



**CASE NO.: CR 6/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**JOGBETH V. HENGARI**

**COMPLAINANT**

**and**

**RIKONJA F. HENGARI**

**DEFENDANT**

**[HIGH COURT REVIEW CASE NO.: 1982/2010]**

**CORAM: SIBOLEKA, J et UNENGU**

**Delivered on: 2011 FEBRUARY 04**

**SPECIAL REVIEW JUDGMENT**

**SIBOLEKA, J.:**

[1] This matter was referred to this Court on special review.

[2] On the 17<sup>th</sup> of August 2005 the defendant signed a consent order of N\$300.00 per month in terms of section 18, of the Act payable at Gobabis Magistrates Court.

[3] For reasons non other than failure to make prompt payments emolument attachment order was later issued and it reads:

"SALARY NO. = H3009195900249  
PAYMENT NO. = 125  
File Number: 14/3/2-66/05  
Case Number: F264  
EMOLUMENTS ATTACHMENTS ORDER: SECTION 12 OF  
MAINTENANCE ACT, NO. 9 OF 2003

In the matter between JOGBETH V. HENGARI COMPLAINANT

And

RIKONDJA F. HENGARI

DEFENDANT

Particulars for the  
Identification of  
the defendant

Min. of Justice

Private Bag 13302, WINDHOEK

Address

WHEREAS the defendant being a convicted person under sub-section (1) of section 11 of the Maintenance Act No. 9 of 2003 and whereas it has been made to appear to the above mentioned court that emoluments are at present or in future owing to the defendant by or from the garnishee, it is ordered:

1. That the said emoluments are attached as from the month of NOVEMBER 2007 to the effect specified in paragraphs 1(a) and 1(b) hereunder-

(a) That the garnishee pay to the Magistrate, Private Bag 2266, Gobabis on or before the 7<sup>th</sup> day of such and every month this order has been granted the sum of N\$300.00 of the emoluments of the said defendant until such date that this cancelled by an order of court.

(b).....,

(c) Total amount of deduction N\$300.00 with effect from 30 NOVEMBER 2007.

In event of termination of service the full amount still outstanding as arrears must be attached from the monies due and or refundable to the defendant and such monies must be paid to the Magistrate Gobabis within seven days of such attachment.

Dated at Gobabis this 01 Day of November 2007."

[4] In the covering letter the special review has been requested as follows:

"In all probabilities, his mental illness might have been the reason for none appearance, if that possibility can be the only inference to be drawn, then the order cannot stand. That is why the case is referred for on review..."

[5] In my view the procedure that need to be followed when desiring to have a default judgment set aside is provided in section 19(4); (5); (6); (7); (8) and (9) of the Maintenance Act, Act no. 9 of 2003.

[6] Since there has not been an appeal lodged against the maintenance order by the defendant or by somebody else on his behalf, in terms of sec. 47, the Maintenance Court at Gobabis may deal with this matter in terms of section 28 of the Maintenance Act.

[7] The GIPF raised concerns in the letter filed: Ref. M0036355M, enquiries L. S. Naunyango dated 20 August 2010 which states that:

**"REQUEST FOR DIRECTIVE TO DEDUCT MAINTENANCE: RIKONDJA  
FESTUS HENGARI M0036355M/21026247**

The above subject matter bears reference.

Please be informed that the above member was a member of your Ministry of Justice and is boarded off from government service on condition of ill-health. However, it is alleged that he had maintenance order issued against him to pay on a monthly basis effective 31<sup>st</sup> August 2005 towards the maintenance of the complainant and his two children. Regrettably, he now retired early and is receiving a monthly annuity from Government Institution Pension Fund (GIPF), payable for life.

If the member is still subjected to such maintenance regardless of his change in employment status, the Fund is thus requesting for your directive to enable it to arrange for the deductions of such maintenance from his monthly pension and have it paid into the claimant's account monthly.

Any assistance that you may render to the applicant will be highly appreciated.

Should you require further information, please do not hesitate to contact us at telephone number: 062 564 098."

[8] In my view the answer to the concern raised in the third paragraph of that letter is found in section 28 of the Maintenance Act no. 9 of 2003 which states in sub section (5) that:

"28(5) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity, or compassionate allowance or other similar benefit is liable to be attached or subjected to execution under a warrant of execution or an order issued or made under this Part in order to satisfy or maintenance order."

[9] In this matter medical documents if available of the alleged mental illness of the defendant should have been placed before the Gobabis Magistrate's Court for consideration. The learned Magistrate would then have had an opportunity to see whether the non appearance of the defendant at the time when the default judgment was issued against him, was as a result of fault on his part or not.

[10] All that appears on this file (14/3/2 - 66/05: Case No: F 264) is a speculation about the defendant's alleged mental illness.

[11] It is my considered view that there is nothing untoward regarding the proceedings that were conducted, leading to the issuance of the default maintenance order, and it is confirmed accordingly.

[12] (i) In the result the default maintenance order is confirmed.

(ii) The matter is returned to the Maintenance Office, Gobabis Magistrate's Court to act as provided for by the Act so that the minor children can get their dues appropriately.

**SIBOLEKA, J**

I agree.

**UNENGU, AJ**