guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to such imprisonment without the option of a fine.**



• Steps to be followed • Documents needed • Where to report • Involvement of SAPS •
Section 305 of the Childrens Act