

REPUBLIC OF ZAMBIA

THE MAINTENANCE ORDERS (ENFORCEMENT) ACT

CHAPTER 56 OF THE LAWS OF ZAMBIA

CHAPTER 56 THE MAINTENANCE ORDERS (ENFORCEMENT) ACT

THE MAINTENANCE ORDERS (ENFORCEMENT) ACT

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CHAPTER 56

MAINTENANCE ORDERS (ENFORCEMENT)

20 of 1921
39 of 1929
36 of 1933
13 of 1954
Government Notice
497 of 1964

An Act to make provision for the registration in Zambia of maintenance orders made in England and Ireland and for reciprocity for orders made in Zambia; to prescribe the procedure for the confirmation of provisional orders; to provide for the enforcement of registered and confirmed orders; to provide for reciprocity with other Commonwealth countries; and to provide for matters incidental to or connected with the foregoing.

[29th November, 1921]

1. This Act may be cited as the Maintenance Orders (Enforcement) Act.*(1) Short title
* The provisions of this Act ceased to apply to the maintenance of children with effect from 28th April 1995.
2. In this Act, unless the context otherwise requires- Interpretation
- "certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;
- "dependants" means such persons as that person is, according to the law in force where the maintenance order was made, liable to maintain;
- "maintenance order" means an order, other than an order of affiliation, for the periodical payment of sums of money toward the maintenance of the wife or other dependants of the person against whom the order is made and, in the case of orders made in Ireland, shall include any order or decree for the recovery or repayment of the cost of relief or maintenance made by virtue of the provisions of the Poor Relief (Ireland) Acts, 1839 to 1914, of the United Kingdom.
3. (1) Where a maintenance order has, whether before or after the commencement of this Act, been made against any person by any court of England or Ireland and a certified copy of the order has been transmitted by a Secretary of State to the President, the President shall send a copy of the order to the prescribed officer of a court in Zambia for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly. Registration of order made in England or Ireland
- * The provisions of this Act ceased to apply to the maintenance of children with effect from 28th April 1995.
- (2) The court in which an order is to be registered as aforesaid shall, if the court by which the order was made was a court of superior jurisdiction, be the High Court, and, if the court was not a court of superior jurisdiction, be a subordinate court.

(As amended by No. 36 of 1933)

4. Where a court in Zambia has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in England or Ireland, the court shall send to the President for transmission to a Secretary of State, a certified copy of the order.

Transmission to Secretary of State of order made in Zambian court

5. (1) Where an application is made to a court in Zambia for a maintenance order against any person, and it is proved that that person is resident in England or Ireland, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in England or Ireland.

Provisional order may be made in absentia and procedure thereon

(2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where such an order is made, the court shall send to the President for transmission to a Secretary of State the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a court in England or Ireland for confirmation, and the order has by that court been remitted to the court which made the order for the purpose of taking further evidence, that court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application. If upon the hearing of such evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the President and dealt with in like manner as the original depositions.

(5) The confirmation of an order made under this section shall not affect any power of a court to vary or rescind that order:

Provided that, on the making of a varying or rescinding order, the court shall send a certified copy thereof to the President for transmission to a Secretary of State, and that in the case of any order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

6. (1) Where a maintenance order has been made by a court in England or Ireland and the order is provisional only and has no effect unless and until confirmed by a court in Zambia, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the President, and it appears to the President that the person against whom the order was made is resident in Zambia, the President may send the said documents to the prescribed officer of a court with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisitions the court shall issue such a summons and cause it to be served upon such person.

Procedure on
provisional order made
in England or Ireland

(2) A summons so issued may be served in Zambia in the same manner as if it had been originally issued or subsequently endorsed by a court having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear, or on appearing fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modifications or with such modifications as to the court, after hearing the evidence, may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

7. (1) A court in which an order has been registered under this Act, or by which an order has been confirmed under this Act, and the officers of such court, shall take all such steps for enforcing the order as may be prescribed. Enforcement of order

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily.

(3) A warrant of execution or an order of commitment issued by a subordinate court for the purpose of enforcing any order so registered or confirmed may be executed in any part of Zambia in the same manner as if the warrant or order had been originally issued or subsequently endorsed by a subordinate court having jurisdiction in the place where the warrant or order is executed.

(As amended by No. 36 of 1933)

8. The High Court may, by statutory instrument, make rules- Rules

- (a) regulating the procedure and practice of the High Court and subordinate courts for carrying out the provisions of this Act;
- (b) as to the manner in which cases may be remitted by a court authorised to confirm a provisional order to the court which made the provisional order;
- (c) generally for facilitating communications between such courts.

