

An Investigation into the Practical Challenges Faced by Maintenance Applicants in Zimbabwe (Chegututu)

Chanhuwa Mildred*

Gender Institute, Midlands State University, Senga Gweru, Zimbabwe

* chanhuwam@staff.msu.ac.zw

*mildkchanhuwa@gmail.com

Abstract

The Maintenance Act (Chapter 5:09) is one of the most progressive pieces of legislation in Zimbabwe towards advancement of women and children's rights. It is a vehicle that is used to enforce responsibility and safeguard the financial welfare of spouses and children where the parties fail to bring their heads together to financially support each other or their offspring. Both spouses regardless of gender can claim for maintenance if they fall within the prescripts of the law. Regardless of the existence of this legislation some caregivers or parents are not using this facility. The aim of this paper is to investigate the challenges in applying and enforcing a maintenance order. The method used was qualitative in nature. Questionnaires were administered to 30 women who have applied for maintenance and 10 interviews were used to gather information. The findings were that the self-actors received negligible amounts that did not suffice for the upkeep of the children, the expenses incurred in travelling to and from to apply for maintenance render the process prohibitive, and there is also suspected corruption and bribery in the maintenance enforcement process. Moreover, the service provision at court is said to be poor and many applicants find the process tedious even though it may grant them the desired results. It is recommended that the legal process should be reviewed and there should be monitoring strategies that should be introduced to curb bribery and corruption and improve service delivery.

Keywords: maintenance, challenges, women, court processes, maintenance applications

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1. Introduction

The Maintenance Act (Chapter 5:09) came in to effect in 1971. The objective of this piece of legislation is to cater for children and spouses' financial needs to meet their day to day expenditures particularly food, schooling, transport, clothing and any other related ancillary expenses. This legislation is important in that it is a vehicle that serves to meet most of the Constitutional rights enshrined in the Zimbabwean Constitution (2013). These include the right to education, shelter, health services, social welfare and dignity itself (Sections 27, 28, 29, 30 and 51 of the Constitution). It is only the spouses registered under the Marriages Act (Chapter 5:11) who can validly claim for maintenance at a point of divorce. The legislation is couched in terms that allow a person of either gender male or female to apply for maintenance (Preamble of Maintenance Act). A child's maintenance can be claimed for regardless of the marital status of the parents.

Statistically speaking it is mostly women, who apply for maintenance. This is perhaps a result of the patriarchal nature of our society that men are typically expected to be the breadwinners and the providers of the family. Another reason could be that women are expected to be the custodians of children (Mgugu, 1996). At a point of divorce or where the father is deemed to be absent for whatever reason; the mother is largely primary responsible for the child's upkeep. According to research done by Armstrong (1992) through the Women in Southern African Research Trust women apply for maintenance because they have very low income, do not hold high paying jobs and are not employed due to low education.

In Chegututu District there have been complaints over the issues of access to maintenance. These complaints result in negative perceptions which are likely to lead to a decrease in the maintenance applications or a decrease in the follow up process when the respondent defaults to pay the maintenance. The aim of this paper is to establish the challenges being experienced by maintenance applicants so that the realisation of women and more especially children's rights are not affected adversely. The investigation was done with the intention to make recommendations and suggestions of legislative amendments, policy formulation and practical strategies that aim at extinguishing any barriers to access to justice and promote full realisation of the applicant's constitutional rights.

In Zimbabwe there is no similar research that has been published which investigates the practical challenges of the maintenance application process. Ladley (1998) explores the maintenance concept in light of urbanisation. He explains that the socialisation process from the Shona culture and how it has given rise to challenges in the implementation of Maintenance Act (Ladley 1998). In his research he identifies that there is a conflict between customary law and law of general application. He finds that customarily Shona unmarried women were purely responsible for their offspring (Ladley 1998). The Shona custom only allowed from compensation for loss of

