



MAINTENANCE – A JUDGEMENT DEBT

1. Introduction

Child maintenance – the duty exists, but what if there is non-compliance? When one divorces from one's spouse, there is most likely a maintenance clause in the settlement agreement that has been made an order of court. However, the question that arises is what are the consequences should the party that is responsible for the maintenance payment not adhere there to.

The options among others at hand are 1) to firstly send a letter of demand, 2) thereafter to cause a writ of execution and 3) to approach the maintenance court.¹ At least, these were the steps followed by Mrs Arcus in a recent Constitutional Court matter considering the rights of persons who are owed arrears child maintenance payments.

In *Simon Roy Arcus v Jill Henree Arcus*, what was in dispute is the interpretation of s11(a)(ii) of the Prescription Act 68 of 1969, which reads as follows:

¹ *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 5-7.

The periods of prescription of debts shall be the following:

(a) thirty years in respect of-

(ii) any judgment debt;²

The determining question in this regard was whether a maintenance claim is considered to be a judgement debt, which would then in effect allow the divorced-spouse to which the arrears child maintenance is owed have a claim within 30 years before it prescribes.³

2. Judgement Debt

A judgment debt for the purposes of the abovementioned Act, and according to *Zweni v Minister of Law and Order*⁴, is one which is final in the sense of it being appealable and unalterable by the court which granted it, it must be definitive of the rights of the parties, and it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.⁵ Judgement debt, furthermore refers to the amount which can be levied by the judgment creditor and it is an amount which is appealable.⁶

3. Prescription and maintenance

It was found that maintenance orders are dispositive of the relief claimed and definitive of the rights of the parties, final and enforceable until varied or cancelled, capable of execution and appealable, should a person have a

² Section 11(a)(ii) of the *Prescription Act* 68 of 1969.

³ *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 1.

⁴ *Zweni v Minister of Law and Order* [1993] 1 All SA 365 (A);

⁵ *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 12 and 15.

⁶ *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 15.

change in circumstances and be able to justify a change in the maintenance amount, one could approach the court for a variation order.⁷

Furthermore the three (3) year period, according to *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and Others*⁸, is meant for claims and disputes that are yet to be determined and where evidence and witnesses may be lost if it is delayed for too long.⁹ Obligations that arise from maintenance orders are determined at that point in time, arising from the circumstances at that time and therefore they are not claims that are yet to be determined.¹⁰ Maintenance orders may be rescinded or varied, but that is the exception to the general rule of a court order being final and immutable.¹¹

3. Conclusion

The court found that maintenance orders are judgment debts due to it fixing the obligations of the judgment debtor until such time as it is discharged or varied upon the establishment of new facts.¹² All maintenance claims are thus subject to the 30-year prescription rule enabling a judgment creditor/spouse who is owed arrear maintenance to claim such maintenance/debt should it fall within the 30-year rule.

⁷ *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 17.

⁸ *Myathaza v Johannesburg Metropolitan Bus Services (SOC) Limited t/a Metrobus and Others* 2018 (1) SA 38 (CC) para 44.

⁹ *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 16.

¹⁰ *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 19.

¹¹ Section 8 of *Divorce Act 70 of 1979*; *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 20.

¹² *Simon Roy Arcus v Jill Henree Arcus* (4/2021)[2022]ZASCA 9 (21 January 2022) para 26.

Contact Malan Lourens Viljoen Inc. should you require assistance in any maintenance claim.

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