

Zambia

## Debtors Act, 1938

### Chapter 77

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## Debtors Act, 1938

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# Zambia

## Debtors Act, 1938

### Chapter 77

Commenced on 21 June 1938

*[This is the version of this document at 31 December 1996.]*

*[12 of 1938; 8 of 1962; 27 of 1965; Government Notice 497 of 1964]*

**An Act in restriction of imprisonment for debt.**

#### 1. Short title

This Act may be cited as the Debtors Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"prescribed" means—

- (a) as respects the High Court, prescribed by rules to be made under the High Court Act;  
*[Cap. 27]*
- (b) as respects the subordinate courts, prescribed by rules to be made under the Subordinate Courts Act.

*[Cap. 28]*

#### 3. Restrictions on imprisonment for debt-with exceptions

- (1) With the exceptions hereinafter mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money.
- (2) There shall be excepted from the operation of subsection (1)—
  - (a) default in payment of a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract;
  - (b) default in payment of any sum recoverable under the provisions of the Criminal Procedure Code;  
*[Cap. 88]*
  - (c) default by a trustee or person acting in a fiduciary capacity and ordered to pay by any court of competent jurisdiction any sum in his possession or control;
  - (d) default by any person practising in Zambia as a barrister or solicitor in payment of costs when ordered to pay costs for professional misconduct, or in payment of a sum of money when ordered to pay the same in his character as an officer of the High Court;
  - (e) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorised to make an order;
  - (f) default in payment of sums in respect of the payment of which orders are in this Act authorised to be made;

- (g) default in payment of any sum payable in respect of estate duty:

Provided that—

- (i) in any case coming within the exceptions (c) and (d), or either of them, any court making the order for payment or having jurisdiction in the action or proceeding in which the order for payment is made, may inquire into the case and, subject to provisos (ii) and (iii), may grant or refuse, either absolutely or upon terms, any application for a writ of attachment, or other process or order of arrest or imprisonment and any application to stay the operation of any such writ, process or order, or for discharge from arrest or imprisonment thereunder;
- (ii) no person shall be imprisoned in any case excepted from the operation of this section for a longer period than six months;
- (iii) nothing in this section shall alter the effect of any judgment or order of any court for payment of money, except as regards the arrest and imprisonment of the person making default in paying such money.

*[As amended by No. 27 of 1965]*

#### **4. Power of committal for judgment debt**

Subject to the provisions hereinafter mentioned and to prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court:

Provided that—

- (i) the jurisdiction by this section given shall, in the case of any court other than the High Court, be exercised only by a subordinate court of the first or second class, and by an order made in open court and showing on its face the ground on which it is issued;
- (ii) such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

#### **5. Proof of means**

Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

#### **6. Jurisdiction of High Court may be exercised in chambers**

The jurisdiction of the High Court under section four may be exercised by a Judge sitting in chambers or otherwise in the prescribed manner.

#### **7. Payment by instalments**

For the purpose of section four, the court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and from time to time rescind or vary such order.

## 8. Imprisonment not to operate as satisfaction

No imprisonment under section four shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

## 9. Discharge on payment

Any person imprisoned under section four shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the costs (if any).

## 10. Power under certain circumstances to arrest defendant about to quit Zambia

Where the plaintiff in any action before the High Court or any subordinate court proves at any time before final judgment by evidence on oath to the satisfaction of the court that he has good cause of action against the defendant to the amount of twenty kwacha or upwards, and that there is probable cause for believing that the defendant is about to quit Zambia unless he be apprehended, and that—

- (a) the absence of the defendant from Zambia will materially prejudice the plaintiff in the prosecution of his action or in his obtaining satisfaction therein; or
- (b) the defendant has disposed of or removed out of Zambia his property or any part thereof and the execution of any judgment or order will be thereby obstructed or delayed;

such court may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he has sooner given the prescribed security not exceeding the amount claimed in the action that he will not leave Zambia without the leave of the court:

Provided that—

- (i) the court may release the defendant at any time on such terms as may seem just, and, in any event, no such defendant shall be detained in custody after the date of final judgment;
- (ii) any order made by a subordinate court of the second or third class shall be reported forthwith to the High Court which shall have full power, with or without argument, to reverse or vary any such order.

*[As amended by No. 8 of 1962]*

## 11. Power under certain circumstances to arrest judgment debtor about to leave Zambia

- (1) Where any judgment creditor proves at any time by evidence on oath to the satisfaction of the court in which the judgment has been obtained or a court in which the judgment has been registered—

- (a) that the amount outstanding on the judgment is not less than twenty kwacha; and
- (b) that there is probable cause for believing that the judgment debtor is about to leave Zambia or has disposed of or removed out of Zambia his property or any part thereof or that there is probable cause for believing that he is about so to do; and
- (c) that the execution of the judgment will be thereby materially obstructed or delayed;

such court may, in the prescribed manner, order such judgment debtor to be arrested and imprisoned for a period not exceeding fourteen days unless and until he has sooner given such security as may be determined by the court not exceeding the amount outstanding on the judgment that he will not leave Zambia without the leave of the court:

Provided that—

- (i) the court may release the judgment debtor at any time on such terms as may seem just and in any event no such judgment debtor shall be detained in custody after the date of satisfaction of the judgment;
  - (ii) any order made by a subordinate court of the second or third class shall be reported forthwith to the High Court which shall have full power, with or without argument, to reverse or vary any such order.
- (2) Any person who maliciously and unreasonably obtains the issue of a warrant under the provisions of this section shall be liable to the judgment debtor for any damage suffered by the latter in consequence of the issue of such warrant.

*[No. 8 of 1962]*

## **12. This Act to apply to civil proceedings by the State**

The provisions of this Act shall apply in the case of civil proceedings by the State.

*[No. 27 of 1965]*