

MAINTENANCE

Reciprocal Enforcement of Maintenance Orders Act 3 of 1995.

Summary: This Act provides for the reciprocal enforcement of maintenance orders between Namibia and other countries designated by the Minister of Justice. It replaces the South African *Reciprocal Enforcement of Maintenance Orders Act 80 of 1963*.

Amendments: Sections 1, 5, 6, 7, 8, and 9 are amended by the Maintenance Act 9 of 2003.

Regulations: Rules and regulations made under the previous Act survive in terms of section 13 of the new Act. Rules issued under the previous Act are contained in RSA GN R.98 of 22 January 1965.

Section 13 of the Act provides that any country designated under the *Reciprocal Enforcement of Maintenance Orders Act 80 of 1963* will be deemed to be a designated country for the purposes of the Act. South Africa was named as a designated country in GN 124/1993 (GG 727), effective 10 September 1993.

Maintenance Act 9 of 2003.

Summary: This Act concerns the payment of maintenance, the holding of maintenance enquiries, and enforcement of maintenance orders. It replaces the South African *Support of Dependants (Natives) Proclamation of 1936* and the South African *Maintenance Act 23 of 1963*. It came into operation on 17 November 2003 (GN 232/2003, GG 3093).

Regulations: Regulations are contained in GN 233/2003 (GG 3093).

Cases: *S v Gawaseb* 2007 (2) NR 600 (HC) (sentence under section 39(1); section 33(1)).

See also *Main NO v Van Tonder NO & Another* 2006 (1) NR 389 (HC), which discusses the Act in dicta at 397E-G.

Cases decided under the repealed *Maintenance Act 23 of 1963*:

S v Koyoko 1991 NR 369 (HC) (section 5(4))

S v Shivute & Several Other Cases 1991 NR 433 (HC) (sections 11(1) and (2))

S v Afrikaner 1991 NR 109 (HC) (section 11(1))

S v Exabuja 1992 NR 196 (HC) (section 11(3))

S v De Koe 1993 NR 359 (HC) (section 11(3))

S v Geiseb 1994 NR 175 (HC) (section 11(3))

Tsauseb v Geingos 1995 NR 107 (HC)

Van Zyl v Fourie 1997 NR 85 (HC) (section 4(1)(b))

Jantjies v Jantjies & Another 2001 NR 26 (HC) (principle of set-off not applicable to maintenance order).

SELECTED CASES

Main NO v Van Tonder NO & Another 2006 (1) NR 389 (HC) (dealing with maintenance from a deceased estate and extending common law to provide for support from estate of parent to major child in need)

S v Gawaseb 2007 (2) NR 600 (HC) (quotes with approval at 602I-603B the following statement from a South African case: “Systemic failures to enforce maintenance orders have a negative impact on the rule of law. The courts are there to ensure that the rights of all are protected. The judiciary must endeavour to secure for vulnerable children and disempowered women their small but life sustaining legal entitlements. If court orders are habitually evaded and defied with relative impunity the justice system is discredited and the constitutional promise of human dignity and equality is seriously compromised for those dependent on the law. It is a function of the State not only to provide a good legal framework but to put in place systems that will enable these frameworks to operate effectively. Our maintenance courts and the laws that they implement are important mechanisms to give effect to the rights of children protected by s 28 of the Constitution. Failure to ensure their effective operation amounts to a failure to protect children against those who take advantage of the weaknesses of the system.”)

SELECTED ARTICLES

Legal Assistance Centre, *Maintenance: A Study of the Operation of Namibia's Maintenance Courts*, 1995

Law Reform and Development Commission, *Report on Maintenance* (LRDC 5), 1997

Legal Assistance Centre, *Guide to the Maintenance Act 9 of 2003*, 2005, available at www.lac.org.na/grap/Pdf/guidmaint.pdf (languages: English, Afrikaans, Oshiwambo, Otjiherero, Khoekhoegowab, Rukwangali).

See also regulations on financial assistance issued under the *Children's Act 33 of 1960* (**CHILDREN**).