

CHAPTER 53

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MAINTENANCE (PREVENTION OF DESERTION AND  
 MISCELLANEOUS PROVISIONS)

*Ordinance No. 38 of 1962, 23 of 1968*

AN ACT TO MAKE BETTER PROVISION FOR THE MAINTENANCE OF  
 FAMILIES AND ILLEGITIMATE CHILDREN AND FOR MATTERS  
 CONNECTED THEREWITH

[18th October, 1962.]

## PART I—PRELIMINARY

*Short title*

1. This Act may be cited as the Maintenance (Prevention of Desertion and Miscellaneous Provisions) Act.

*Interpretation*

- 2.—(1) In this Act, unless the context otherwise requires—  
 “adequate maintenance” means maintenance reasonably sufficient for the necessities of the person to be maintained, irrespective of the means or ability of the person who is bound to afford such maintenance;  
 “attachment of earnings order” means an order made under subsection (1) of section 12;  
 “defendant”, in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;  
 “domestic proceedings” means any proceedings under any of the following Acts:—

The Matrimonial Causes Act, (Cap. 51)

The Maintenance and Affiliation Act, (Cap. 52)

The Maintenance Orders (Facilities for Enforcement) Act, (Cap. 54)

The Maintenance Orders (Reciprocal Enforcement) Act, (Cap. 55)  
 “earnings”, in relation to a defendant, means any sums (other than excepted sums) payable to him—

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service);

(b) by way of pension (including an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment);

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

“excepted sums” means—

(a) sums payable by any public department of the government of any territory outside Fiji;

(b) pay or allowances payable to the defendant as a member of Her Majesty's Forces;

(c) destitute allowance; and

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

“maintenance” includes lodging, feeding, clothing, teaching, training, attendance, medical and surgical relief and, in respect of any deceased person, the cost of his funeral;

“maintenance order” means a maintenance order, alimony order or affiliation order made under any of the following Acts:—

The Matrimonial Causes Act,

(Cap. 51)

The Maintenance and Affiliation Act,

Cap. 52)

and in relation to Parts III and IV includes a maintenance order registered in a court in Fiji under the provisions of the Maintenance Orders (Facilities for Enforcement) Act or the Maintenance Orders (Reciprocal Enforcement) Act;

(Caps. 54, 55)

“night imprisonment order” means an order made under subsection (1) of section 21;

“parent” means—

(a) in respect of any child, other than a child which has been adopted by any person under an adoption order which remains in force—

(i) the father of a legitimate child;

(ii) the mother of an illegitimate child;

(iii) the mother of a legitimate child if the mother is a widow or has the custody of the child by virtue of the decree or order of any judge, magistrate or court;

(iv) the husband of the mother of any child, whether legitimate or illegitimate, if the child was born before the marriage of the mother with her said husband, and whether the mother is alive or dead;

(b) in respect of any child which has been adopted by any person under an adoption order which remains in force—

(i) the adoptive father of the child;

- (ii) the adoptive mother of the child if there is no adoptive father living, or if the said mother has the custody of the child by virtue of the decree or order of any judge, magistrate or court;
- (iii) the husband of the adoptive mother of the child, whether the child was adopted before or after the marriage of the mother to her said husband, and whether the mother is alive or dead;
- (iv) the widow of the adoptive father of the child, whether the child was adopted before or after her marriage to the said father;

“pay day” means each occasion on which any earnings to which an attachment of earnings order relates fall to be paid;

“person belonging to Fiji” means a person who is entitled to enter Fiji without a permit under the Immigration Act. (Cap. 88)

(2) Any reference in this Act to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive such payments either directly or through another person or for transmission to another person.

(3) Any reference in this Act to proceedings relating to an order includes a reference to proceedings in which the order may be made.

## PART II—PROVISIONS TO PREVENT ABANDONMENT OF FAMILIES WITHOUT PROVISION FOR MAINTENANCE

### *Leaving Fiji while payments under maintenance order are in arrear*

3. Every person against whom a maintenance order has been made, either before or after the commencement of this Act, and who, while any moneys payable under the order are in arrear and unpaid, leaves or attempts to leave Fiji without the permission in writing of a magistrate, shall be guilty of an offence and shall be liable to imprisonment for any term not exceeding two years. In any prosecution for any such offence the burden of proving that the permission of a magistrate was so given shall be upon the defendant.