(No. 36 of 1933)

9. Any document purporting to be signed by a Judge or officer of a court outside Zambia shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document. Signature on documents of court officers

10. Depositions taken in a court in England or Ireland for the purposes of this Act may be received in evidence in proceedings before courts in Zambia under this Act. Depositions may be received in evidence

11. Where the President is satisfied that reciprocal provisions have been made by the legislature of any country within the Commonwealth for the enforcement within such country of maintenance orders made by courts in Zambia, the President may, by statutory Proclamation, extend this Act to such country, and this Act shall thereupon apply in respect of such country as though the references to England or Ireland were references to such country and the references to a Secretary of State were references to the Governor or other appropriate authority of such country. Provision for reciprocity with other Common-wealth countries

(No. 39 of 1929 as amended by No. 13 of 1954)

SUBSIDIARY LEGISLATION

MAINTENANCE ORDERS (ENFORCEMENT)

CAP. 56

SECTION 8-THE MAINTENANCE ORDERS (ENFORCEMENT) RULES

Government Notices
142 of 1958
497 of 1964

Rules by the High Court

1. These Rules may be cited as the Maintenance Orders (Enforcement) Rules. Title
2. In these Rules, unless the context otherwise requires- Interpretation

"Registrar of the High Court" includes any Deputy Registrar, Assistant Registrar or District Registrar.
3. The copy of an order made by a court outside Zambia and received by the President under section *three* of the Act shall, if the order was made by a court of superior jurisdiction, be sent to the Registrar of the High Court, who shall- Transmission of copy of order of court of superior jurisdiction
 - (a) if the defendant is alleged to be living in the area of jurisdiction of the District Registry as defined in Government Notice No. 25 of 1957 or any subsequent notice amending the same or prescribing a new area of jurisdiction for any such District Registry, transmit the order to the District Registrar of the District Registry concerned;
 - (b) if the defendant is alleged to live outside the area of jurisdiction of any District Registry, retain the same at the Principal Registry for registration as hereinafter mentioned.
4. Any Registrar or District Registrar receiving such order shall thereupon enter the order in a register to be kept for that purpose at the Principal Registry or District Registry, as the case may be, and the copy so received shall be filed in the Registry or District Registry, as the case may be, of the High Court. Registration of orders by Registrar or District Registrar
5. The copy of an order made by a court not of superior jurisdiction outside Zambia and received by the President as aforesaid under section *three* of the Act shall be sent to a magistrate holding a subordinate court of the first class having jurisdiction within the area in which the defendant is alleged to be living. Transmission of copy of order of court not of superior jurisdiction
6. The copy of a provisional order made by a court outside Zambia and received by the President as aforesaid shall likewise be sent to a magistrate holding a subordinate court of the first class having jurisdiction as provided by rule 5 with the accompanying documents and a requisition for the issue of a summons. Transmission of copy of provisional order

7. The magistrate to whom any order is sent in accordance with the above rules shall enter it in his civil register on the date on which he receives it in the same manner as though the proceedings had been had and the order had been made at his court, provided that each such entry shall be headed as follows:

Registration by a
magistrate

"In the matter of the Maintenance Orders (Enforcement) Act".

8. When an order provisionally made outside Zambia has been confirmed, with or without modification under section *six* of the Act, by a magistrate holding a subordinate court of the first class or such court has decided not to confirm it, the magistrate shall send notice thereof to the President for transmission to the court from which it was issued.

Notice of confirmation
of order or otherwise

9. When an order has been registered in any court in Zambia under section *three* of the Act, or a provisional order has been confirmed by a subordinate court under section *six*, that court shall, unless satisfied that it is undesirable to do so, direct that all payments due thereunder shall be made through an officer of the court, or such other person as it may specify for the purpose.

Direction as to
payments

10. The person through whom the payments are directed to be made shall collect the moneys due under the order and may take proceedings in his own name for enforcing payment and shall send the moneys when so collected to the President for transmission to the court from which the order originally issued. The person through whom payments are directed to be made may retain out of such moneys as come into his hands the amount of all disbursements necessarily or reasonably made.

Collection of payments

11. An application for the variation or rescission of a confirmed order shall be made with notice to the person through whom payments are directed to be made; and the applicant shall cause a copy of any order varying or rescinding a confirmed order to be served upon that person. The fees and costs payable upon the lodging of an application under subsection (6) of section *six* of the Act shall be the fees and costs payable in respect of interlocutory applications in the High Court or subordinate court, as the case may be.