virginity and acknowledgement of rearing of the child when the child is fully grown (Ladley 1998). Maintenance therefore was considered a purely western notion. This status quo socialised man into believing that unmarried women who seek maintenance are undeserving and perhaps prostitutes (Ladley 1998). Such attitudes led to sub-standard disbursement of maintenance funds at court (Ladley 1998). This has led many women to drop off their claims, with some ending up in prostitution (Ladley 1998). Ladley's (1998) work focusses on the maintenance from the intersection of the customary law and general law in light of urbanisation. The current research brings a new dimension by actually searching for the actual challenges being faced by maintenance applicants in a Constitutional era where most structures has been put in place to empower women and children. Mapuranga (2016) on the other hand, provides literature on the issue of gender equality and how women are playing lottery by marrying elite man and divorcing them overnight to claim for maintenance. On the contrary this paper is premised on the assumption that the maintenance applicant's intention in applying for maintenance is genuine. This is similar to the position stated by Mgugu (1996) who argues that the maintenance orders granted are so small to take care of the problems that maintenance is applied for. Furthermore, the meagre amount given are insufficient to cover the child's basic needs and other custodial roles played by mothers are not accounted for (Mgugu 1996). In other words, applicants seek maintenance primarily to ensure upkeep of the children. This paper does not focus on experiences of men as done by Armstrong (1992) rather it assess the court process objectively albeit from the perception of women out of absence of men who apply for spousal and child maintenance.

2. Research Method

A qualitative research method was used. A combination of open-ended questionnaires and interviews were used to gather information. Open-ended questionnaires were chosen for their convenience and that they lead to greater level of discovery on issues under investigation and are convenient for participants to complete at their own time (Gilham 2005). Their downside is that some participants may misinterpret or miss the question (Creswell, 2013). It is for this reason that interviews were used for their interpretative validity and because they allow the interviewer to probe further to get a vivid picture of what actually transpired (Gilham 2005). Interviews give a moderately high response rate and allows the interviewee to read the facial and body cues of the interview (Creswell, 2013). Data was gathered from a total number of 40 women. Only 10 women were interviewed through giving their narrative experience through interviews. The other 30 women completed questionnaires. The stratified purposive sampling method was used to identify women who are self-actors and have applied for maintenance. The women were identified at the Chegutu magistrate court and would have come on maintenance related business. This includes making a first time applicants or those making variation applications to a maintenance order or to report on default by the respondent. The sample size is a fair representation of women who apply for maintenance in the Chegutu District as it reflects the total number of women served on three successive Tuesdays and represent more than three quarters of the total number of women assisted in a month.

3. Area of Study

Chegutu district is located in Mashonaland West province in Zimbabwe. It is an agricultural area whose town is surrounded by farms such as Creema, Bhorobhoro, Eresi, Umvovo, Pickstone, Wicklow, Ameva, Cigaro and Selous to name a few. The Chegutu Court district stretches as far as Mhondoro, to include a considerable part of the Mhondoro district where the Chegutu circuit court occasionally sits. On the other side Chegutu district stretches as far as Chakari in the south making its boundary with the Kadoma District court. A large number of the people who fall within this jurisdiction are indigent people who work in the farms, peasant farmers and small scale miners commonly known as "makorokoza".

4. The Court Process

The Maintenance Act provides the following steps as the process to applying for maintenance. The maintenance court application is done by way of submitting a completed form which constitutes an application form coupled with summons to initiate the process (Gombiro 2020). This form was crafted as way to assist indigent clients so that they become "self-actors" a term which refers to clients who are not legally represented by a lawyers. When the form is submitted it is stamped and returned to the applicant to personally take it to the police. The applicant takes the application to the police in his/her area requesting the police to serve the papers to the respondent. The police either summons the alleged spouse or father to the police or the finds the person and give them a copy of the application and make them sign to acknowledge receipt. It is the signed copy that the applicant has to collect and take to court as proof that the delivery of the papers have been effected (Section 29 of Maintenance Act). This is when the court process begins in the presence of the applicant, the summoned person and the Magistrate. In several instances the parties to the maintenance are instructed to find common ground and come to an agreement on the quantum that can be afforded by the respondent, failure to agree will result in the Magistrate hearing the case and making an order on the maintenance. Other processes such as variation of maintenance

follow a similar procedure (Section 12 of the Maintenance Act). The person will have to apply to court and service of papers is done by the police and then they appear in court for the determination of the quantum.

5. Findings

The findings were that they are challenges in accessing the court to make an application on any day of your choice; there is no expense in making an application for maintenance; transport expenditure of travelling to and from court is a problem and the duration of the process can be wearisome; most women are not happy on the nature of service provision given to them; corruption and bribery is affecting the efficacy of the maintenance system; the quantum received by most self-actors is trifling especially if the respondent is legally represented and that the legal administrative procedures for maintenance are making the maintenance application difficult.

6. Discussion

The findings of this paper are discussed in a thematic fashion based on the responses drawn from the questionnaires. These are administrative, financial, social challenges and legal challenges. Each theme facilitates a general discussion and comments on what was extracted upon gathering data.