### *Leaving Fiji with intent to disobey a maintenance order*

4. Every person against whom a maintenance order has been made, either before or after the commencement of this Act, and who at any time thereafter leaves or attempts to leave Fiji with intent to make default in obeying that order, shall be guilty of an offence and shall be liable to imprisonment for any term not exceeding two years.

### *Leaving Fiji after complaint but before maintenance order made*

5. Every person against whom any application or complaint has been made under the Maintenance and Affiliation Act or against whom any application has been made under the Matrimonial Causes Act and who has been served with a summons issued in pursuance of the application or complaint, or knows that an application or complaint has been so made against him, and who thereafter and

before the application or complaint has been heard and determined leaves or attempts to leave Fiji with intent to make default in obeying any order that may thereafter be made against him in respect of the matter of the complaint, shall be guilty of an offence and shall be liable to imprisonment for any term not exceeding two years. (*Amended by 23 of 1968 s. 3*) (Cap. 52) (Cap. 51)

*Leaving Fiji while failing to make adequate provision for maintenance of wife*

6. Every person who without reasonable cause fails to provide his wife with adequate maintenance, and who at any time while failing so to do leaves or attempts to leave Fiji without the permission in writing of a magistrate, shall be guilty of an offence and shall be liable to imprisonment for any term not exceeding two years. In any prosecution for any such offence the burden of proving that the permission of a magistrate was so given shall be upon the defendant.

*Leaving Fiji while failing to provide for maintenance of child*

7. Every parent of a child who without reasonable cause fails to provide that child with adequate maintenance, and who at any time while failing so to do leaves or attempts to leave Fiji without the permission in writing of a magistrate, shall be guilty of an offence and shall be liable to imprisonment for any term not exceeding two years. In any prosecution for any such offence the burden of proving that the permission of a magistrate was so given shall be upon the defendant.

*Leaving Fiji without making provision for maintenance of wife or child during absence*

8. Every person who is the husband of any woman or a parent of any child, and who leaves or attempts to leave Fiji with the intention of failing without reasonable cause to make adequate provision for the maintenance of that wife or child during his absence, shall be guilty of an offence and shall be liable to imprisonment for any period not exceeding two years.

*Person against whom affiliation order made leaving Fiji without permission of magistrate*

9. If any person against whom an affiliation order has been made under the Maintenance and Affiliation Act leaves or attempts to leave Fiji without the permission in writing of a magistrate at any time within one year after the making of the order, he shall be guilty of an offence and shall be liable to imprisonment for any period not exceeding two years. In any prosecution for any such offence the burden of proving that the permission of a magistrate was so given shall be upon the defendant. (Cap. 52)

*What constitutes an attempt to leave Fiji*

10. Every person shall be deemed to attempt to leave Fiji within the meaning of this Act who does any act with intent to leave Fiji.

*Proof of intent in prosecutions under this Act*

11. In any prosecution for an offence against this Act, the fact that the defendant has at any time within three years after leaving Fiji habitually made default in obeying a maintenance order or in providing his wife or any child with adequate maintenance shall be sufficient evidence, unless the contrary is proved, that the defendant left Fiji with intent so to make default.

## PART III—ATTACHMENT OF EARNINGS ORDERS

*Powers of courts to make orders attaching earnings of defaulters under maintenance orders*

12.—(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, at the time when the application was made there was due under the order and unpaid an amount equal to not less, in the case of an order for weekly payments, than four or, in any other case, than two of the payments required by the order; and

(b) that the defendant is a person to whom earnings fall to be paid, then, subject to the provisions of subsection (2), the court may, if it thinks fit, and notwithstanding any provisions contained in any other Act including any provisions exempting earnings, pensions or other sums from attachment, by an order or orders require the person to whom the order in question is directed, being a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or that part thereof payments on each pay day at the deduction rate therein specified; and any such order is in the 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 deduction rate, that is to say, the rate at which the court making or varying the attachment of earnings order thinks it reasonable that the earnings to which that order relates should be applied from time to time in satisfying the requirements of the maintenance order, not exceeding the rate appearing to that court to be necessary for the purpose of—

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

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

(b) designate the officer to whom any payment under the said order is to be made, being—

(i) if the order is made by the Supreme Court, the Chief Registrar of the Supreme Court;

(ii) if the order is made by a magistrates' court, the clerk of that court;

(c) contain, so far as they are known to the court making the order, particulars for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

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

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

13. 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.