Variation or rescission
of order

12. An appeal against an order in confirmation lodged under subsection (7) of section *six* of the Act shall be presented to the High Court and shall be heard in like manner as a civil appeal from a subordinate court under the Subordinate Courts Act. Where a person through whom payments are directed to be made has been nominated, the appellant shall cause notice of the appeal and of any order made by the High Court in the course of the hearing of the appeal to be served upon such person. The fees payable in connection with appeals shall be those payable in respect of civil appeals from subordinate courts to the High Court.

Appeals
Cap. 28

13. (1) The registers to be kept under rule 4 and the entries to be made in the civil register of a subordinate court of the first class under rule 7 shall be open to inspection on the payment of a fee of four fee units.

Inspection and copies
of registers

(2) Copies of any orders registered in accordance with these Rules shall be supplied upon payment of the copying fee appropriate to the High Court or the subordinate court, as the case may be.

14. Where an order is registered in any court in Zambia under the Act, the Registrar of the High Court may request the Attorney-General to act as legal representative of the party in whose favour such order was made or given and in such cases shall forward all papers lodged in such court, other than those required for registration, to the Attorney-General who may cause such application to be made and such steps to be taken as may be necessary to enforce such order.

Steps to be taken by Registrar.
Powers of Attorney-General

15. The Attorney-General or any person acting for him under rule 14 shall thereupon be deemed to be the legal representative of the party in whose favour such order was made or given unless and until some legal practitioner is appointed in his place either by him or such party.

Legal representative of the party

SECTION 11-APPLICATION TO RECIPROCATING COMMONWEALTH COUNTRIES UNDER
SECTION 11-NORTHERN TERRITORY OF AUSTRALIA

Statutory Instrument
16 of 1972

Proclamation by the President

WHEREAS it is provided by section *eleven* of the Maintenance Orders (Enforcement) Ordinance that where the President is satisfied that reciprocal provisions have been made by the legislature of any country within the Commonwealth for the enforcement within such country of maintenance orders made by courts in Zambia the President may by Proclamation extend the said Ordinance to such country and that the said Ordinance shall thereupon apply in respect of such country as if references therein to a Secretary of State were references to the Governor or other appropriate authority of such country;

AND WHEREAS I am satisfied that reciprocal provisions have been made by the Northern Territory of Australia for the enforcement therein of maintenance orders made by courts in Zambia:

NOW THEREFORE, I, KENNETH DAVID KAUNDA, President of the Republic of Zambia, in exercise of the powers contained in section *eleven* of the Maintenance Orders (Enforcement) Ordinance, as read with section *twenty* of the Interpretation and General Provisions Ordinance, do hereby declare and notify that from and after the date of publication hereof in the Gazette the Maintenance Orders (Enforcement) Ordinance shall be extended to the Northern Territory of Australia.

(See section 43 of *Cap. 64*)

THE MAINTENANCE ORDERS (ENFORCEMENT) ACT

Statutory Instrument
267 of 1970

Proclamation by the President

The Laws of Zambia

WHEREAS it is provided by section *eleven* of the Maintenance Orders (Enforcement) Act that where the President is satisfied that reciprocal provisions have been made by the legislature of any country within the Commonwealth for the enforcement within such country of maintenance orders made by courts in Zambia the President may by Proclamation extend the said Act to such country and that the said Act shall thereupon apply in respect of such country as if references therein to a Secretary of State were references to the Governor or other appropriate authority of such country;

AND WHEREAS I am satisfied that reciprocal provisions have been made by the Australian States of Queensland, South Australia and Tasmania for the enforcement within the said States of maintenance orders made by courts in Zambia;

NOW THEREFORE, I, KENNETH DAVID KAUNDA, President of Zambia, in exercise of the powers conferred by section *eleven* of the Maintenance Orders (Enforcement) Act, as read with section *twenty* of the Interpretation and General Provisions Act, do hereby declare and notify that from and after the date hereof the Maintenance Orders (Enforcement) Act shall be extended to the Australian States of Queensland, South Australia and Tasmania.

GIVEN under my hand and the Public Seal of the Republic of Zambia at Lusaka this 14th day of October, 1970.

KENNETH D. KAUNDA

President

(S.I. No. 267 of 1970)

Endnotes

1 (Popup - Popup)

The provisions of this Act ceased to apply to the maintenance of children with effect from 28th April 1995.