6.1 Administrative Challenges

These challenges speak to the hiccups encountered in the court application process. It includes nature of service provision, availability of resources and the duration of the case. Most of the participants indicated that they were not happy with the nature of client service they receive. Participants indicated that maintenance applications are accepted on Tuesdays only. On this particular day at around 8:30am a list is written by applicants of their names and this list is used to serve people for day. It is used to issue the court application forms only to people who have made it before the said time and appear on the list. If an applicant/comes after the 08:30 they are not served but are told to come on the following week on Tuesday to make it on the list.

The problem with such an arrangement is that it deters the applicant's access to justice. People have a right to freely attend apply and be heard in our courts of law as set out in the Constitution. One of the participants stated that:

“Pano vanhu vanobatsirwa neChipiri chega chega vanonyorwa mazita. Ukasvikawo vanhu vezuva iroro vakwana unopererwa nekuti mafambiro ekuti tisvike kuno anonetsa. Ende mari yekufambisa unotoishaya zvachose.”

This response summarised states that:

“We are only assisted on Tuesdays only. If we come here after 8:30 we cannot write our names on the paper given by the clerk. We lose heart in continuing with the court application. In fact we will not have money to pay bus fare to come back to court.”

Apart from this challenge, sometimes there is no electricity and no printed application forms on the said Tuesday. The applicants are turned away or have to sift into their pockets to photocopy the required forms.

Nonetheless, the applicants indicated that generally all forms are made available if there is electricity and they have never had to buy forms from any court official.

One of the interviewees indicated that client service at Chegutu court is unsatisfactory. She indicated that when she went to apply for variation, she was publicly singled out and told to go and dress appropriately because trousers are not allowed in courts. She stated that as a result of the demeaning manner which it was done she felt violated and gave up continuing with the court application. She indicated that she was actually wearing formal wear but was not permitted on account that she was wearing a trousers.

Concerning the duration of the case, it was indicated that the court sitting itself does not take time. However, duration is extended especially when the respondent has lawyers and seek postponement or service is not to have been properly effected. When the case takes too long it leads to fatigue. One of the participants stated that:

“Mufunge inini ndasvika pakuneta nekufamba ndichiramba ndichingoappler, ndichiuya kucourt asi munhu wacho asingauye and ahasungwe “

“I am getting tired with coming to court and tired of the application process. The respondent does not show up and he is never castigated.” (English version)

The participant further indicated that continuously taking days off employment effectively prejudiced her at work and she has regrets with taking the maintenance route.

6.2 Financial Challenges

The financial challenges that come with maintenance are not administrative in nature. They occur in the form of travelling expenses to and from court to those who live in the rural areas. The maintenance court application is not associated with any legal expense when a person represents herself. One of the participants responded that:

“the transport costs I use from Mhondoro to here have already exceeded the quantum that I am

currently getting from my court order. My court order comes in RTGS whilst I have to meet most of the rentals and transport costs in USA dollars. I regret starting this process. If I am not successful today I am not coming back again to this court.”

This participant further indicated that there are other ancillary expense such as food expenses that have to be incurred. The participants has to travel to court on Monday and sleep at a relative’s place so that they make it at 8:00 to write the names on the list of maintenance applicants to be served. Apparently, if a person has no relative in the urban area they are deterred to apply because of the distance they travel to court. They will only make it to court after 9:00am and will not be served.

6.3 Social Challenges

The huge social challenge that has affected the effectiveness of the maintenance application process is the issue of corruption and bribery. In maintenance application; there is need for the respondent to be summoned to court through service of court application. This process is done through the police station closest to where the respondent resides. The challenge occurring is that having delivered the court papers to the Police; when a person goes to collect the return of service (a paper showing that the respondent actually received the documents) some of the police officers are reported to have declared that the papers had gone missing.

One of the interviews indicated that;

“I went to the Police after redoing the application 3 times but at each instance they said they cannot find the maintenance application forms. In fact, the person I had handed over initially refused saying that I had not given him the papers and was not on duty on the day I had delivered the papers to him. I gave him the papers and later on I saw him having drinks with the respondent but he vehemently denied receiving my applications, and this has crippled my application.”

The response above demonstrate some suspected misconduct and lack of client service by the said police officer. Similar sentiments on malpractice by policer officers were also shared by another participant who stated that the policer officer said that;

“*ambuya munofaniraka kusiya yedrink kuti zviite. Tarisai kuisa kurikuita zuva and akuna transport inosvika kunogara murume wedu*”.

“you should leave a few cents so that I can buy a drink for me to serve your papers. The sun is scorching hot and where your husband resides there is no transport that gets there.”

