

SANAPS

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROFESSIONAL SHERIFFS

www.sanaps.org.za

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A

Date: 22 March 2016

Our Ref: Drafting of Guidelines – Bad Debt

Per: E-mail

The South African Board for Sheriffs

Attention. Mrs. Vanessa Botha

Drafting of guidelines for sheriffs to manage and recover bad debt in their offices

Thank you for your e- mail dated 14 March 2016.

We attach herewith an example of a copy of a letter of demand that we forward to our delinquent debtors.

The letter has not had much of an impact.

Rule 14 (7) is not of much assistance because Magistrates refuse to furnish the necessary order on the basis that the amount is too small or that the sheriff should sue.

Suing does not assist because of the costs involved.

Usage of the Small Claims Court is limited because there are provisions in the Small Claims Court Act that does not allow this court to be used as a collection of bad debts and the plaintiff is limited to the amount of summonses that are required to be issued.

Holding back the processes and returns after service/ execution is of no assistance, particularly where the defendant reacts to the summons/ warrants directly with the attorneys who settles the matter without collecting the sheriff's costs. These documents remain in the sheriffs possession as the attorney no longer requires same, the matter being settled.

Ad hoc appointments are used to circumvent payment to the sheriff.

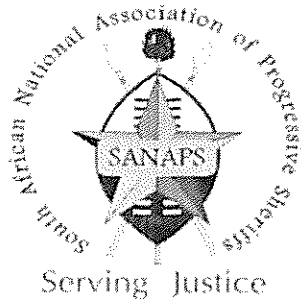
An unnecessary burden is placed on the sheriff for taxations particularly where the taxation takes place out of the sheriff's jurisdiction.

Please note that we advise sheriffs to serve all urgent matters, matters with court dates and matters that are prescribing immediately without delay and then demand payment rather than exposing themselves to a damages claim.

We believe that the best solution in resolving this age old problem is for the Law Societies to make non- payment of sheriffs accounts a punishable violation of the attorney's code of conduct. This is the case in KZN.

A. Dawood.





I D MAHOMED
SHERIFF ROODEPOORT SOUTH/DOBSONVILLE
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ROODEPOORT, 1725
P O BOX 9118, AZAADVILLE, 1750
DOCEX 28, ROODEPOORT
TEL: 011 760 2505 FAX: 011 760 6525
CELL: 072 233 3935
E-mail: iqubaldawood@gmail.com

Dear Sir /Madam

Re: Your account:

YOUR ACCOUNT IS NOW LONG OVERDUE.

1. If you have paid an amount that has not been credited, please fax me the proof of payment at 011-760-6525, quoting your account number, accept my apologies for any inconvenience caused, and read no further.

2. If you have not settled my account please note that I intend to pursue one or more of the following:

- a) Report you in terms of 14 (7) of the Magistrate Court Act 32 of 1994.
- b) Your account will be closed with immediate effect.
- c) All your future work will only be done on cash up front deposit basis.
- d) I will instruct my Attorney, no matter how small the amount is, to issue summons against you.
- e) I will blacklist you with all the other Sheriffs
- f) I will blacklist you with I.T.C as a late payer.
- g) I will address you as a "bad Payer".

I trust that you will avoid the above.

For your convenience, payment is to be made into the following account.

Account Name: Sheriff Roodepoort South

Account no : 1982300299

Bank : Nedbank

Branch : Westgate

Branch code : 198341

Ref : Account number

Please fax me proof of payment quoting your account no at 011-760-6525.

3. There will be no further notices.

Yours faithfully

I.D. Mahomed

Sheriff

From: Sheriff <contact@sheriffdptsouth.co.za>
Sent: 22 March 2016 12:46 PM
To: vanessa@sheriffs.org.za; Sheriff; Allan Murugan (sashmurugan@mweb.co.za)
Cc: 'Simone Jones'; A Dawood (ashrafd@mweb.co.za); A M Makwetu (ammakwetu@gmail.com); amanda@sheriffct.co.za; Estelle; Estelle Carelse (ecarelse@mweb.co.za); I D Mohamed (iqubaldawood@gmail.com); Johan Fourie (sheriff2@iafrica.com); Johannes Tseke Mphahlele; Lettah Makhudu; M Lephadi; Mr AL Shabalala; Ms Mmathoto Lephadi; Reyhana Laher; A K Nkhumise; amrithchabilall@ymail.com; Carey- Lee Seema; Carry- Lee Seema; June Thomas; KZN Ravind Singh; Lawrence Machete; machethel@gmail.com; Mookgopong; Ms LD Monyamane; North West G Mashele; R Rajkumar; S Gouws; Sagie; Sheriff mookgopong
Subject: Drafting of Guidelines for Sheriffs to Manage and Recover Bad Debt in their Offices
Attachments: Drafting of Guidelines for Sheriffs to Manage and Recover Bad Debt in their Offices; Letter of Demand 2016.pdf

Dear Mrs. Botha,

Kindly refer to the attachments.

