Family Law & Domestic Relations
20th December 2023



Abiodun Victoria Ogunnubi[1]

MAINTENANCE ORDERS IN NIGERIA: STATUTORY AND JUDICIAL CONSIDERATIONS

1. INTRODUCTION

The Matrimonial Causes Act (MCA)[2] provides for both spousal and child(ren) support,[3] also known as a maintenance order. Spousal support under the MCA extends to both marriages conducted under the Act and void marriages, however, marriages conducted according to Muslim rites or other customary law are exempt. Notwithstanding the above, a maintenance order includes children given birth to by both or either spouse before or during the marriage as well as children adopted by both spouse or either spouse with the consent of the other during the marriage.[4] However, a maintenance order will not be made in respect of a child born before the marriage, who has been adopted by another person(s)[5] or for the benefit of a child who has attained the age of twenty-one years except there are special circumstances that justify the making of such an order.[6]

This article will consider the meaning of a maintenance order, the legal considerations surrounding the grant of a maintenance order in Nigeria, the factors to be considered in the grant of a maintenance order, its effects and enforceability.

---

1 **Associate in the Dispute Resolution Department at S.P.A. Ajibade & Co., Lagos, Nigeria.**
2 Cap M7, Laws of the Federation of Nigeria, 1990.
3 Part IV, Section 69 of the Matrimonial Causes Act.
4 Section 69(a) and (b) of the Matrimonial Causes Act.
5 Section 69(c) of the Matrimonial Causes Act.
6 Section 70(4) of the Matrimonial Causes Act.

2. WHAT IS A MAINTENANCE ORDER?

Maintenance order is defined in Section 2 of the Maintenance Orders Act[7] to mean "*an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, …"*

Maintenance is also defined in the Black's Law Dictionary,[8] as *'Financial support given by one person to another, usu. paid as a result of legal separation or divorce; esp. Alimony. Maintenance may end after a specified time or upon the death, cohabitation, or remarriage of the receiving party.'*

A maintenance order can only be sought as an ancillary relief[9] either pending proceedings for matrimonial reliefs (*maintenance pendente lite*) or after the completion of proceedings (*maintenance per se*)[10] in Nigeria, unlike some other jurisdictions where a maintenance order can be sought in an independent suit.[11] An application for a maintenance order is not limited to dissolution proceedings but also extends to proceedings for judicial separation[12] but excludes proceedings for restoration of conjugal right.[13] A maintenance order ensures the financial security of either the spouse and/ or the children of the marriage during and/ or after the proceedings. Maintenance payment is usually paid to the spouse in custody of the child(ren) of the marriage or to such persons or public officer or other authority as the court specifies. Contrary to societal beliefs, it is not intended to enrich the spouse but to ensure he/ she does not live below the position to which he/ she is accustomed to[14] and would usually inure till the remarriage of the spouse[15] in the case of spousal maintenance. Likewise, till the attainment of adulthood of the child(ren) of the marriage in the case of child(ren) support.

---

7 Cap M1, Laws of the Federation of Nigeria, 1990.

8 9th Edition at p. 1039.

9 See, Ugbah v. Ugbah (2009) 3 NWLR (Pt. 1127) pp. 124-125, paras. G-A, where the Court of Appeal held that an action for maintenance can only be commenced under the Matrimonial Causes Act and should be ancillary or incidental to a pending or concluded main relief. This is because of the need to preserve the sanctity of the marriage institution.

10 Section 70 of the Matrimonial Causes Act.

11 In the United Kingdom (except for Scotland and Northern Ireland), Section 27 of the Matrimonial Causes Act 1973 permits a spouse to apply for an order for financial provision if his or her spouse has neglected to maintain either the party or the child(ren) of the marriage. The application is not required to be an ancillary relief to divorce or legal separation proceedings. In India, a husband is liable to maintain his wife pursuant to Section 125 of the Indian Code of Criminal Procedure, 1973 and a wife will be entitled to maintenance if her husband has stopped living with her without any reasonable cause and she is not able to meet her basic needs at the time or has no source of money.

12 Section 42(3) of the Matrimonial Causes Act.

13 See, Jabre v. Jabre (1999) 3 NWLR (Pt. 596) 606 p. 621, paras. A, D-E.

14 See, Olu-Ibukun v. Olu-Ibukun (1974) 2 SC 41.

15 Section 73(1)(j)(i) of the Matrimonial Causes Act.

3. IS A MAINTENANCE ORDER GENDER BASED?

The traditional belief of women being the responsibility of their men during and after the breakdown of their union is popular in Africa. This is similar to the common law principle that a husband is duty-bound to maintain his wife and his children. The courts in some cases have adopted the approach that a man has a common law duty to maintain his wife and his children and can be compelled by law to provide necessaries for them.[16] Notwithstanding the foregoing, Section 70 of the MCA distinctly provides that a maintenance order can be made in favour of either the wife or husband in matrimonial proceedings, provided the conditions for the grant of such an order are taken into consideration.[17]

The Court of Appeal in *Mueller v. Mueller*[18] observed as follows:

> *Husband and wife, given the changes sweeping across our society today, in so far as the rights and duties to make financial provisions are concerned, albeit in theory, are gradually moving towards equal footing base. Many wives are today more financially empowered than their husbands. And so the courts are fast moving away from the old rule whereby they virtually ordered financial provisions in favour of the wife.*
> *...*

Consequently, it can be concluded that husbands and wives have equal standing under the MCA and are both entitled to maintenance from the other if the order is equitable and in accord with the conditions stated in Section 70.

