



## **MAINTENANCE ORDERS ACT**

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## MAINTENANCE ORDERS ACT

An Act to facilitate the enforcement in Nigeria of maintenance orders made in England or Ireland and vice versa.

[1921 No. 8.1929 No. 18.]

[23rd June, 1921]

[Commencement.]

### 1. Short title

This Act may be cited as the Maintenance Orders Act.

### 2. Interpretation

In this Act, unless the context otherwise requires-

"Dependants" means such persons as any other person is, according to the law in force in England and Ireland, if the order is made in England or Ireland, or in Nigeria, if the order is made in Nigeria, liable to maintain;

"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 in respect of Ireland, includes an 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;

"Prescribed" means prescribed by any rules made under this Act.

### 3. Enforcement in Nigeria of maintenance orders made in England and Ireland

(1) Where a maintenance order has, whether before or after the commencement of this Act, been made against any person by any court in England or Ireland, and a certified copy of the order has been transmitted by the Secretary of State to the President, the President

shall send a copy to the prescribed officer of a court in Nigeria 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 has 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.

- (2) The court in which an order is to be so registered shall, if the court by which the order was made was a court of superior jurisdiction, be a High Court, and, if the court was not a court of superior jurisdiction, be a court of a magistrate.

[L.N. 47 of 1955.]

#### 4. Transmission of maintenance orders made in Nigeria

Where a court in Nigeria 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 the Secretary of State a certified copy of the order.

#### 5. Power to make provisional orders of maintenance against persons resident in England or Ireland

- (1) Where an application is made to court in Nigeria 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.

- (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 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 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 pre-scribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.
- (5) 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.
- (6) 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 the Secretary of State, and that in the case of an order varying the original order the order shall not have any effect unless and until confirmed in like 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.

6. Power of court to confirm maintenance order made in England or Ireland

- (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 Nigeria, 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 Nigeria the President may send the said documents to a magistrate with a requisition that summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the magistrate shall issue such a summons and cause it to be served upon such person.

- (2) A summons so issued may be served in Nigeria 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 magistrate that the order ought not to be confirmed, the magistrate may confirm the order either without modification or with such modifications as to the magistrate after hearing the evidence may seem just.

- (5) If the person against whom the summons was issued appears at the hearing and satisfied the magistrate 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 magistrate 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 a magistrate, and where on an application for rescission or variation the magistrate 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 magistrate 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 a right of appeal to the High Court of the State or part of the Federation concerned against the confirmation of the order, provided that the order confirmed is one against which such person would have a right of appeal in England or Ireland.

## 7. Mode of enforcing orders

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

8. Proof of documents signed by officers of court

Any document purporting to be signed by a judge or officer of a court in England or Ireland 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.

9. Depositions to be evidence

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

10. Rules

The Chief Judge of a High Court may make rules regulating the procedure under this Act of the High Court and other courts established within the jurisdiction of the High Court and with respect to other matters incidental thereto.

[L.N. 112 of 1964.]

11. Power to extend this Act to other countries

Where the President is satisfied that reciprocal provisions have been made by the legislature of any country of the Commonwealth or of any British possession for the enforcement within such country or possession of maintenance orders made by courts in Nigeria, the President may by order extend this Act to such country or possession, and this Act shall thereupon apply in respect of such country or possession as though the references to England or Ireland were references to such country or possession and the references to the Secretary of State for the Colonies were references to the President, Governor-General or Governor as the case may be, of such country or possession.

[L.N. 112 of 1964.]

12. Provision for re-registration in Regional courts

The President may at any time direct that a maintenance order registered under section 3 of this Act, prior to the date of coming into operation of the Adaptation of Laws (Judicial Provisions) Order, 1955, shall after such date be re-registered in such court as he may direct, and thereupon the provisions of this Act shall apply to such order as so re-registered, as they apply to an order on first registration under section 3 of this Act. [L.N. 47 of 1955.]



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