Annexure A

SANAPS SHERIFF & ACTING SHERIFF MEMBERSHIP APPLICATION FORM:

I the undersigned _____

SHERIFF / ACTING SHERIFF OF _____ **in**

_____ **Province,**

hereby apply for membership to SANAPS.

I undertake to abide by SANAPS's Constitution. (See this at: www.sanaps.org.za)

My Contact Details are as follows:

1. **E- mail Address:**_____
2. **Physical Address:**_____
3. **Postal Address:**_____
4. **Tel: No:**_____
5. **Cell No:**_____

Signed at _____ **on** _____

_____

After completing the form please fax to (011) 760- 6525 or e- mail to iqubaldawood@gmail.com or post to P. O. Box 9118 Azaadville 1750.

Annexure B

Obtaining a court order made easier

NEW: BIG LEGAL ISSUES NOW CHEAPER FOR EVERYONE

➝ Mediation programme is aimed at resolving all disputes, says expert.

Phindile Chauke

Obtaining a court order to resolve a dispute may no longer depend on the size of one's wallet when the first Court-Annexed Mediation is launched in South Africa next month.

The Department of Justice and Constitutional Development gazetted the rules to govern the new mediation initiative almost two weeks ago to make way for its full implementation from August 1 in district and regional courts.

Speaking exclusively to *The Citizen* ahead of the implementation of the new wing of justice, deputy chief State law adviser at Justice, Jacob Skosana, said the programme formed part of government's concerted effort to enhance access to justice.

"It differs from the private mediation that happens in families and in private institutions, because this one happens under the watchful eye of the courts. Whatever agreement is reached in, it becomes an order of the court," he said.

Anyone who breaches this agreement can expect a penalty from the court for negotiating in bad faith.

Skosana said the programme, which has been in planning for just over three years, will be an extension of the Commission for Conciliation, Mediation and Arbitration (CCMA), which is limited to resolving labour disputes.

However, the department is set to bring in new mediation clerks for the Court-Annexed Mediation, because existing court clerks were overloaded by the influx of cases.

"We anticipate that we are going to be flooded. The courts will not be able to handle the influx hence we will be implementing the programme gradually, while we build capacity," Skosana said.

"Labour is only one fraction of many other disputes in society. There are also cases of the Road Accident Fund, car accidents disputes, claims against local government for pothole damage or your child having fallen into a manhole without a lid," Skosana said. Medical and police negligence claims are other examples.

"Anyone can approach the mediation programme. Even when someone owes you money or when someone is suing you for breach of promise," Skosana said.

"The difference with the mediation is the cost benefit and speed. Usually it would take four to five years to resolve a divorce – simply because there are summonses to be issued. With the mediation system you do not file papers and avoid all the costs and delays," he said.

The Court-Annexed Mediation will be charging a standard fee, which is yet to be determined by Justice Minister Jeff Radebe.

– *phindilec@citizen.co.za*

Annexure C

INTERPLEADER MATTERS IN THE SUPREME COURT

C P BEZUIDENHOUT
LLD
Sheriff Supreme Court
Tulbagh

INTRODUCTION

The present form of the interpleader has been used in the magistrates' courts long before it was introduced into the supreme court by rule 58.[1] This rule 58 of Act 59 of 1959 was derived from the English Rules of Court quoted as order 57.[2]
This action is usually brought to court by a sheriff who is commanded by the court to attach and sell goods of a defendant to satisfy a court order ("goods" does not include a human being). In *R v Ngunze* 1951 4 SA 679 (E) it was held that "a warrant upon decree to take delivery of goods" which ordered the messenger to take delivery of two girls in the custody of the appellant, was unlawful and a nullity.

The sheriff becomes the stakeholder as applicant in the interpleader suit.[3]

PURPOSE OF INTERPLEADER

In *Bernstein v Visser*[4] the purpose of interpleader proceedings in the case of execution was stated:

"Now interpleader is a form of procedure whereby

a person, who is a stake-holder or other custodian of movable property, to which he lays no claim in his own right, but to which two or more other persons lay claim, may secure that they shall fight out their claims among themselves without putting him to the expense and trouble of an action or actions. Interpleader in the case of execution is a species of this genus. The reason for providing for interpleader in the case of execution is thus stated by *Mather on Sheriff and Execution Law* (2 ed 463): "Cases frequently arise where a third party makes an adverse claim to property seized by the sheriff under an execution, and that the latter, but for the following safeguard, would be consequently subject to considerable risk in the discharge of his duties, to meet which, relief by way of interpleader is provided." Rule 58 introduces this form of interpleader into the superior courts for the first time, though it has long existed in the magistrates' courts."

