



Date: 14 October 2014

Our Ref: Report 5 of 2014

Per: E- mail

Dear Colleagues,

Report 5 of 2014

Further to our report on the the 27 August 2014 the following has transpired:

1. **Developments in Gauteng Province**
 - 1.1 **High Court Interpleader matters dealt with in the Magistrate's Court by way of consent to jurisdiction:**

In a meeting that took place on the 10 September 2014 at the Pretoria Magistrate Court Mr. Desmond Nair, Chief Magistrate, informed the Pretoria circle of sheriffs that his court will no longer deal with these matters as it is in contravention of Section 69 of the Magistrate's Court Act. In essence a lower court has no jurisdiction over a higher court and the higher court will not be bound by any decision of the lower court. In future all interpleaders of this nature will be struck off. It is very likely that the same practice will follow in the rest of Gauteng and then nationally. The SABFS has been informed. We are taking up the matter with the Rules Board once more highlighting the financial risk placed on the sheriff and the manner in which the interpleader procedure is abused to frustrate sales in execution.

- 1.2 **The New Procedure regarding Police Assistance for Evictions and Removals in Gauteng:**

A meeting has been held with the SAP Dobsonville and POPS (Public Order Policing) regarding the above and, at their request, we hereby notify colleagues of the new procedure, should you require police assistance anywhere in Gauteng Province. Please refer to **(Annexure A)** hereto.

- Address a letter on your letterhead requesting assistance from your local Station Commander. Your letter must specify what assistance you require, together with copies of the warrants/ writs/ orders that you are going to execute as well as the addresses where the executions are to take place.
- Please verify the validity of the court orders by calling the appropriate clerk/ registrar. (The Gauteng contact list has been forwarded to colleagues but should you require same please contact us).
- Please e- mail the very same letter with the annexures to BeeslaarJJ@saps.gov.za and to no other party. Lt Colonel Beeslaar will also verify the court orders.
- POPS and the SAPS will arrange a meeting and invite the sheriff or his deputy in order to discuss the logistical requirements. A date as to when the assistance will be provided will be furnished on this day.
- Colleagues are also reminded to fax or e- mail all processes to the Department of Human Settlement MEC in Gauteng on (011) 355 4327 or e- mail: kingdomdlamini@gauteng.gov.za

1.3 **SANAPS Workshop on the Proposed Amendments to Rule 46**

We have had a very successful meeting in the North West Province. Colleagues from as far as the Free State and Northern Cape attended. Colleagues are notified of our next workshop, the particulars of which are as follows:

DATE: 18th October 2014

TIME: 08: 30 A.M. for 9: 00 A.M.

VENUE: Colosseum Hotel, 410 Schoeman Street, (Corner Du Toit Street), Arcadia Pretoria, **Website:** www.colosseumpretoria.com **Tel:** (012) 320 5120.

Colleagues are strongly advised to attend as there are proposals for radical amendments. Some of these are:

- ❖ The sheriff must prepare the conditions of sale.
- ❖ The sheriff must appoint a conveyancer.
- ❖ The potential discarding of the capping of sheriff's fees (commissions)
- ❖ The creation of a reserve price in consultation with the execution debtor.

Please R.S.V.P. your attendance to Reyhana Laher on Tel: (011) 760 – 2505 or E- mail: contact@sheriffdptsouth.co.za.

NB: It is very unlikely that we will have any further workshops for this year.

1.4 **Unpaid Fees from the DOJCD:**

Are you unable to receive your fees from the DOJCD? In terms of the under taking given to us by the DOJCD you should be receiving your fees, barring any queries, within 30 days of date of statement. If you are receiving no joy from your local magistrate's court please bring this to the attention of Mr. Emily Dlamini at the DOJCD. Her e- mail address is: EDhlamini@justice.gov.za.

1.5 **Rule 46 (11) Cancellations:**

Kindly refer to **(Annexure B)**. It is noted that Judges are now granting orders barring individuals from participating in execution sales for a specified time at a specified sheriff. This has not occurred in the past. We suggest that this be announced at your next immovable auction in order to discourage those individuals who undermine our auctions.

