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## EMOLUMENTS ATTACHMENT ORDERS



HIGH COURT ACT 16 OF 1990 AND RULES : MAGISTRATES' COURTS ACT 32 OF 1944; ENFORCEMENT OF FOREIGN CIVIL JUDGMENTS ACT 28 OF 1994; REGULATIONS RELATING TO MAINTENANCE ACT 9 2003

A judgement creditor may cause an order, known as an Emoluments Attachment Order, to be issued from the court of the district in which the employer of the judgement debtor resides, carries on business or is employed.

### What is an Emoluments Attachment Order?

An Emoluments Attachment Order is a debt collection process in which a court order stipulates the terms whereby the judgement creditor can attach or deduct part of the salary of the judgement debtor.

- An Emoluments Attachment Order has the effect of setting aside a portion of the judgement debtor's salary, wages, allowances or any other form of remuneration due to the judgement debtor ("emoluments"), which becomes payable to the judgement creditor.
- In terms of the order, the employer of the debtor is obliged to deduct the amount from the debtor's salary, failing which the employer will be held in contempt of court.
- The Emoluments Attachment Order will stipulate the installments payable, which shall be payable until the judgement debts and costs have been paid in full.

### How is an Emoluments Attachment Order obtained?

A creditor must apply to a court in the area where the debtor resides, carries on business, or is employed. If the debtor is employed by the State, the creditor must approach the court in the area where the debtor is employed.

- This application may be brought without notice to the judgement debtor or garnishee/employer and must be supported by an affidavit, outlining the size of the debt, the circumstances in which the debt arose and the availability of alternatives to recover the debt, among other factors.
- Once the Emoluments Attachment Order has been authorized, a further application authorizing the issue of an Emoluments Attachment Order must be brought using a Notice of Intention to issue an Emoluments Attachment Order.
- The application to issue the Emoluments Attachment Order must be served on the judgement debtor and the garnishee/employer.
- The Emoluments Attachment Order shall contain sufficient information to enable the garnishee/employer to identify the judgement debtor. An ID card or number is an example of evidence of identification.

### Garnishee order

A Garnishee order deals with the attachment of debts, which includes any income from whatever source other than emoluments.

- A judgement creditor may make an *ex parte* application to court in order to attach any debt at present or in future owing or accruing to the judgement debtor by or from any other person to an amount sufficient to satisfy the judgement and the costs of the proceedings for attachment.
- This process involves a third party or a garnishee paying the judgement creditor directly instead of paying the judgement debtor monies owed to him. For example, in the event that the judgement debtor has recently sold property and to a third party or garnishee, the garnishee order will order the third party or garnishee to make payment directly to the judgement creditor and not to the judgement debtor whom he bought the property from.

**For more information and help on this QuickLaw topic** you can talk to a Legal Counsellor at your nearest LegalWise Branch or email [windhoek@legalwise.na](mailto:windhoek@legalwise.na) / [oshakati@legalwise.na](mailto:oshakati@legalwise.na) / [walvisbay@legalwise.na](mailto:walvisbay@legalwise.na)

### Can an Emoluments Attachment Order be cancelled, amended or suspended?

- A court may on good cause shown, cancel or rescind, amend or suspend an Emoluments Attachment Order.
- If a debtor cannot maintain him or herself or his or her dependents after an Emoluments Attachment Order has been issued, the court may cancel or amend it in such a manner that the debtor, and his or her dependents, will have sufficient means to survive.

### What happens when the debtor leaves the service of his/her employer?

- The debtor must immediately advise the creditor, in writing, of the name and address of his or her new employer.
- The creditor must serve a certified copy of the Emoluments Attachment Order on the debtor's new employer, with an affidavit specifying the payments received since the Emoluments Attachment Order was issued, the costs incurred and the outstanding balance.
- The old employer will be relieved of its payment obligations and the new employer is now bound to the Emoluments Attachment Order.
- If the debtor becomes self-employed, he or she must still comply with the Emoluments Attachment Order.

### Glossary of Terms

**CONTEMPT OF COURT:** is the offense of being disobedient to or disrespectful toward a court of law and its officers in the form of behavior that opposes or defies the authority, justice and dignity of the court. It is committed when, for example, a person disobeys or defies the order of a court. Contempt charges may be brought against parties to proceedings; lawyers or other court officers or personnel or witnesses who defy or disobey the orders of a court.

**EX PARTE APPLICATION:** an *ex parte* application in the context of a Garnishee order means that no notice is given by the judgement creditor to the judgement debtor or the third party or the garnishee at this stage, as this may lead to the third party or garnishee and judgement debtor entering into an arrangement in order to avoid making payment to the judgement creditor.

**GARNISHEE:** a third party who is served notice by a court to surrender money in settlement of a debt or claim.

**JUDGEMENT CREDITOR:** a judgement creditor is a party to which a debt is owed that has proved the debt in a legal proceeding and that is entitled to use judicial process to collect the debt. A creditor becomes a "judgement creditor" when a judgement is rendered stating that he or she is entitled to recover a particular debt from a judgement debtor.

**JUDGEMENT DEBTOR:** a judgement debtor is a person against whom a judgement ordering him or her to pay a sum of money has been obtained and remains unsatisfied.

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