This participant indicated that her papers were served as a result of the fact that she had agreed to leave a token for the police officer to motivate him to serve the papers and get the return of service required at court. She indicated that she also had to provide transport for the officer to serve the respondent.

Another issue raised in this regard was that the orders set by the Magistrate were being ignored rendering the whole process of claiming for maintenance futile.

One of the interviewees the applicant of case M20/13 stated that:

“*ndakaplyer maintenance 2013 ndakawana maintenance mwedzi mitatu chete. Izvezvi ndanzwa nekufambira kubva Chakari, kana vana kuchikoro avasi kuenda. Mutemo wacho saka unotibatsira sei? Ndotuya kunozvonzi takaisa warrant of arrest asi murume wangu ahasati akambosungwa kubva 2013. Ndinomuona almost every day and ndinotauranaye asi anzi mapurisa arikumushaya*”

“I applied for maintenance in 2013 and received maintenance for only three months. I am tired of travelling to and from Chakari. My children are not even going to school. How does the law even assist us? Yet another warrant of arrest have been issued again; but since 2013 my husband has not been apprehended. I see him every day but the police simply state that they cannot find him.”

(English version)

The experience shared here demonstration tendencies of malpractice, bribery and corruption by some members of law enforcement which is rendering the maintenance machine ineffective. In addition the sanctions for breach of maintenance are not being adequately enforced; this is the main reason why there is non-compliance. The warrant of arrests that are issued are not put to effect, many times it is stated that the respondent cannot be found yet the in some instances the applicant live together with the respondent.

Another participant stated that the maintenance process required her to invest time into details about the financial status of the man she divorced. She indicated that to be successful in maintenance you have to be nosy, you have to find out where your former spouse is leaving where and how he is getting his money and it feels intrusive.

Further to this some interviewees indicated that women are blamed for claiming maintenance and are ostracised by society. This point was also raised by Mgugu (1996) to say women fail to apply for maintenance because they are labelled falsely as prostitutes for applying for maintenance.

6.4 Legal Challenges

Most of the interviewees were of the opinion that the mechanisms that are currently available in Zimbabwe are

not rendering the maintenance order effective. Furthermore, there is no machinery to make orders effective to respondents who are outside Zimbabwe. Many maintenance's court orders are defiled, the respondents sometime simply relocate to another place and it becomes difficult for the maintenance to be effected. This was also reiterated by another participant who stated that;

"I applied for variation upwards successfully, the respondent has defiled the court order and relocated to South Africa. I have come to report and have been informed that I would have to report the police only when he comes back"

This paints a picture that the legal process cannot serve applicants where respondents are outside Zimbabwe due to the administrative and financial challenges that have to be incurred. This actually renders the maintenance application process futile.

Other legal related challenges have to do with the procedural legal requirements. One of the participants stated that, she failed to do her application the first time because she could not ascertain the address of the respondent despite knowing the place physically. She then opted to use a relative's address but was not truthful; to the court in doing so. As such certain legal requirements have an effect of deterring people from applying yet other alternative means can be used.

Another participant lamented that the amount respondent declared at court is a trifling sum and produced fake payslip. This effectively determines the maintenance order that is granted by the court. The court does not take into account other economic activities the respondents do. Their payslips will have trifling amount which cannot sustain the respondent alone. As a result the maintenance granted will not be even sufficient to pay a room's rental.

Judgements are furthermore delivered in RTGS on account that Respondent receive RTGS (Zimbabwe local currency) but yet expenses met on the child require United States dollars. The Zimbabwe system uses two currencies RTGS and United States dollars. The United States dollar is currently valued at four times the value of the RTGS on the black market. This means 400 Rtg order granted is equivalent to one United States dollar. This also means that Rtg has very low purchase power and loses its value over night due to inflation. The quantum that is given become negligible overnight and it becomes a waste of time to go to court.

Many women indicated that they need legal representation rather than just assistance with the completing the forms. One of the views by the participants is that:

"being at court itself is intimidating, my spouse had a lawyer and got away with almost everything. My application for maintenance upward was not changed and the reason was that the respondent's income had not changed yet he could afford a lawyer in court. Perhaps bringing a legal practitioner should be considered as evidence to say a person has money. And we should have free legal representative were the Respondents is represented so that both parties are even.

Another participant stated that the respondent used a lawyer to apply for variation for variation downwards on account that his burden had increases because he had another child and it was entertained by the court. The order granted by the court was not sufficient to cover the fees for the children, which means all the other expenses from food, rent, transport, house help and medical expenses rested on her shoulders. She clearly stated that she had wasted her time approaching the court. However, she also indicated that things could have gone different if she was legally represented.