2. **Fees:**

We have not as yet heard anything and will once more address a letter to the Honourable Minister. We are deeply perturbed at the poor manner in which the profession is being treated.

3. **The Consultative Forum Meeting on the 26 September 2014:**

A number of matters unfortunately could not be dealt with in the absence of the SABFS's Chairperson, Mrs. C. Mabuza and the SABFS's Attorney Mr. J. Tarica. Below is a brief feedback of some of the issues dealt with.

3.1 **Mr Mabunda Tirhani Group – Auctioneering ATASA**

Mr. Tirani made a presentation and once more urged all sheriffs who have taken on the learnership to complete same. Mr. Tirani was informed why the participation was so poor. A task team has been formed to see how best to take the matter forward. All learners have been informed. In the interim all colleagues who have received letters of demand, should ignore this.

3.2 **Ms E Hambridge – CCMA Awards**

There will be a radical change in many of the issues relating to our attachments in the Labour Court. For the moment sheriffs are to proceed in terms of the current rules and once the new rules have been enacted, we will notify colleagues of same.

3.3 **Labour Court (Ms N Ntuli)**

Ms. Ntuli is the registrar of the Labour Court in Johannesburg. She raised the following issues:

➤ **Sheriffs and the other parties are not attending interpleader matters set down in court.**

We explained to Ms. Ntuli that even though the sheriff is cited as the applicant, the sheriff's only interest in the matter is the courts pronouncement on ownership. It is not necessary for the sheriffs to attend. Should the parties fail to attend, the matter is usually struck off and the sheriff's execution proceeds. She was also sensitized of the consent to the jurisdiction interpleaders referred to in paragraph 1.1 hereto.

➤ **The Labour Court has the authority to issue a warrant of arrest. Why are sheriffs not executing these?**

There are 2 views:

Unlike the Magistrate Courts where it is not necessary for a sheriff to cross borders in the execution of the arrest, this is not the case for a Labour Court warrant of arrest as the Labour Court is based in Johannesburg. In other words a sheriff who arrests a person, for example, in Pretoria would be required to cross over a number of other sheriff's jurisdictions to deliver the prisoner to the Labour Court in Johannesburg.

The other view is that any sheriff who arrests anybody within the sheriff's jurisdiction can take the prisoner over other sheriff's jurisdictions for the purposes of delivering the prisoner.

We have requested Ms. Ntuli to get clarity on this from a Labour Court Judge. Colleagues will be notified once the matter is clarified.

- **When a sheriff receives any notice urgent or otherwise from the execution debtor, the sheriffs stop the procedure.**

It has been resolved that should a sheriff receive any document the sheriff is to call the registrar of the court in order to establish:

- ❖ Does the process require a date? If yes:
- ❖ Has the date been arranged with the registrar?

If the answer is "No", - the sheriff must proceed. The same would apply where there is no set down date when this is required – the sheriff must proceed. This has been a standard operating procedure and colleagues, particularly our new colleague's, attention is drawn to this arrangement.

Attached herewith (**Annexure C**) is the list of all the contact details of the Registrars of the Labour Court nationally.

- **Sheriffs are reluctant to proceed where the execution debtor states that the very first time he has heard of this matter is at the point of execution. As the sheriff has not served the initial process there is some hesitation.**

A procedure has developed by way of a practice note agreed upon between sheriffs and the Judge President of the Labour Court. In essence what the sheriff needs to do under these

circumstances is to provide the execution debtor with a 3 day grace period in allowing the execution debtor to do whatever is required to protect his rights, failing which the sheriff is to proceed. The contact details of the registrar must be furnished to the execution debtor and the execution debtor must be reminded that a rescission must be accompanied by an application to stay the writ, failing which the sheriff is to proceed. This 3 day grace period must be strictly complied with.

All of the above has been agreed to in order to establish fairness and equity to the expectations of the execution creditor, the execution debtor and the sheriff. Colleagues are reminded to adhere to these arrangements as it is to our benefit also. You would not want to be in a position of removing machinery without affording the 3 day grace period, simply to find that you have to return the machinery and you are unable to recover your wasted costs because the unemployed execution creditor is an indigent.

