How to increase or decrease your child's maintenance payment

A maintenance order may be varied, suspended or rescinded, by the Maintenance Court in the area in which the child resides. The Maintenance Court will only grant an increase or decrease of the maintenance payable, should the court find that there is sufficient reason to do so. When considering "sufficient reason", the court often refers to the term "good cause".

It is not possible to precisely define the term "good cause", as each matter differs. The court will duly consider the circumstances of each matter.[1]

There are certain factors which the court will consider when determining whether good cause to vary the current maintenance order exists.

The paramount consideration of the court will be the best interest of the minor/dependant child. The needs of the child will, therefore, have to be established. Section 15(2) of the *Maintenance Act*[2] defines the need of the child as that which a child reasonably requires for his/her proper living and upbringing, and includes: food, clothing, accommodation, education and medical care.

Once the court has established the need of the child, it will consider the ability of each parent to contribute to such need. Thus, the parents must fully disclose their financial position to the court.[3]

Should a parent request a decrease in maintenance, it will not be sufficient merely to provide details of the income of the parties. An inability of the parent to contribute must be shown.[4] It is also important to note that not every change in a parent's financial circumstances will justify a variation of maintenance.

Should you be convinced that good cause exists for you to increase or decrease the maintenance payment towards your child, an application may be brought in the Maintenance Court in the area in which the child resides by submitting a completed *J107E* form: "*Substitution or discharge of existing Maintenance Order*", together with the necessary supporting documentation.

It is important to remember that each parent has a common law duty to maintain

his/her child *pro rata* to his/her income, to ensure that the child's needs are sufficiently met. It is furthermore trite law that the maintenance of the child will always receive preference above any other expenses that a parent may have.

Elmari Richter, Van Velden-Duffey Inc

[1] Jacobs v Jacobs [1955] 4 All SA 210 (T)

[2] Maintenance Act 99 of 1998

[3] Whiteley v Whiteley [1959] 2 All SA 295 (E), 1959 (2) SA 148 (E)

[4] Jacobs v Jacobs [1995] 4 All Sa 210 (T), 1995 (4) SA 211 (T)