4. THE GRANT OF AN ORDER OF MAINTENANCE

A maintenance order for either a spouse or child(ren) of a marriage is not automatic. The grant or refusal of a maintenance order is discretionary and like all discretionary powers of the court, the power is expected to be exercised judicially and judiciously.[19] Section 70(1) and (2) of the MCA clearly outlines the factors to be considered by the courts in determining whether to grant or refuse a maintenance order and in assessing the sum to be awarded for maintenance, as follows: -

4.1 <u>The Means and Earning Capacity of the Parties</u>

This refers to the incomes and assets of parties[20] and encompasses the various sources of income, i.e., employment, investments, or other sources and is not limited to tangible and intangible assets, actual, contingent, and prospective assets, such as cash, shares in the company, properties, investments, etc. The Court of Appeal in

---

16 See, Nanna v. Nanna (2006) 3 NWLR (Pt. 966) p 41, paras. B-C.
17 See, Olu-Ibukun v. Olu-Ibukun (supra).
18 (2006) 6 NWLR (Pt. 977) pp. 645-646, paras. E- E.
19 See, Akinboni v. Akinboni (2002) 5 NWLR (Pt. 761) 564.
20 See, Akinboni v. Akinboni (supra).

Damulak v Damulak[21] held that in determining the earning capacity of parties, the court would consider the age of the spouse, if there are children of the marriage, the age(s) of the child(ren), if there are severe fluctuations in the husband's earning capacity, etc. Order XIV Rule 4(4) of the Matrimonial Causes Rules requires an Applicant for an ancillary relief for maintenance to state the particulars of the property, income, and financial commitments of both the applicant and the spouse, so far as they are known to the applicant, the capability of each spouse to earn an income, any financial arrangement in operation between the parties, etc.[22] Therefore, it is imperative that an applicant for a maintenance order places sufficient evidence before the court to enable it to determine the means of the parties.

4.2 **Conduct of the parties to the marriage**

The court in assessing an application for maintenance of a party is required by the MCA to consider the conduct of parties. While the MCA did not expound on this, however, the courts in determining the conduct of parties, have taken the following into consideration in some cases; immoral or depraved or perfidious conduct of a spouse that has adversely affected the financial status or the living standard of the parties,[23] inflicting grievous body injuries on one spouse, etc. While the award of maintenance is not intended to be a penalty or a mark of disapproval of a spouse's misconduct,[24] the courts would always regard the interest of children as paramount and would grant an award of maintenance where the interest of the child(ren) compels the award of same.[25]

4.3 **All other relevant circumstances**

This is an omnibus provision that enables the courts to consider the peculiar circumstances of each case in assessing an application for maintenance. The court is required to gather information relevant to the circumstances of the case from the evidence of parties at trial and does not require an applicant for a maintenance order to strictly prove his/ her entitlement to such award.[26] Some of such factors are:

---

21 (2004) 8 NWLR (Pt 874) pp. 171 – 172, paras H – F.
22 See, Tabansi v. Tabansi (2018) 18 NWLR (Pt. 1651) 279.
23 See, Damulak v Damulak (supra) pp. 172 – 173, paras G – B.
24 See, Hayes v Hayes (2000) 3 NWLR (Pt. 648) p. 294 paras B – E.
25 See, Hayes v Hayes (Supra) p. 291 paras. C – D.
26 See, Nanna v Nanna (2006) 3 NWLR (Pt 966) p. 40 paras E – H, p. 41 paras C – D.

4.3.1 **The standard of living of parties during the marriage**[27]

The court will consider the standard of living previously enjoyed by parties during the marriage, this extends to the parties' station in life and their lifestyles, economic trends, etc. The court in *Hayes v Hayes*[28] held that the husband who had urged his wife to stop the practice of her profession and resign herself to the status of a full-time housewife, had led the wife to believe that she would remain in great affluence without practicing her profession as a legal practitioner.

4.3.2 **Duration of marriage**

The number of years parties are married could be considered in the award of a maintenance order, and maintenance could be awarded in favour of parties that lived together for longer years.[29]

4.3.3 **The age and health of each spouse**

The court would consider the age of each spouse and if any of the parties have health issues that prevent them from working.