4. **Law Societies Update**

4.1 **Northern Province Law Society: Meeting 30 March 2014**

A meeting was held on the 9 October 2014. The attorneys delay/ failure in paying our accounts was once more highlighted. The Law Society acknowledged that the complaints against certain sheriffs have been dealt with to their satisfaction. The Northern Province Law Society has agreed that in future all complaints against any sheriff would follow the following procedure:

Prior to reporting to the Board - the complainant should raise all of the complaints with the sheriff himself if the complainant gets no satisfaction from the sheriff's staff. Failing this, the complainant should contact the sheriff's association which will in turn try and resolve the issue within a specified time frame, failing which the matter should be reported to the Board.

NB: Under no circumstances does this mean that the associations have taken over the Board's role regarding discipline.

The issue then rose as to which association the complainant should address where a sheriff has dual membership. We therefore once more urge members who have a dual membership to take this into consideration.

4.2 **Bank Agents wanting to be appointed as Ad hoc Sheriffs**

We are totally opposed to this firstly because of the legal ramifications and to the obvious financial ramifications. Here is SANAPS view:

Whilst we fully understand (not approve) why the banks hire tracers for vehicle recoveries, there is absolutely no justification to appoint them as ad hoc sheriffs. The bank's problems would be resolved if they are willing to pay us the same commissions they are presently paying their tracers. This financial incentive would allow a sheriff to appoint a deputy of his/ her choice whose full time job would be to trace and remove vehicles, with a legitimate court order, within the sheriff's jurisdiction, and under the sheriff's supervision. The advantage to both the profession and the banks would be efficiency, legality and legitimacy – a far cry from the very serious allegations against the banks made in the Sunday Times article dated the 14 September 2014. In the interim, sheriffs should not be expected to participate in the illegal attachments by a tracer, and thereby lend legitimacy to an illegal process.

4.3 Draft Policy on remunerative work requests by Sheriffs

The Board for sheriffs has presented a draft policy which we are perusing and will comment in due course. In principle, SANAPS agrees with the policy which will allow our less fortunate colleagues to earn additional income legitimately outside the profession.

4.4 Counsel's Opinion on the effect of rescissions/ appeals/ reviews/ debt counselling on writs/ warrants/ orders in all courts

The Chair of the Forum has agreed to present this to the Board for consideration. We have requested this because there seems to be a great deal of confusion as to how these procedures affect the execution process. On the one hand the instructing attorneys demand that we proceed and on the other the execution creditor's/ respondent's attorney threatens us with court actions. This problem has further been exacerbated by Section 18 of the Supreme Court of the Appeals Act when read with Rule 49(ii). We have asked for an all-embracing opinion across all the courts and trust that the Board will consider the request favourably seeing that the profession finances the Board, a precedent has been set, and the opinion would reduce the risk to our Indemnity and Fidelity Insurance.

5. Meeting with the Banking Forum on the 30 September 2014:

The purpose of the meeting was essentially to find consensus on the proposed amendments to Rule 46. A very fruitful meeting was held and save for minor requests for amendments to the proposals; the proposals were accepted in principle. The only bone of contention was the sheriff's duty to appoint the conveyancer. The final submissions will be forwarded to the Rules Board by the 15 October 2014 and colleagues will be kept informed.

The historical Municipal accounts lodged with the sheriffs have also been discussed. Kindly refer to **(Annexure D)**. Colleagues are advised that where a claim is placed against an immovable sale in execution by the City Council/ Municipality in terms of the local Government Municipality Systems Act, instead of interpleading, as the SABFS has advised, colleagues are instead advised to draw up the distribution account which should not include the municipal accounts and the distribution account should then be taken for review by any aggrieved party in terms of the High Court Rule 46 (14)(a) and Magistrate Court Rule 43 (14)(d). The review judgement would guide the sheriff as to payment of the sale proceeds.

This procedure has been confirmed by all as the correct procedure at the Banking Forum.

Colleagues are strongly advised to avoid interpleading, given the difficulty and risk we have with this procedure.

