



Date: 6 August 2014

Our Ref: Report 3 of 2014

Per: E- mail

Dear Colleagues,

Report 3 of 2014

Further to our report dated the 27 June 2014 the following developments have taken place:

1. Fees:

We have been informed by the SABFS that the Rules Board has recommended an increase of 14.25% on fees and R5.00 for travelling to the Minister (**Annexure A**). This falls far short for the 33% and R6.00 requested and motivated by the profession and the SABFS. It is regrettable that after a great deal of expense and time, the Rules Board has found a number of reasons why the Bloom report should be ignored. One wonders why it is possible for attorneys to get increases between 100% to 120% and not us. Are their applications not subject to the very same rigorous opposition as ours? Some colleagues have recommended that we should challenge the Minister (if these tariffs are approved). It is very unlikely that the SABFS will challenge its own Minister. Would you support a class action suit against the Minister and are you willing to contribute towards legal costs? Please furnish us with your comments.

NB: The increases needs the Minister's approval and are not yet effective.

2. Re- demarcation Gauteng & North West Province:

The 1 August 2014 deadline for the creation of magisterial districts in Gauteng and North West Province has been postponed to the 1 December 2014. Mr. Skosana has once more referred those who sought point to point descriptions of the new jurisdictions to the SABFS, despite the SABFS informing him that the Board does not have this information nor is it capacitated to furnish such. A sum of R1 million has been set aside to deal with this and other issues. The deadline for submissions for each sheriffs affected area is the 31 August 2014. Mr. Vincent Nel from the Board is co-ordinating the project and as soon as his report is available, we will distribute to members.

3. Amendments to the regulations of the Sheriff's Act:

The regulations have been published on the 18 July 2014 and deals with appointments of new sheriffs, the appointments of acting sheriffs and the recognition of any professional society or association representing sheriffs. Attached herewith, for your convenience, is Gazette Number: R568. **Annexure B**

4. Media Reports on the Sheriffs Eviction Lwandle, Cape Town:

Much has been said about the evictions and the sheriff's role therein. Whilst we commend the sheriffs in completing the task under very difficult circumstances, we respectfully submit that it was not necessary for the sheriffs to apologise for performing his duties failing which he could be fined up to for R100 000.00 by the SABFS. We commend the sheriff in dealing with the police, city officials, (Municipality and the Department of Human settlement we presume), SANRAL and the contractors in executing. We also commend the sheriffs in seeking divine guidance in ensuring nobody would be injured.

Whilst we have deep sympathy for those evicted we take this stance as we ask:

- Why did the court grant this order if it is felt that there has been any human rights violations? Should the court not apologize?
- Why was the interim order not challenged in court by the occupiers? Should they not blame themselves?
- What did the local authorities and SANRAL do about providing shelter/ alternative accommodation to those evicted? Should they not apologize?
- Why did the Legal Aid Resource Centre and the Lawyers for Human Rights not assist those evicted prior to the eviction? Should they not apologize for failing to be proactive?

The headline in the media gives one the impression that because the sheriff has apologised, the sheriff was at fault. This was certainly not the case and it is regrettable that the sheriff who is always at the flashpoint of the evictions seems to be the perpetrator of wrong doings and all other parties participating are not mentioned. We however, congratulate Mr. Burger in handing a very delicate situation in such a professional manner.

This is an extremely difficult socio- political problem and sheriffs should not be used as scapegoats for other Government department's shortfalls.

5. Reduction in a Prescribed Rate of Interest:

The Minister has amended, as from the 1 August 2014, the prescribed rate of interest from 15, 5% rate per annum to 9% per annum for the purpose of the Prescribed Rate of Interest Act of 1975. Please also bring this to the attention of your deputies and staff when interest needs to be calculated on a warrant/writ.

6. Meetings with the Chief Master of the Supreme Court:

Below is the report of our colleague Johan Fourie, the contents of which is self- explanatory.

“I have attended this meeting and wish to report only on the issues relating to the masters requirements:

It is clear that the chief master has had a fresh look at the Act and especially the requirements of Section 19 of the Act in regard to liquidations and the sheriff’s involvement.

The chief master was very adamant that there was and remains no intention from his side to change the existing requirements of Section 19 but rather to re-visit this section with the view of curtailing the malpractices that have developed over the past years in the service and follow up procedures conducted by insolvency practitioners.