4.3.4 **The existence or non-existence of child(ren) of the marriage**

The interest of children in a marriage is considered paramount by the courts in matrimonial proceedings.[30] While a maintenance order of a child can only be sought as an ancillary relief under the MCA, however, same can be sought by a child as an independent suit under Section 14(2) of the Child Rights Act.[31] Section 70(4) of the MCA states that maintenance orders can only be awarded in favour of children below 21 years, except in special circumstances, which must be proven. However, a maintenance order for child support awarded under the Child Rights Act terminates when the child attains 18 years.[32] In determining the amount to be awarded as maintenance of children of a marriage, the following are to be considered:[33]

a. the effect that the income, earning capacity, property and other financial resources of the parents of the child(ren) has or is likely to have in the foreseeable future;

---

27 See, Nanna v Nanna (supra) p. 41 paras E – H.
28 Supra.
29 See, Oluibukun v Oluibukun (supra).
30 Section 71(1) of the Matrimonial Causes Act.
31 Cap C50, Laws of the Federation of Nigeria, 1990.
32 Section 55(12) of the Child Rights Act.
33 Section 55(14) of the Child Rights Act and Order 4(1) of the First Schedule to the Child Rights Act.

b. the financial needs, obligations and responsibilities each of the parent of the child(ren) has or is likely to have in the foreseeable future;

c. the financial needs of the child(ren);

d. the income, earning capacity (if any), property and other financial resources of the child(ren);

e. physical and mental disability of the child(ren);

f. the manner in which the child(ren) are expected to be educated or trained.

5. MODE OF PAYMENT OF A MAINTENANCE ORDER

Section 73 of the MCA is instructive on the mode of payment of a maintenance order. Upon the grant of a maintenance order, the court may order maintenance to be paid or secured in a lump sum, or in installments, i.e., weekly, monthly or as the court may deem fit to order. Furthermore, the court is empowered to discharge, suspend, or revive the operation of, and review a maintenance order, either upwards or downwards.[34] Notwithstanding the provisions of the MCA, parties can agree on maintenance, but this is subject to the review and or discretion of the court to adopt same.

6. EFFECT OF A MAINTENANCE ORDER

A party against whom a maintenance order is awarded is obliged to comply with the terms of the order. The order can be enforced against the party who is in breach of that obligation. By Section 7(2) of the Maintenance Orders Act, maintenance orders are enforceable summarily in a similar manner as an order for the payment of a civil debt recoverable.[35]

The Maintenance Orders Act was enacted to facilitate the enforcement of maintenance orders made in England or Ireland in Nigeria and vice versa. The reciprocal provisions of the Act have been extended to the Gambia, Ghana, Sierra Leone, Grenada, the Commonwealth of Australia, etc.

By Section 3 of the Maintenance Orders Act, maintenance orders made in England and Ireland are enforceable in Nigeria upon the registration of the order by either the Magistrate or High Court in Nigeria. Such an order would have the same force and effect in Nigeria from the date of registration and the court shall have the power to enforce the order. Also, where a provisional maintenance order is made by a court in

[34] Section 73(1)(j) of the Matrimonial Causes Act.

[35] This could be by seeking a garnishee order under Part V of the Sheriffs and Civil Process Act or initiating a contempt proceeding against the obligor for failure to comply with the maintenance order.

England and Ireland, such an order would only become enforceable upon confirmation by a court in Nigeria.[36] This would require the transmission of a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed to the President, the President then forwards the documents to the court, further to which a summons will be issued on the person against whom the order is sought, the matter will be set down for hearing, and the court could confirm the order either with or without modification or remit the case to the court that made the provisional order. Sections 4 and 5 of the Maintenance Orders Act provide similar provisions on transmission of certified copies of the maintenance orders made in Nigeria to England and Ireland as well as the making of provisional orders of maintenance against persons resident in England or Ireland.

7. CONCLUSION

There is a need to harmonize the various legislations on maintenance in Nigeria, to reflect the current realities which have been adopted by the courts in their pronouncements. While the Maintenance Orders Act enacted in 1921 restricts the award of a maintenance order to a wife and dependents, the MCA extends the same to both spouses. Also, under the MCA a maintenance order can only be sought as an ancillary relief while same could be filed as an independent suit under the Child Rights Act. Lastly, under the Child Rights Act, a child above the age of 18 cannot apply for a maintenance order while the MCA exempts children who have attained 21 years from benefitting from a maintenance order.

For further information on this article and area of law,
please contact **Abiodun Victoria Ogunnubi** at:
S. P. A. Ajibade & Co., Lagos by
Telephone (+234 1 472 9890), Fax (+234 1 4605092)
Mobile (+234.809.790.4777, +234.818.449.2339)
Email: aogunnubi@spaajibade.com
www.spaajibade.com

[36] Section 6 of the Maintenance Orders Act.