In so far as the uncapping of our commission is concerned the banks have agreed to a maximum of R35 000.00 on a sliding scale. We will keep colleagues informed as soon as the amendments come into effect.

Colleagues are also reminded that the banks require strict compliance to the conditions and there should be no hesitation by the sheriff to sign the Rule 46 (11) cancellation applications, affidavit, if its contents are correct.

We thank our colleague Johan Fourie for all his inputs.

6. **Finances:**

Thanks to the generosity of donors, we have raised the sum of R14 500.00 which has empowered us to have 2 further workshops – one in the North West (20 September 2014) and another in Gauteng (18 October 2014). We have thus far had workshops in which 284 people have participated. We are

busy negotiating with SASSETA for further finances. In the meantime should any sheriff wish to donate please do so at the below mentioned account:

Account Name: SANAPS

Bank: Nedbank

Account Number: 1001658892

Branch Code: 103610

As a reference please use the word donation, your name and jurisdiction.

7. SANAPS Website:

To date hereof we have had over 32 000 hits on the website. Are you taking advantage of this? Please use the advertising platform as this will certainly increase your potential buyer's market. SANAPS does not charge you a cent for using our advertising platform but you can charge an amount of R125.00 for a movable and R250.00 for an immovable advertisement. Whilst the website is available to the public at large, only sheriffs are allowed to advertise. For this, you need to login. If you have any difficulties please contact Mr. Ashraf Dawood on Cell: 084 786 3297 E- mail: ashrafd@mweb.co.za who will assist you in logging in and advertising.

SA Sheriffs:

We kindly wish to bring to the attention of colleagues a private website that also advertises sheriff's immovable sales in execution. The website address is: www.sasheriff.co.za.

SA Sheriff has requested us to ask colleagues to visit the website and make any recommendations to furnish inputs that would enhance their website. This will include reports, statistics & historical data. Any comments should be directed to Charleen Sardini on Tel: (011) 742- 1934 Fax: 086 669 5026 or E- mail: charleen@sasheriff.co.za.

SA Sheriffs in conjunction with SANAPS is seeking the broadest base of advertising and we encourage colleagues to co- operate.

8. Collation of Questions and Answers Raised by Colleagues:

❖ Q. Does the sheriff require a High Court order before employing the services of a locksmith?

A. No. Please refer to Ex Parte Kaefer Insulation (Pty) Ltd: In Re Kaefer Insulation (Pty) Ltd v Sharneck [1984] 4 All SA (W). However a sheriff will still require an indemnity.

❖ Q. On instructions, the sheriff has removed a vehicle by virtue of a court order. It subsequently turns out that the defendant's name is not reflected on the court order. In fact a totally different defendant's name is reflected and not merely a spelling error. The plaintiff's attorney requires the sheriff to hand back the warrant in order to delete the incorrect name, insert the correct name and have the clerk of the court endorse the amendment. Is this correct?

A. No. The attorney needs to make a substantive application to court and has to notify the 2 defendants about his intention to substitute a new name. The clerk of the court is not empowered to do this. Unless there is a compelling reason, the vehicle should also be released.

❖ Q. Can a sheriff refuse to render a service where the attorney has an outstanding account?

A. In the absence of S 14(7) order the service cannot be refused. However the return can be retained until payment has been made.

❖ Q. Sheriffs are writing and receiving a lot of e- mails as a result of the postal strike. Are you entitled to charge for these?

A. Yes. Item 12 of the High Court tariffs. Item 28 of the Magistrate Court tariffs. You are also entitled to charge a telephone call for sending an e- mail.

9. Membership:

We are now 139 members and look forward to more members joining.

Colleagues ask yourself, after having read this and our previous reports whether you are not better informed of the events, challenges and opportunities relating to the profession. If the answer is yes and you are not a SANAPS member, please spare us 5 minutes of your time by completing our attached membership form (**Annexure E**) and forward same to us. We strive for the benefit of all colleagues and your membership would strengthen this ideal. Ask yourself - who leads and who is following?

We thank all who participated in compiling this report.

Yours faithfully,
Mr. A. Makwetu.