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

14.—(1) The court by which an attachment of earnings order has been made may if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

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

(a) upon the making of an order of commitment or the issue of a warrant of commitment for the enforcement of the related maintenance order:

(b) upon the discharge of the related maintenance order, and where an attachment of earnings order ceases to have effect as aforesaid the proper officer of the court shall give notice of the cessation to the person to whom the order was directed:

Provided that where the related maintenance order is discharged as mentioned in paragraph (b) and it appears to the court discharging the order that arrears thereunder will remain to be recovered after the discharge, that court may, if it thinks fit, direct that the operation of this subsection shall be suspended until the proper officer of the court, upon satisfaction of all arrears, shall give notice of the cessation of the order to the person to whom the order was directed.

(3) Where notice is given to a court in pursuance of subsection (4) of section 15, the court shall discharge the attachment of earnings order to which the notice relates.

(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 the person to whom the attachment of earnings order is directed; and where an attachment of earnings order ceases to have effect under subsection (2), or is discharged otherwise than under the provisions of subsection (3), the said person shall not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date when the notice required by subsection (2) or, as the case may be, a copy of the discharging order is served on him.

*Liabilities of persons to whom attachment of earnings orders are directed*

15.—(1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other enactment but subject to the following provisions of this Act, comply with the order or, if the order is subsequently varied under the provisions of section 14, 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 orders, the employer shall—

(a) deal with those orders according to the respective dates on which they came into force, disregarding any later order until any earlier order has been dealt with;

(b) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payment due in pursuance of any earlier order.

(3) An employer who makes any payment in pursuance of an attachment of earnings 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 to that effect to the court which made the order.

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

16.—(1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing—

(a) order the defendant to furnish particulars to the court, within such period as may be specified by the order, as to—

(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 particulars as may be so specified for the purpose of enabling the defendant to be identified by any employer of his:

(b) order any person appearing to the court to be an employer of the defendant to give to the court, within such period as may be specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be so specified.

(2) A document purporting to be such a statement as is mentioned in subsection (1) shall, in any such proceedings, as are so mentioned, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

*Powers of courts to determine whether payments are earnings*

17.—(1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed or of the defendant or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified by the application are earnings for the purposes of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection.

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) shall not incur any liability for failing to comply with the order as respects any payments of the class or description specified by the application which are made by him to the defendant while the application, or any appeal in consequence thereof, is pending:

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

*Miscellaneous provisions as to payments under attachment of earnings orders*

18.—(1) The officer 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.

(3) On any occasion on which an employer makes a payment under an attachment of earnings order in respect of a defendant, the employer may, notwithstanding anything in any other enactment, retain for his own use out of any balance of the defendant's earnings remaining after the making of that payment the sum of five cents or, if on that occasion the employer makes such payments in pursuance of two or more attachment of earnings orders relating to the defendant, the sum of five cents in respect of each such payment.

*Application to earnings paid by the Crown, etc.*

19. In relation to earnings falling to be paid by the Crown or out of the revenue of Fiji, this Act shall have effect subject to the following modifications, that is to say—

- (a) the order shall be directed to the Chief Accountant who shall inform the court whether he or the head of some other Government Department, and if so which Department, is responsible for paying earnings to the defendant;
- (b) section 20 shall not apply except in relation to a failure by the defendant to comply with an order made under the provisions of section 16.

*Offences*

✓ 20.—(1) A person who—

- (a) fails to comply with subsection (1) or subsection (4) of section 15 or an order of a court made under the provisions of section 16; or
- (b) gives such notice as is mentioned in the said subsection (4), or a statement in pursuance of such an order as aforesaid, which he knows to be false in a material particular; or
- (c) recklessly gives such a notice or statement which is false in a material particular,

shall, subject to subsection (2) be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty dollars, and in the case of a second or subsequent conviction (being, in the case of a failure to comply with the said subsection (1), a second or subsequent conviction relating to the same attachment of earnings order) to a fine not exceeding fifty dollars.

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

## PART IV—NIGHT IMPRISONMENT ORDERS

*Night imprisonment orders*

21.—(1) When a court commits any person to prison for failure to pay any sum due under a maintenance order, it may make a committal order for night imprisonment, and if it does so shall endorse the committal order to that effect. Such an order shall be known as a “night imprisonment order”, and may be varied by a court from time to time.

(2) A person who is committed to prison under a night imprisonment order shall be confined in prison during such hours only (whether of night or day) as the court may specify on the order, or, if it does not so specify, during the time when he is not in employment (which includes going to and returning from employment) or seeking employment.