It became very clear that the Act is adequately addresses the issues and makes enough provision for checks and balances to be performed which will effectively restore the control that sheriffs and the master should have in the early stages of the liquidation process.

It is clear that he requires a strict return to the letter of the law and has expressed his co- operation to assist the profession with the increase of the tariffs which is adjustable by application to the Rules board and minister in terms of Section 19 [6] (I have previously mistakenly believed that the tariff may only be adjusted by statute but has since seen that there exist a procedure in the act that allows for adjustment by the minister).

The extended web page of the master will cover liquidations nationally and will contain captured information of the process right from the start and will even make it possible for sheriffs to note the information of applications that are eminent. The valuation of the assets of the estate as given by the applicant will be recorded and this will be the area where the master requires the sheriff to compare the record with the reality found in possession of the insolvent.

The master will not proceed with the final appointment of the liquidator should he not have the sheriff’s return of service of the application together with the sheriff’s full report on the state of the books and full inventory with valuation of the assets found. The sheriff will be required to take charge of the assets and secure such for safekeeping. This is a hurdle that we need to properly discuss and find acceptable suggestion as to how sheriffs will deal with this in future.

There will not be a possibility of any additional measures whereby sheriffs could secure their fees or other costs in advance. We will have to draw a well-planned guideline for sheriffs and also draw the document for the master which will form part of his procedural instruction to masters nationally.

The long and the short is quite simple: we have to stick to section 19, no less or no more!

I am very excited about the move and believe we could draft a well-motivated document that will properly guide the procedure for the future.”

7. The Meeting with the National Consumer Council:

Several meetings have taken place and a new meeting has been set down for the 8 August 2014. Once this has been finalised a report will be forwarded to all members:

8. Meetings with the Law Societies Regarding Late Payment of our Fees:

Several meetings have been set up by the Board and have, regretfully, subsequently been cancelled. We will keep members informed of any progress.

9. ATASA's Auctioneering Course:

We have had a strong feedback from 20 colleagues who instructed us to deal with ATASA on their behalf. An appointment has been made for the 6 August 2014 and any member who desires that we take up this matter on their behalf should urgently notify us accordingly.

10. Meeting with the Department of Human Settlement – Gauteng Province only:

Gauteng members are reminded once more to kindly fax: (011) 355- 4327 or e- mail: kingdom.dlamini@gauteng.gov.za their eviction court orders. They will assist in verifying whether the court orders are fraudulent or not.

11. Meeting with the DOJCD: Anti-Fraud Corruption:

11.1 Attached herewith is a list of all the registrars and clerks in Gauteng Province. Colleagues are encouraged to phone the relevant courts to verify the authenticity of the orders/ warrants. **(Annexure C)** We also attach herewith the report on the anti- fraud meeting **(Annexure D)** and a letter from the DOJCD addressed to all area court managers/ clerks/ registrars. **(Annexure E)**

11.2 There has been some objection to the verification as some sheriffs believe that a warrant/ writ/ order should never be questioned. Please note the distinction as to questioning the authenticity as opposed to the contents of a process. A mere phone call could protect the sheriff against massive damages claims should the sheriff execute a fraudulent process.

11.3 One hopes that the DOJCD will support our sheriff's request to the Rules Board to amend the rules relating to the issuing and service of EAOs.

12. Strategy to Curb Fraudulent Actions at our Sales in Executions:

We have had some feedback from members and urge all other members to furnish us with proof of these wrongful acts, adversely affecting our auctions, so that we may report this to the authorities. Let's break these rings once and for all. Please furnish the Secretary with any information

13. Advertising on SANAPS Website:

We have received a positive response from sheriffs using the advertising facility who have thanked us for the opportunity to earn extra income. Members are reminded that SANAPS does not charge any fee from the sheriff; however the sheriffs can charge R125.00 and R250.00 respectively, for every movable and immovable advertisement.

14. Collations of Questions and Answers Raised by Colleagues:

NB: Colleagues are advised to look at the rules before acting on any information here below.

❖ *A notice of motion contains several annexures.*

Can the sheriff charge for the service of each of these annexures?