Although the reference is made specifically to the sheriff (as the previous deputy-sheriff was known), it does not exclude an interpleader by any other person against a claim of seizure of property.[5]

As we are referring to rule 58, the sheriff's position will be dealt with being included in "any person" of rule 58(1).

THE SHERIFFS' ACTION

The sheriff is compelled to act in one or both of the following ways:

A. **Indemnity**

In the event of any person making claims to property (i e movables, immovables and incorporeals)[6] the sheriff is compelled to protect the interests of the judgment creditor as well as his own interests.[7]

The law-maker had realized that even in the event of an order obtained in favour of a creditor, there may arise a situation where the defendant could still further his claim against the creditor or the sheriff if an attachment had been made.

The bulk of interpleaders is aimed at movables.In the event of such a claim the sheriff notifies the plaintiff of such action taken by any other person. The sheriff may demand an indemnity to his satisfaction which would render him "harmless from any loss or damage by reason of the seizure thereof".[8]

This form of security is determined by the Supreme Court Act.[9] This particular form does not include any costs which a sheriff may face in a later court action. In spite of the form of security, the sheriff is at risk to a cost order by court.

A sheriff would be well advised not to accept any form of security under rule 45(5), should costs of judgment not be specifically mentioned. Should he fail to take protective action,

he would act "at his own risk".

Sheriffs are warned that costs in the supreme court are exorbitant. This matter would be dealt with at a later stage.

The sheriff holds the attached goods in his care if indemnity is obtained to his satisfaction.[10]

B **Failing indemnity: interpleader notice**

In the event of the required indemnity not being delivered, the sheriff is compelled to lodge an interpleader notice. This method is utilized to bring to the court the conflicting claims of a plaintiff and defendant and other persons who claim certain rights over attached movables, immovables or incorporeal rights thereon.

The parties to this form of action now wear new caps. The sheriff becomes the applicant. The execution creditor becomes a claimant with all rights thereto.[11] He should be cited as "Defendant in Reconvention and First Claimant". All other claimants are numerically cited.

The sheriff thereafter delivers an interpleader notice to the claimant or claimants.[12]
All subject-matter attached are tendered to the registrar[13] with the interpleader notice and affidavit.

Money in the possession of the sheriff is to be paid to the registrar with the delivering of the interpleader notice[14] who shall hold it. In terms of rule 58(2)(a), payment or tender of payment should be made to court.[15]

Where immovable property gives rise to conflicting claims, the sheriff shall place the title deed(s), if available, together with the interpleader notice, in the hands of the registrar.[16]

The interpleader notice must strictly conform to the rules laid down.[17] The interpleader notice must:

1. be addressed to all the claimants;
2. state the nature of the liability [18] ... attach certain movable property in execution of a judgment ... and describe the attached property, e g 1569 merino sheep;
3. call upon claimants to deliver particulars of their claims[19] not less than 15 days from the date of service thereof and
4. state a court date for a hearing[20] not less than 15 days from date specified in the notice for the delivery of claims. These dates are arranged with the registrar *before* completing the interpleader notice;
5. include an affidavit. It would appear that there is a difference in the content of the affidavit of the applicant and those of claimants. The applicant ought to present a concise report of his attachment and the execution thereof.[21]

Rule 58 does not require an affidavit to state the claim of a claimant. A claimant should only furnish "particulars" of a claim. These particulars should be sufficient to acquaint an opponent, including the applicant/sheriff, to decide on opposing such a claim.[22]

The sheriff's affidavit is of great importance when the court is faced with rival claimants. Should their affidavits create a state of uncertainty as to which of the claimants has made out a better title, the court may not be able to determine who the plaintiff and defendant in the ensuring trial should be. In a similar case the court refused to give a direction as to who was to be the plaintiff.[23]

It should be noted that in the Bruce case the court directed a claimant to be a plaintiff.[24]

In another case the court refused to enforce a claimant's right to ownership founded on an illegal agreement. [25]

The sheriff is usually in a better position to furnish the court with evidence of factual and unbiased nature.