7. Recommendation

In light of the challenges stated there is need for engagement of all stakeholders to monitor the court system, particularly the Judicial Service Commission (JSC) on how courts are being run. Magistrates should engage with applicants occasionally to establish the nature of client service that is received by the applicants. This means that issues around access to justice in terms of making court applications can be done on a daily basis as done by other court jurisdictions.

It is suggested that the number of court officials particularly Magistrates and clerks should be increased to ease pressure. In the alternative, an exclusive family court dealing with private law can be established. If the number of clerks is increased together with the Magistrates matters are dealt with expeditiously. In addition an electronic system can be introduced to assist on the workload of the clerk of court when there is one person to do both civil and criminal matters.

There is need to introduce strategies to monitor transparency in the judicial service and in the law enforcement sector where maintenance is concerned. They are complainants of suspected bribery and corruption. This challenge is associated with the requirement of the police having to serve court documents or and in the processing in deciding the quantum by the Magistrate. It is suggested that the court can dispatch itself the applications directly to be served. This will have greater sanction than when an ordinary person seek police to serve as if it is out of personal service. The police can therefore be made accountable on disappearance of court papers and related matters. In the alternative in support to the current law; there should be a wider ambit of people who can serve the court papers such as ministers or religion and chiefs. Running concurrently with the

suggested procedure a clear, easy accessible reporting system should be made readily made available without people risking victimisation. This can involve use of anonymous boxes, having independent compliance or anti-corruption offices located separately from the police where a person can freely report of any misconduct. Furthermore there should be greater sanction for bribery and corruption perpetrated by the police.

In terms of the judicial system, the amounts granted in maintenance should be monitored versus the background of the applicants, so that discretion granted by the magistrates is not abused by means of bribery in deciding the maintenance cases. To add to that a minimum wage should be set and gazetted as minimum possible maintenance. The amount of maintenance should be significantly evident of serving the needs of the child. This will improve guidance to Magistrates in deciding the quantum together with the other factors they have to take into account.

There should be court monitoring process service apart from reviews that assist applicants to reduce bribery and corruption. This will assist in feeding information to JSC and any other interested parties on the nature of judgements being delivered. Cases where a spouse ceases to pay USA dollar fees on the basis on being a salaried RTGS employee should be prohibited.

There should be sufficient resources to ensure that, electricity does not deter access to justice. Application forms should always be available at whatever time.

Alternative means of payments such as Ecocash should be considered acceptable apart from the banking system, because the banking system itself potentially deters people from applying for maintenance. Bank have their own requirements that can be problematic to indigent people. In addition banks charges can highly exorbitant and consume a considerable amount of the maintenance money.

There is need for trained personal to assist in the court processes. There is a considerable number of women who apply to courts and are illiterate and they need assistance. These women end up feeling discriminated especially when there is no designated person to assist. They end up having to pay someone else to complete their form and this becomes an extra expense and a deterrent to maintenance court applications. Free legal representation can be made available to women where the respondents come to court with their own legal practitioners.

Lastly, there is need to educate people on maintenance process, so that they understand the legal process involved in determination of maintenance and that maintenance can actually be varied once it is granted. There is also need for the law to reform the law in maintenance where a claim is made during pregnancy and to cater for anticipated expenses this could assist women in times of need.

Further research should be done on sustainability of running a maintenance only court or a family law court and on whether there is access to justice where other rights are concerned other than Maintenance.

8. Conclusion

This paper identified the challenges faced by women in Chegutu district in applying for maintenance. The challenges were classified thematically as administrative, financial, legal and social challenges. In terms of the administrative process, there is a cry for accessibility of the court. The court should serve the maintenance applicants on a daily basis and not reserve a particular day for maintenance applications. This challenge will significantly reduce the transport expenditure challenge where an applicant has to travel to and from court before being served. The other challenge relates to the quantum that is deliberated by the court. The maintenance quantum should be objectively significant and evidently contribute toward the child's expenses. Trifling amounts render maintenance claims fruitless. One of the legal challenges is the requirement to serve court papers through the police. In several cases respondents are served but bribery take places and the return of service is never found. In other instances the police officers refuse to serve the papers until a person losses heart to continue with the process. In an attempt to resolve these challenges legislative amendments, policy changes and mitigating strategies were suggested. Some of these includes amending the Maintenance Act, in terms of requirement for police to effect service, providing an alternative for the bank account requirement and providing minimum possible quantum order. Other strategies has to do with increased court staffing, court monitoring and having independent compliance structure to monitor bribery and corruption.

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