(3) (a) The court if it thinks fit may direct that the earnings of the defendant shall be collected by the officer in charge of the prison or by his representative named in the order, and if it does so direct shall also specify an amount, whether expressed as a proportion of the prisoner’s earnings or as a sum of money, which shall be applied out of the earnings from time to time falling due to the defendant towards payment of any sum due under the maintenance order in respect of which the night imprisonment order was made.

(b) If a night imprisonment order contains a direction under this subsection it shall also contain so far as they are known to the court, particulars for the purpose of enabling the defendant to be identified.

(4) Any employer to whom a night imprisonment order or a certified copy thereof is produced and from whom any earnings are due to the person named in such order shall pay such earnings to the officer in charge of the prison or his representative, and if he fails to do so without reasonable cause shall be guilty of an offence and liable to a fine not exceeding twenty dollars.

(5) An employer who makes any payment to an officer in charge of a prison or to his named representative in pursuance of a night imprisonment order shall give to the defendant a statement in writing specifying the amount of that payment.

(6) The officer in charge of the prison shall apply such earnings in the following order:—

(a) to deduct the prisoner’s subsistence charges in prison at the rate for the time being in force for persons imprisoned in respect of a civil debt, reasonable allowance however being made for any meals not supplied to the prisoner which would be supplied to a prisoner wholly confined to prison;

(b) to pay any amount specified by the court under subsection (3);

(c) to pay the balance to the defendant.

(7) If the court is satisfied on information from the officer in charge of the prison or otherwise that the defendant is not being employed whilst not confined in prison or that he has not complied satisfactorily with the requirement that he return to prison when not employed, or that for any other reason the night imprisonment order is not operating satisfactorily, it may cancel the night imprisonment order and make a committal order in lieu thereof.

For the purpose of this subsection a written statement purporting to be signed by an officer in charge of a prison that the defendant is not being employed whilst not confined in prison, or that he has not complied satisfactorily with the

requirement that he return to prison when not employed or, as the case may be, that the night imprisonment order is, for stated reasons, not operating satisfactorily, shall be evidence of the facts stated, unless and until the court be satisfied to the contrary.

(8) No night imprisonment order shall be made for any period exceeding the period for which it would be lawful to make a committal order, nor when a night imprisonment order is cancelled under subsection (7) and a committal order substituted shall such a committal order be made for any period exceeding the unexpired portion of the period of the night imprisonment order.

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

22.—(1) In any proceedings relating to a night imprisonment order the court may either before or at the hearing order the defendant to furnish particulars to the court, within such period as may be specified by the order, as to—

- (a) the name and address of his employer, or of each of his employers if he has more than one;
- (b) such particulars as to the defendant's earnings as may be so specified; and
- (c) such particulars as may be so specified for the purpose of enabling the defendant to be identified by any employer of his.

(2) If any person fails to comply with an order made under the provisions of subsection (1), or makes any statement in pursuance of such an order which he knows to be false in a material particular, or recklessly gives such a statement which is false in a material particular, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty dollars, and in case of a second or subsequent conviction to a fine not exceeding fifty dollars.

PART V—MISCELLANEOUS

*Power of court to require deposit of passport*

23. A judge, magistrate or court may require—

- (a) any person belonging to Fiji who is in arrears with payments under a maintenance order;
  - (b) any person belonging to Fiji who is brought before the court under arrest in the course of enforcement of a maintenance order,
- to deposit his passport, being a Fiji passport, with the court. The passport may be detained until the court is satisfied that suitable arrangements have been made either by the provision of sureties or otherwise for compliance during the absence of such person from Fiji with any maintenance order made or to be made against him.

*Domestic courts*

24.—(1) A magistrates' court when hearing domestic proceedings shall, if practicable sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held, and a court so sitting is in this section referred to as a domestic court.

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(2) In a domestic court no person other than the members and officers of the court and the parties to the case, their counsel, the probation officer and other persons directly concerned in the case shall, except by leave of the court, be allowed to attend.

(3) No person shall publish the name, address, photograph or anything likely to lead to the identification of the parties to any proceedings before the court save with the permission of the court or in so far as required by the provisions of this Act.

Any person who acts in contravention of the provisions of this subsection shall be liable to a fine not exceeding twenty dollars.

*Controlled by Ministry of the Attorney-General*