Many thanks,

Yours faithfully,

Mr. I.D. Mahomed (SANAPS Secretary)

Sheriff Roodepoort South/ Dobsonville

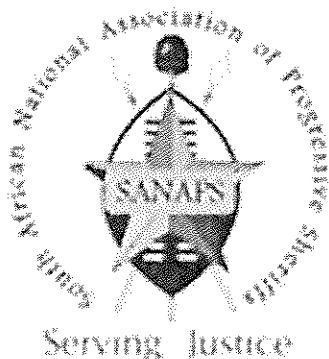
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B



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REPUBLIC OF SOUTH AFRICA

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Ref: 3/25/1 /1 DM
Enq: Blendynn Williams
E-mail: blwilliams@justice.gov.za

Mr A Shabalala
Chairperson: SANAPS
PO BOX 1290
FERNDALE
2160

Dear Mr Shabalala

SUBMISSION BY SANAPS REGARDING THE NON-PAYMENT OF SHERIFFS AND OBLIGATIONS TO SARS

Your letter dated 6 September 2016, refers.

You would recall that you have, amongst others, requested me to intercede on behalf of the sheriff's profession as your numerous meetings with the Law Societies regarding non or delayed payment by attorneys of accounts of sheriffs have borne no fruit. You also raised concerns regarding the unnecessary obligations imposed on sheriffs by SARS and National Treasury.

Following your request, I met with the Law Society of South Africa (LSSA) on 3 October 2015. Mr Jan van Rensburg, the Co-Chairperson, Mr Sam Mkhonto, a Councillor, Mr Nic Swart, the CEO, and Ms Lizette Burger, the Manager for Professional Affairs, were present at the meeting.

I re-iterated the concerns raised by SANAPS, as well as similar concerns alluded to during my interactions with SASS and the SABFS. I also informed LSSA of the practice by some attorneys to circumvent the duly appointed sheriff by requesting the court manager to consider the appointment of an acting sheriff in terms of section 5(1A) of the Sheriffs Act, 1986 (Act 90 of 1986) (the so called ad hoc sheriff).



I also emphasized that acting (ad hoc) appointments for a particular suit may only take place if an objection is raised due to a conflict of interest, or if the Minister for any other reason considers it necessary. However, it appears that this provision is being misused by some attorneys and also incorrectly used by some of the by court managers.

I also informed LSSA that there is a wrong perception amongst some attorneys and their staff that they have three months within which to pay a sheriff, whereas section 14(7) of the Magistrates' Courts Act, 1944 (Act 32 of 1944) clearly states that the sheriff may approach a magistrate to authorize a sheriff to refuse or execute a process if the magistrate is satisfied that a sum of money is due and payable to a sheriff in respect of services performed more than three months previously.

LSSA indicated that making the delayed or non-payment a misconduct offence as suggested by SANAPS, is not a viable option as previous experience has shown that the Law Society gets inundated with complaints, the misconduct proceedings are drawn out, with very little success, if any. LLSA was not aware that the non-payment of a sheriff's account was a punishable offence with the Law Society of KZN as alluded to in your letter, and have indicated that they will make enquiries in this regard.

LSSA is in agreement that section 14(7) *supra*, should not be used by attorneys as a reason for delaying payments to sheriffs. The Law Society also indicated that general complaints by the sheriffs' profession of delayed or non- payments are of no assistance and that the sheriffs' profession should provide them with specific matters in order to follow it up.

LSSA undertook to issue an **Advisory Note** to all attorneys regarding the necessity to timeously pay sheriffs. I will submit a copy of the Advisory Note to SANAPS on receipt thereof from LSSA.

I have also requested the Department to revisit the current circular regarding the appointment of ad hoc sheriffs with a view to further strengthen it and to provide more clarity/guidance to Court Managers and Registrars regarding the other reasons considered necessary. I have requested my office to submit the current circular to the SABFS with a view to obtain comments/suggestions from its members, as well as the sheriff's organisations.



I have also invited the SABFS that in those instances where a sheriff reported delayed or non-payments to the SABFS, and where the Board communicated with LSSA or the Provincial Law Societies with no response, it be brought to my attention in order to take it up with LSSA.

Regarding your concern that SARS/National Treasury imposes unnecessary obligations on sheriffs, I am of the view that sheriffs, like all other citizens, must be tax compliant. It therefore follows that sheriffs, like all other persons and businesses, should submit their tax returns as required by law, and be issued with tax clearance certificates. On this there should be no exception.