The sheriff, as the applicant, also states in his affidavit, that:

1. he claims no interest in the dispute other than charges and costs;[26]
2. he is not a colluder; [27]
3. he abides by the decision of the court as to his liability or validity of respective claims.[28]

If the claimant, who has received an interpleader notice and affidavit from the sheriff, does not deliver his particulars of claim within the time stated, or, having delivered such particulars, he does not appear in court to support his claim, the court may order him and all claimants under him barred as against the applicant (the sheriff) from making any claim on the subject-matter of the dispute.[29]

Rule 58(6) deals further with the claimant who has delivered particulars of his claim and appears before the court.[30] Rule 58(6)(e) is of particular importance to the sheriff who had incuried costs and expenses. There is only a reference to costs and expenses (if any) as incurred by the applicant under para (b) of sub-rule (2), "as to it may seem meet".[31]

The following example my act to clarify the position. A sheriff may become involved in the following situation:

Sheriff A commences an interpleader action. On the day of hearing he appears in person at court. Three claimants (B1 in reconvention, B2 and B3) are represented by three advocates, their city correspondents and three attorneys at Beautiful East. The matter is booked for Court 9, and everyone is in attendance. The judge finds no interpleader matter on his role and postpones the matter *sine die*. Up jumps all advocates and clamour for costs *against* the applicant, sheriff A. Costs are allowed.

The sheriff, as an officer of the court, is compelled by law to institute interpleader proceedings. Through no fault of his, he is held liable for costs. He has no right or authority in law *to refuse to take interpleader action*. He finds himself in a position to be penalized if he does not act (claims for

damages) and with costs awarded against him (if he does act).

In the present financial circumstances he may even fare worse. Insolvencies are everyday matters. Should a first claimant be ordered to pay costs and is thereafter declared insolvent, it may leave the applicant (sheriff) without payment of his costs and fees.

Had the applicant (sheriff) instructed attorneys and an advocate to represent him at the interpleader hearing, he will suffer heavy financial loss.

In order to protect himself in terms of his costs and fees, a sheriff would be well-advised to consider the following options: He must obtain:

1. a deposit in his trust account calculated on the basis of R5000 per day per claimant;
2. a special power of attorney from every claimant absolving the applicant (sheriff) from any and all cost orders;
3. payment of applicant's (sheriff's) attorney and client bill of costs;
4. claim of damages in the event of defaulting payment;
5. a special power of attorney instructing the Registrar to invest money received in a financial institution at the highest rate of interest; or
6. an irrevocable undertaking that all the sheriff's costs (e g from attachment until interpleader action had been instituted) will be paid at that stage and not at the end of the main action.[32]

Costs may also cause grave concern in an interpleader action based on the ownership of the attached property in execution which is not stayed by the ensuing insolvency of the debtor.[33]

An interpleader suit is regarded as one of those cases for which no pleadings are required. Questions of law are herein dealt with. To quote Herbstein and Van Winsen:

> "If a claimant to whom an interpleader notice and affidavit have been duly delivered, delivers particulars of his claim and appears before it, the court may order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant." [34]

The sheriff is not excluded from this ambit of legal process.

The law-maker had dealt in a most unsatisfactory manner with the position of the sheriff as an applicant, and the order of costs that a court is bound to make against the applicant.

REFERENCES

1 Herbstein and Van Winsen *The Civil Practice of the Superior Courts in South Africa* 621.

2 *Beazley v Magnum Estate Agents (Pty) Ltd and Another* 1976 4 SA 94 W 96A.

3 *Verbeek v Maher* 1978 1 SA 64 N 69E-F; *Kamfer v Redhot Haulage (Pty) Ltd and Another* 1979 3 SA 1149 W 1152C; *Sadie v Currie's City (Pty) Ltd and Others* 1979 1 SA 363 T 366F-G.

