

Maintenance Orders (Attachment of title Earnings) Act.

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CHAPTER 118

MAINTENANCE ORDERS (ATTACHMENT OF EARNINGS) ACT

[28th October, 1963]

Act 22 of 1963.

Act 10 of 1964.

Act 28 of 1965.

S.I.95 of 1975.

S.I.72 of 1976.

Act 23 of 1976.

Act 16 of 1982.

S.I.14 of 1988.

S.I.41 of 1991.

Act 7 of 1998

ARRANGEMENT OF SECTIONS

SECTION

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2. Interpretation.
- 2A. Family Tribunal vested with functions of court.
3. Powers of court to make orders attaching earnings of defaulters under maintenance orders.
4. Restriction of issue or orders or warrant of commitment on making of attachment of earnings orders.
5. Variation and discharge of attachment of earnings orders.
6. Liability of persons to whom attachment of earnings order are directed.
7. Powers of court to obtain statements of earnings.
8. Miscellaneous provisions as to payments under attachment of earnings orders.
9. Application of this Act to earnings paid by the Government.
10. Order when defendant on one of the Outlying Islands.
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12. Rule of Court.
13. Contrary provisions of other enactments.

Short 1. This Act may be cited as the Maintenance Orders (Attachment of title Earnings) Act.

Interpretation 2(1)In this Act unless the context otherwise requires -
"attachment of earnings order" has the meaning assigned to it

by subsection (1) of section 3;

"court" means the Magistrates' Court or the Supreme Court;

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

"earnings", in relation to a defendant, means any 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 the contract of service);

(b) by way of pension;

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

"Family Tribunal" means the Family Tribunal established under the Children Act;

"maintenance order" means -

(a) an order for alimony, maintenance or other payments made or deemed to be made by a court in Seychelles under any of the following enactments, that is to say,

(i) section 21, subsections (2), (3) and (4) of section 23 and subsection (2) of section 24 of the Matrimonial Causes Act;

(ii) the Summary Jurisdiction (Wives and Children) Act;

(iii) Articles 205, 206, 207, 214 and 762 of the Civil Code;

(iv) Section 8(1) (Maintenance orders) of the Children Act;

(v) section 12 (Affiliation orders) of the Children Act;

(b) an order registered or confirmed in Seychelles under the Maintenance Orders (Reciprocal Enforcement) Act;

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

"Outlying Islands" means such islands or group of islands as are listed as Outlying Islands in the First Schedule to the Peace Officers (Inner Islands and Outlying Islands) Act

(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 was made.

(4) Any reference in this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment.

Family **2A.** The jurisdiction and functions of the court under this

Tribunal Act in respect of a maintenance order relating to a child
vested with vested in the Family Tribunal and for this purpose -
functions (a) a reference in the Act to the court shall be deemed to
of court be a reference to the Family Tribunal;

1. without prejudice to the power conferred upon it by the Children Act, the Family Tribunal shall have all the powers of the court under this Act;

1. where consequent upon an application made to the court under this Act, a matter relating to the care, custody or maintenance of a child required to be determined, the court shall remit the matter to the Family Tribunal for its determination.

Application **3.** Until the Family Tribunal has established rules of the
of rules made Tribunal the rules of court made under section 12 of the Act
under shall, subject to such modifications as may be necessary in the
section 12 circumstances apply.

3.(1)If, on the application of a person entitled to receive payments under a maintenance order, it appears to the court which made the order, or by which 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 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 a part thereof payments in accordance with the schedule to this Act; and any such order is in this Act referred to as an "attachment of earnings order".

(2)The 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 the 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 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 to this Act should not be reduced by a payment made in pursuance of the attachment of earnings order;

(c) designate the officer of the court to whom any payment under the schedule is to be made.

(4) The attachment of earnings order shall not come into force until the expiration of seven days from the date when a copy of the order is served on the person to whom the order is directed.

4. 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 orders.

5.(1) The court which made an attachment of earnings order 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) Where notice is given to a court in pursuance of subsection (2) of section 6, the court shall discharge the attachment of earnings order to which the notice relates.

(3) Where at any time it appears to the officer of the court designated in pursuance of paragraph (c) of subsection (3) of section 3 by an attachment of earnings order 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 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 said officer shall make an application to the court for the appropriate variation order, and the court -

(i) shall grant the application unless the defendant appears at the hearing thereof and requests the court to proceed under the following paragraph and the court decides to proceed thereunder;

(ii) if the court decides to proceed under this paragraph, it 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 "the appropriate variation order" means an order varying the attachment of earnings order in question by reducing the normal reduction rate specified thereby so as to secure that that rate 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) of this subsection.

(4) 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 a person to whom the attachment of earnings order is directed; and where an attachment of earnings order is discharged otherwise than under subsection (2), 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 a copy of the discharging order is served on him.

6.(1) A person to whom an attachment of earnings order is directed shall comply with the order or, if the order is subsequently varied under section 5, with the order as so varied.

(2) A person to whom an attachment of earnings order is directed who, at any time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of one month immediately preceding that time been the defendant's employer shall forthwith give notice in writing to the court which made the order.

7.(1) Where proceedings relating to an attachment of earnings order are brought, 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; and

(ii) such particulars as to the defendant's earnings as may be specified;

(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.

8.(1)The officer of the court to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum 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.

9.In relation to earnings falling to be paid by the Government of seychelles 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 Principal Secretary of the Ministry of Finance; and

(b) section 11 shall not apply except in relation to a failure by the defendant to comply with an order under section 7.

10.(1)Where an application is made under section 3 for an attachment of earnings order and the defendant has previously to the date of such application proceeded under a contract of service to the Outlying Islands the court may make an attachment of earnings order on an ex parte application without giving the defendant an opportunity of being heard.

(2)The employer shall be bound to transmit to the defendant by the next available opportunity a copy of the attachment of earnings order served on the employer.

(3)The defendant may in such circumstances and during his absence from Mahé make application by proxy to the court for the variation or discharge of the attachment of earnings order and the court may vary or discharge such order as empowered under section 5.

11.(1)A person who -

(a) fails to comply with subsection (1) or subsection (2) of section 6 or an order of a court under section 7 thereof, or

(b) gives a notice as is mentioned in the said subsection (2), 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 notice or statement which is false in a material particular,

shall subject to subsection (2), be liable on conviction to a fine not exceeding five hundred rupees.

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

12.(1)The Minister may, after consultation with the Chief Justice, make rules of court prescribing the fees and costs payable in any proceedings before a court under this Act, and generally providing for matters of practice and procedure and incidental matters arising under this Act.

(2) Rules made under or by virtue of this section may include provision for the remission of fees and costs where the person liable to pay them has no means to do so.

13.This Act shall have effect notwithstanding anything to the contrary in any other enactment for the time being in force and the provisions of such enactments shall stand amended in so far as they are inconsistent with the provisions of this Act.

SCHEDULE

(Section 3.)

PAYMENT 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", on relation to any pay-day, means the amount of the earnings aforesaid falling to be paid on the pay-day in question.

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 of the court 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.

NO SUBSIDIARY LEGISLATION