No. High Court tariff 2(a) (i)

Magistrate Court 1B(c)(i)

If however an additional separate process (not an annexure) needs to be served then you can charge for the service of the process but without additional travelling costs. It is therefore important to distinguish between an annexure and a process.

- ❖ *The attachment on movables has been released but the execution debtor refuses to collect his goods or has disappeared.*

What should the sheriff do?

In terms of Section 71 of the Magistrate Court the sheriffs should advertise the goods and sell to defray his expenses.

The advertisement could be costly but the sheriff needs to decide whether he may be losing more income as a result of a lack of storage space.

- ❖ *The original and copies of a divorce summons each had a few pages missing. The sheriff served the incomplete process and was informed by the defendant's attorney of the missing pages.*

What should the sheriff do?

In this instance, the parties agreed that the service was irregular. A new set of the summons which contained all the documents was handed back to the sheriff who then re-served. The second date of service was considered the effective date of service. It is fortunate that all parties co-operated. Imagine what the position would be if the defendant was not co-operative and avoided service at all costs.

Could the missing pages be served by registered post by the instructing attorney?

There seems to be no clear answer.

- ❖ *Can an attorney demand a nulla bona return when there are attachable assets (which would not satisfy the judgement) from the sheriff prior to the sale of goods?*

A nulla bona is only recorded by the sheriff, if no movable assets are pointed out, or found by the sheriff. This can only be done when the debtor is present and the sheriff is able to ask the relevant questions in regard to fixed property and warn such debtor of the danger of insolvency. All assets must first be dealt with before such nulla bona is recorded. However a sheriff may issue a return stating that the assets of a defendant will not be sufficient to cover the debt and the E/Creditor may go to court with such return and ask the court to declare that the immovable assets be declared attachable. This is done on a regular basis.

Colleagues should bear in mind that once the assets have been sold the sheriff may not issue a nulla bona should the defendant not declare in person that he has no further assets and sign the back of the writ together with the sheriff under the written quote 'NULLA BONA' and the consequences have been explained to him in full as discussed previously. He may have a wrist watch of value which can be attached; however the court may decide to act as mentioned above.

- ❖ *Can a High Court summons to be served on a closed corporation be placed on the principle door?*

Yes. Rule (4)(1)(a)(v)

- ❖ *What is the tariff for any matter issued from the regional court?*

The Magistrate Court tariff applies.

- ❖ *A sheriff has attached movable to perfect a notarial bond and in terms of the court order, the applicant is entitled to choose his own auctioneer. Earlier the very same goods have been attached on behalf of another execution creditor. Can the sheriff insist on proceeding with the auction?*

No as the claimant on the notarial bond is preferant and the court order allows another auctioneer to take over the matter.

What should the sheriff do regarding the first attachment?

The sheriff should notify his instructing attorney of the new auctioneer and inform his attorney to liaise with the auctioneer/ applicant's attorney, should there be any surplus. The matter would then be out of the sheriff's hands.

- ❖ *Who has a greater claim the landlord's hypothec or an ordinary creditor?*

The landlord's hypothec.

- ❖ *Does a Magistrate Court summons lapse?*

Yes. Rule 10. It lapses after 12 months of being issued and not served.

- ❖ *In a Magistrate Court's immovable sale can the instructing attorney demand that the deposit and the balance of the purchase price be paid into his trust account instead of the sheriff's trust account?*

No. Rule 14 (a) & (b).

- ❖ *Can a sheriff secure a J175 process? (Summons in a criminal case).*

Yes.

- ❖ *Does the sheriff serve the notice of motion in a voluntary surrender (insolvency)?*

No.

15. **Membership:**

We are now 134 members and growing. Sheriffs assume that because we are communicating with them that they are members. Please note that you will only be considered a member once you have completed and signed a membership form. Attached herewith is **Annexure F** which is a list of our membership and if you are not listed thereon, and would like to become a member, please complete

(Annexure G) (membership form) and fax or e- mail the completed form to: (011) 760- 6525, contact@sheriffdptsouth.co.za.

MEMBERSHIP IS FREE!!!

16. **Donations:**

Whilst membership is free colleagues are kindly requested to consider a donation in any amount for which we will be grateful. The banking particulars are as follows:

Account Name: SANAPS
Bank: Nedbank
Account Number: 1001658892
Branch Code: 103610

Yours faithfully,

Mr. A. Makwetu.

