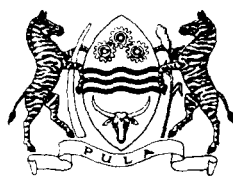


THE MAINTENANCE ORDERS ENFORCEMENT ACT, 1970

No. 59



of 1970

ARRANGEMENT OF SECTIONS

Section

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AN ACT TO MAKE FURTHER PROVISION FOR THE ENFORCEMENT OF MAINTENANCE ORDERS

Date of Assent: 16.11.70

Date of Commencement: 25.11.70.

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Maintenance Orders Enforcement Act, 1970.

Interpretation

2. In this Act unless the context otherwise requires "order" means —
 - (a) any maintenance order made by the High Court;
 - (b) any order made under the Deserted Wives and Children Protection Law, 1962 and any order recognized and enforced under section 9 of that law;
 - (c) any maintenance order registered or confirmed under the Maintenance Orders Proclamation (Chapter 8);
 - (d) Any affiliation order under the Affiliation Proceedings Act, 1970.

Payments under maintenance order may be made through Clerk of the Subordinate Court

3. (1) Where an order has been made against any person by a court and an affidavit is lodged with the clerk of the subordinate court of the district in which such person is believed to be resident to the effect that such order is not being complied with, the clerk of the court shall serve a notice on such person calling upon him to make all payments in future under the order through the clerk of the court or else to show cause in the subordinate court on a day appointed in the notice why he should not do so.

(2) If the defendant objects to making payment through the clerk of the court he may, on the day named, appear before the court to show cause why he should not do so.

(3) The court in adjudicating upon the matter shall consider whether it has been proved that the defendant is in arrear with his payments, whether he has any reasonable excuse for being in arrear and whether it is probable that he will be in arrear with his payments in future.

(4) If the court is satisfied that the defendant is in arrear and that there is a likelihood of his being in arrear again in future it shall confirm the order made by the clerk of the court that in future all maintenance shall be paid through the clerk of the court.

Penalty for failure to comply with order and to notify change of address

4. (1) Subject to the provisions of subsection (4) any person against whom an order has been made by any court for the periodical payment of sums of money towards the maintenance of any person who fails to make any particular payment in terms of such order shall be guilty of an offence and liable to imprisonment for a period of one year.

(2) If a person is convicted of failing to pay maintenance due under an order in contravention of subsection (1), the court may in addition to any penalty which it may impose, order that all future payments under the order shall be made through the clerk of the court.

(3) Subject to the provisions of subsection (4) any person who has been convicted or acquitted on a charge under this section of failing to make any payment and who fails —

(a) within two months after such conviction or acquittal; or

(b) if upon such conviction he was sentenced to and has undergone imprisonment, within two months after his release in respect of such imprisonment, to make that payment, shall be liable to be prosecuted again under subsection (1), and his previous conviction or acquittal shall not be a bar to his conviction on the later charge.

(4) Proof that any failure which is the subject of a charge under this section was due to a lack of means and that such lack of means was not due to unwillingness to work or misconduct on the part of the person charged, shall be a good defence to any such charge:

Provided that if the court finds that the person charged was able to pay a portion of any particular payment and failed to do so, such proof shall not be a defence in relation to the portion of the particular payment which the person was able to pay.

(5) If any person against whom an order referred to in subsection (1) has been made, during the currency of the order, changes the place of his residence or employment, he shall forthwith give notice thereof in writing to the person to whom payment is to be made in terms of the order, or, where payment is made through a clerk of court, to the clerk of court and shall in that notice state fully and clearly where the new place of his residence or employment is situate.

(6) Any person who fails to give notice as required by subsection (5) shall be guilty of an offence and liable to a fine not exceeding R50 or to imprisonment for a period not exceeding three months.

(7) In any prosecution for a contravention of this section, a certificate alleging the essential details of the judgment and the fact of default of payment shall, if purporting to have been signed by a person describing himself as the Registrar or Assistant Registrar of the High Court or a clerk of a subordinate court, be received in any court on production by the prosecutor and without further proof as *prima facie* evidence of the facts therein stated.

Passed by the National Assembly this day, the 2nd November, 1970.

G. T. MATENGE,
Clerk of the National Assembly