

What is maintenance?

Maintenance refers to the obligation of one person to contribute, in part or in whole, to the cost of living of another person.

- The legal duty or obligation to support a person is based on the relationship between the persons, the need to be supported and the ability to support.
- Maintenance is usually expressed in an amount of money per month.

Who is entitled to receive maintenance?

- All children are entitled to receive maintenance from their parents, irrespective of whether the child is born inside or outside the marriage of the parents;
- Spouses are primarily responsible for each other's maintenance.
- Parents are allowed to receive maintenance from their children if the parents have little or no income, and only if the children having regard to their own needs, are able to support the parents;
- The right of a parent to be maintained arises only where that parent's spouse or other person who is legally liable to maintain that parent is unable to do so.

Where can an application for maintenance be made?

An application for maintenance can be made against a defendant (person who must pay maintenance) at any Maintenance Court (Magistrates Court) in the district where the complainant (person who applies for maintenance) or the child, on whose behalf maintenance is claimed, resides or works.

Who can apply for maintenance on behalf of a child?

A parent, care giver, the person who looks after the child (such as the grandmother) or any other person who is worried about the child (such as a teacher) can apply for maintenance.

A child can also claim maintenance from a parent without assistance from an adult.

What expenses can be claimed for in respect of a child?

Total maintenance costs for a child must cover all the child's reasonable needs for a proper living and upbringing. Maintenance will include:

- Housing, water and electricity;
- Food, clothing and toiletries;
- Transport;
- Childcare services
- Medical expenses (such as prescription medicine and treatment by a doctor, dentist, psychologist or psychiatrist);
- Education, including pre-school education and sometimes university or other higher education. The costs for education will be based on the reasonable expectations of the parents.

Maintenance is for the reasonable costs of living, not for luxuries. But the court will look at the parents' resources and lifestyle to determine the needs of the child. For example, a parent with a small income might be expected to pay for school uniforms but not for fancy designer clothes. But it will not be reasonable for a parent with a large income to expect his or her child to eat nothing but mealie pap.

What should a person take to court when applying for maintenance?

- Identity document of the complainant.
- Complainant's contact details, such as telephone numbers and home and work addresses.
- If maintenance for a child is claimed, the birth certificate of that child.
- If maintenance for the spouse is claimed, the marriage certificate or divorce order where maintenance order was granted.
- A full list of expenses and any proof of same, such as receipts.

- The complainant's pay slip and proof of any other income.
- As much detail as possible regarding the defendant, such as telephone numbers, home and work addresses, list of known income and expenses, and so on.

What happens after the application has been made?

- The maintenance officer will inform the defendant of the application and will hold an informal enquiry with the complainant and defendant being present.
- The defendant must take any proof of his/her income and expenses to the informal enquiry.
- The purpose of the informal enquiry is to assist the complainant and the defendant in reaching a settlement.
- If a settlement is reached, an agreement will be entered into between the complainant and the defendant, which will be made an order of court.
- If a settlement cannot be reached, the maintenance officer will place the matter before court for a formal enquiry to be held.
- The court will consider the facts and evidence of the claim and decide, by way of a maintenance order, whether maintenance should be payable and the amount of such maintenance.
- The complainant and the defendant must both be present at the informal and formal enquiry, and will be allowed to have legal representation.
- If the defendant fails to appear at the formal enquiry in court, an order may be given in his/her absence.
- It will not be necessary for the complainant and/or defendant to appear in court if they consent in writing to the maintenance order being granted.

How can a maintenance order be enforced?

If the defendant fails to make a payment of maintenance in accordance with a maintenance order, the following remedies will be available to the complainant:

- warrant of execution – the attachment and selling of the defendant's property, such as furniture, vehicle and other valuables;
- emolument attachment order – the garnishing of the defendant's salary for payment of the monthly maintenance;
- attachment of debt – the attachment of money owed to the defendant by a third party, other than a salary, for example rent owed by a tenant of the defendant;
- criminal prosecution – the laying of a criminal complaint against a defendant based on the failure to comply with the maintenance order.

When using one of the above remedies, the complainant must have a copy of the maintenance order available and proof that the defendant failed to pay maintenance.

Until when must a child be maintained?

A maintenance order made in favour of a child ceases if and when:

- The child dies or is adopted by another person,
- The child marries,
- The child attains the age of 18 years, but if the child is attending an educational institution for the purpose of acquiring a course which would enable him or her to maintain himself or herself, the maintenance order does not terminate until the child attains the age of 21 years.

Is any maintenance payable before a child is born?

- There is nothing in the law which provides for this. However, an order for child maintenance can also include contributions towards the expenses of the mother in connection with pregnancy and childbirth. This can include the costs of medical and hospital expenses, as well as other expenses.
- Such expenses could be for medical care or nutrition such as - fresh fruit, vegetables and milk - which are essential for the healthy development of the child before it is born. This provision emphasizes the fact that both parents share responsibility for a child from the moment of conception.
- A claim for a contribution towards pregnancy and birth-related expenses should normally be made before the child's first birthday. But the mother can claim these expenses later if she can show a good reason for the delay.

Glossary of terms:

BENEFICIARY: any person for whose benefit a maintenance order may, by law, be made or has been made.

CAREGIVER: a person other than a parent or guardian who has the right to care for a child. Care is the right of that person to have a child reside primarily with him/her and to control or supervise the daily life of that child.

COMPLAINANT: a beneficiary; a parent or other legal custodian or primary caretaker of a beneficiary; or any other person who has an interest in the well-being of the beneficiary, including but not limited to a relative, social worker, health care provider, teacher, traditional leader, religious leader or an employer.

DEFENDANT: any person against whom a maintenance order may, by law, be made or has been made.

EMOLUMENTS: the term emolument includes any salary, wages, allowances, or any other form of remuneration or any other income which is paid periodically to any person, whether expressed in money or not.

GARNISHING: is derived from the word garnishment. It is a legal process for collecting a monetary judgment on behalf of a plaintiff from a defendant. Garnishment allows the plaintiff (the "garnishor") to take the money or property of the debtor from the person or institution that holds that property (the "garnishee"). A similar legal mechanism called execution allows the seizure of money or property held directly by the debtor.

GUARDIAN: both husband and wife are guardians of a child born from the marriage; the mother of a child born out of wedlock is the guardian. Guardianship includes safeguarding the child's property or property interests; representing the child in legal matters; and consenting to marriage, etc.

MAINTENANCE COURT: a special court dealing with matters relating to maintenance. Every Magistrate's Court shall be a Maintenance Court.

MAINTENANCE OFFICER: a person appointed to assist with maintenance matters at court.

PARENT: the biological father or mother of a child who has full or limited parental rights and responsibilities over his/her child.

SPOUSE: persons married in terms of a civil marriage, customary marriage or religious marriage.

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