4 1934 CPD 270 272-273.

5 *African Life Assurance Society Ltd v Van der Nest and Another* 1971 3 SA 672 C 672G.

6 Supreme Court Act 59 of 1959 in rule 45(8) determines that "incorporeal property whether movable or immovable is available ...".

7 See rule 45 on Execution of the Supreme Court Act 59 of 1959. Rule 45(1) states: "The party in whose favour any judgment of the court has been pronounced may, *at his own risk*, sue out of the office of the registrar ..." (underlining my own).

8 Herbstein and Van Winsen *op cit* 621.

9 Act 59 of 1959 rule 45(5) form 19.

10 Rule 45(3).

11 Rule 58(1).

12 Rule 58(1): "Applicant" refers to any person: *Beazley v Magnum Estate Agents (Pty) Ltd and Another* 1976 4 SA 94 W.

13 Rule 58(2)(b).

14 Rule 58(2)(a).

15 *Government of the Repulic of South Africa v Midkon (Pty) Ltd and Another* 1984 3 SA 552 T 567E.

16 Rule 58(2)(c).

17 Rule 58(3).
18 Rule 58(3)(a).
19 Rule 58(3)(b).
20 Rule 58(3)(c).
21 Rule 58(3) and (4).
22 *Corlett Drive Estates v Boland Bank Bpk* 1979 1 SA 863 867 C E-H.
23 *Greenfield NO v Blignaut and Others* 1953 3 SA 597 SR 598E-G.
24 *Bruce, NO v Josiah Parkes & Sons (Rhodesia) Ltd* 1972 1 SA 68 R.
25 *Rootes (Central Africa) (Pvt) Ltd v Mundawarara and Another* 1973 2 SA 447 R 450D.
26 Rule 58(4)(a).
27 Rule 58(4)(b).
28 Rule 58(4)(c).
29 Rule 58(5).
30 *Bruce NO v Josiah Parkes & Sons (Rhodesia) (Pvt) Ltd* 1972 1 SA 68 R disusses the claimant's right to ownership, necessary allegations and proof.
31 Herbstein and Van Winsen **op cit** 292; *Ackermann v Kritzinger & Others* 1974 4 SA 666 C; *Bruce NO v Josiah Parkes & Sons (Rhodesia) (Pvt) Ltd* 1972 1 SA 68 R.
32 See *Ackermann v Kritzinger and Others* 1974 4 SA 666 C: the sheriff may be compelled to wait years before being paid whilst he has to pay his bills immediately.
33 *Kelly v Lombard* 1927 AD 182.
34 Rule 58(6)(c), read with subrule (5). See also rule 33(4).

DIE REGSAANSPREEKLIKHEID VAN DIE BALJU BY BESLAGLEGGING OP WAPENS EN AMMUNISIE AS UITWINBARE GOEDERE

MAJOOR L KELLERMAN
B IURIS LLB
Senior Regsbeampte: Suid-Afrikaanse Polisie
Pretoria

INLEIDING

Dit is bekend dat Suid-Afrikaners histories en tradisioneel 'n kultuur van wapenbesit ontwikkel het en sodoende waarskynlik tans een van die hoogste *per capita* vuurwapenbesitsyfers in die wêreld het. Tans is daar nagenoeg 3 468 487 gelisensieerde wapens in besit van 1 261 825 lisensiehouers.[1] As veral in ag geneem word dat blanke Suid-Afrikaners oor die algemeen makliker wapens bekom het[2] asook die ontwikkeling van die sekuriteitsindustrie, kan aangevoer word dat die gemiddelde aantal wapens per persoon waarskynlik in die toekoms veel hoër sal wees.

Dit is teen hierdie agtergrond dat balju's by die uitvoering van hofbevele telkens gekonfronteer word met die besluit of regtens op wapens en ammunisie beslag gelê kan word as uitwinbare goedere. Nie alleen die beslaglegging nie, maar ook die verdere beskikking oor sodanige artikels lewer eiesoortige probleme op. In hierdie artikel word ondersoek ingestel na die regsaanspreeklikheid van die balju by die beslaglegging op wapens en ammunisie en die verdere beskikking daaroor.