



LAWS OF KENYA

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## **MAINTENANCE ORDERS ENFORCEMENT ACT**

CHAPTER 154

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CHAPTER 154

**MAINTENANCE ORDERS ENFORCEMENT ACT**

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CHAPTER 154

**MAINTENANCE ORDERS ENFORCEMENT ACT**

[Date of commencement: 6th September, 1921.]

**An Act of Parliament to facilitate the enforcement in Kenya of maintenance orders made in the United Kingdom or Eire or in certain British possessions, and vice versa**

[Act No. 33 of 1921, Cap. 16 (1948), Act No. 32 of 1961, L.N. 406/1961, L.N. 2/1964, L.N. 18/1964, L.N. 168/1964, Act No. 11 of 1970, Act No. 4 of 1974.]

**1. Short title**

This Act may be cited as the Maintenance Orders Enforcement Act.

**2. Interpretation**

In this Act—

“**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 liable to maintain according to the law in force in that part of Her Majesty’s dominions in which the maintenance order was made;

“**maintenance order**” means an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and includes an order or decree for the recovery or repayment of the cost of relief or maintenance;

“**prescribed**” means prescribed by rules of court.

[Act No. 4 of 1974, Sch.]

**3. Enforcement in Kenya of maintenance orders made in the United Kingdom or Eire**

(1) Where a maintenance order has, whether before or after the commencement of this Act, been made against any person by any court in the United Kingdom or Eire, and a certified copy of the order has been transmitted by the Secretary of State to the Minister, the Minister shall send a copy to the prescribed officer of a court in Kenya for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on the order, as if it had been an order originally obtained in the court in which it was so registered, and that court shall have power to enforce the order accordingly.

(2) The court in which an order is to be so registered shall, if the court in 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 of the first class.

[L.N. 168/1964, Act No. 4 of 1974, Sch.]

**4. Transmission of maintenance orders made in Kenya**

Where a court in Kenya 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 the United Kingdom or Eire, the court shall send to the Minister for transmission to the Secretary of State a certified copy of the order.

[L.N. 168/1964, Act No. 4 of 1974, Sch.]

**5. Power to make provisional maintenance orders against persons in the United Kingdom or Eire**

(1) Where an application is made to a subordinate court of the first class in Kenya for a maintenance order against any person, and it is proved that that person is resident in the United Kingdom or Eire, 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 the United Kingdom or Eire.

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

(3) Where an order is made, the court shall send to the Minister for transmission to the 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 a provisional order has come before a court in the United Kingdom or Eire for confirmation and the order has by that court been remitted to the subordinate court which made the order for the purpose of taking further evidence, that court or any other subordinate court of the first class sitting and acting for the same place shall, after giving the prescribed notice, proceed to take the evidence in the same manner and subject to the same conditions in support of the original application.

(5) If upon hearing of the 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 Minister and dealt with in the same manner as the original depositions.

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

Provided that—

- (i) on the making of a varying or rescinding order the court shall send a certified copy thereof to the Minister for transmission to the Secretary of State;
- (ii) in the case of an order varying the original order the order shall not have any effect unless confirmed in the same manner as the original order.

(7) 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.

[L.N. 168/1964, Act No. 4 of 1974, Sch.]

## **6. Confirmation of maintenance orders made in the United Kingdom or Eire**

(1) Where a maintenance order has been made by a court in the United Kingdom or Eire, and the order is provisional only and has no effect unless and until confirmed by a subordinate court of the first class in Kenya, 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 Minister, and it appears to the Minister that the person against whom the order was made is resident in Kenya, the Minister may send the documents to the prescribed officer of a subordinate court of the first class 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 the documents and requisition, the court shall issue the summons and cause it to be served upon that person.

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

(3) At the hearing the person on whom the summons was served may 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 affirm the order either without modification 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 purpose of taking 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 the same 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.

(8) At the hearing of any summons issued by virtue of this section or of any appeal against the confirmation under this section of a provisional order, any State Counsel or any person duly qualified as a barrister or solicitor holding office in the Attorney-General's Chambers may appear on behalf of the person upon whose application the maintenance order was made.

[Act No. 32 of 1961, Sch., L.N. 18/1964, L.N. 168/1964, Act No. 4 of 1974, Sch.]

#### **7. Enforcement of orders**

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

(2) Every such order shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily.

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

[Act No. 32 of 1961, Sch.]

#### **8. Proof of documents**

Any document purporting to be signed by a judge of a court in the United Kingdom or Eire 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.

[Act No. 4 of 1974, Sch.]

#### **9. Depositions to be evidence**

Depositions taken in a court in the United Kingdom or Eire may be received in evidence in proceedings before subordinate courts under this Act.

[Act No. 4 of 1974, Sch.]

#### **10. Reciprocity between Kenya and other countries**

Where the Minister is satisfied that reciprocal provisions have been made by the legislature of any country to which for the time being section 95 of the Constitution applies for the enforcement within such country of maintenance orders made by courts in Kenya, the Minister may by notice extend this Act to that country, and this Act shall thereupon apply in respect of that country as though the reference to the United Kingdom or Eire were references to that country and the references to the Secretary of State were references to the competent authority of that country.

[L.N. 406/1961, Act No. 11 of 1970, Sch., Act No. 4 of 1974, Sch.]

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