

Enforcing the Payment of Maintenance

By Nicolene Rajah

Any matter pertaining to a child is of paramount importance and the Courts are obligated to always give effect to what would be in the best interests of a child. It is imperative that this notion is upheld in maintenance disputes.

A maintenance order can be granted in a divorce as an interim order, a final order or with a maintenance order in terms of the Maintenance Act. A defaulting party may be held accountable and the following remedies will assist the applicant:

- **EXECUTION AGAINST PROPERTY:** The Court will grant a warrant of execution against the movable property of the defaulting party. Should the movable property not be sufficient in settling the outstanding maintenance, then a warrant may be issued against the immovable property resulting in the immovable property being sold by public auction to settle the arrear maintenance.
- **EMOLUMENT ATTACHMENT ORDER:** An application to the Maintenance Court is made to register a garnishee order against the defaulting party's salary. The garnishee order is served on the employer and the ordered amount is then deducted from their salary every month towards payment of the arrear maintenance.
- **ATTACHMENT OF DEBT:** Debt owed to the defaulting party by a third party can be attached to settle arrear maintenance.
- **CRIMINAL PROSECUTION:** A criminal complaint is laid against the defaulting party whereafter they can be prosecuted for not complying with the maintenance order.

When exploring any of the above remedies, a party must have a copy of the maintenance order and proof of the defendant's defaulting on payment. The above remedies will assist in ensuring the maintenance order is given effect and the defaulter faces the necessary consequences.



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It is further important to bear in mind that parties may claim maintenance from parents living in certain foreign countries in terms of the Reciprocal Enforcement of Maintenance Orders Act and that maintenance orders are not considered as “ordinary debt” but as a “judgement debt” and therefore only prescribe after thirty years.

If you need any further information or assistance, please contact Whyona Sithapersad on 033 8459700 or email on whyona@jleslie.co.za or her Secretary: tanya@jleslie.co.za



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