I am, however, mindful that sheriffs are *sui generis*. I am of the view that provision should be made for a mechanism and time period within which to resolve disputes/ disagreement between a sheriff and SARS, more especially as sheriffs are the only persons empowered by statute to attached and remove property within their area of appointment. It is for this very reason and following discussions between the Chairperson of the SABFS and myself, as well as representatives from the SABFS and the Department of Justice and Constitutional Development (DOJCD), that a Circular was issued by the DOJCD in terms of which a mechanism was put in place to resolve tax clearance matters within a period of six months. A copy of the said Circular is attached.

I have been informed by Ms Louraine Rossouw, the CFO of DOJCD, that notwithstanding this "grace period" there are still a number of sheriffs who are not tax compliant. These sheriffs will not be able to continue to serve and execute court documents for government departments and other statutory bodies that fall within the PFMA, as the departments/ statutory bodies are legally obliged to comply with the prescripts issued by National Treasury/SARS.

I have been informed that one such requirement by National Treasury is for a sheriff to be registered on the Central Supplier Data Base. Legal Aid South Africa (LASA) informed me of the difficulties that they are currently experiencing as a large number of sheriffs (about 90) are not registered on the Central Supplier Data Base resulting in over 1000 processes that cannot be served by the duly appointed sheriffs. They must therefore make use of acting appointments with resultant delays and additional costs. I have been informed by LASA that one sheriff blatantly refuses to register as the sheriff is of the view that the number of processes received from LASA does not warrant all the effort of registering on the data base.



Yet, the same sheriff who is refusing to register has a monopoly in that he/she is the only person empowered by law to serve and execute the processes in his/her area of appointment.

I would encourage all sheriffs who have not register as yet to do so without delay. Where they encounter challenges to access the data base, sheriffs' organisations such as SANAPS and SASS should assist those sheriffs.

I have, at a meeting with the SABFS on 10 October 2016, informed the Board of the above matters.


I also informed the Board that I informally raised the tax clearance issue with Mr Mcebisi Jonas, the Deputy Minister of Finance.

Ms Charmaine Mabuza, the Chairperson of the SABFS indicated that they have on various occasions engaged with officials from SARS/National Treasury and that it will be beneficial for the meeting with Deputy Minister Jonas if the Board provides me with a consolidated response of the most common challenges experienced by the sheriffs' profession.

I will on receipt of the information from the SABFS arrange a meeting with Deputy Minister Jonas, to which the SABFS will also be invited to. SANAPS will be informed of the outcome.

I trust that the above information will be of assistance to SANAPS.

Yours faithfully.


Mr John Jeffery, MP
Deputy Minister: Justice and Constitutional Development
Date: 3/11/16

CC Ms Charmaine Mabuza : Chairperson of the SABFS

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NO: JR2018/15

In the matter between:

**RUSTENBURG PLATINUM MINES
LIMITED**

Applicant

and

GLADWIN MOKHELE

First Respondent

COMMISSIONER DONALD KGALAKE

Second Respondent

NKADIMENG N.O

COMMISSION FOR CONCILIATION,

Third Respondent

MEDIATION AND ARBITRATION

SECURITY BOND

WHEREAS an Arbitration Award was issued by the Second Respondent under the auspices of the Third Respondent under case number **LP4504-15** on **20 September 2015** in terms of which the Applicant was ordered to reinstate Mr Gladwin Mokhele on or before 19 October 2015 and to pay him an amount of **R239 660.00 (two hundred and thirty nine thousand, six hundred and sixty Rand)**, being the back pay from 21 May 2015 to 18 October 2015.

AND WHEREAS the Applicant has instituted, before the above Honourable Court, an Application under the above case number to review and set aside the Award ("**the Review Application**");

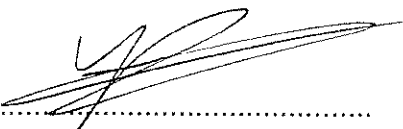
AND WHEREAS Section 145(7) of the Labour Relations Act 66 of 1995 (as amended) permits the Applicant to furnish security to the satisfaction of the Court, in which event the operation of the Arbitration Award is automatically suspended.

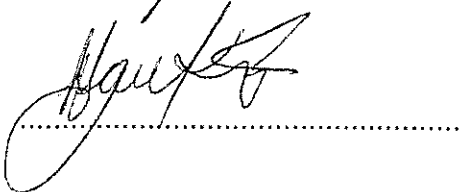
AND WHEREAS Section 145(8) of the Labour Relations Act 66 of 1995 (as amended) requires, unless the Court directs otherwise, security to be furnished in the case of an order for reinstatement, to be equivalent to 24 (twenty four) months' remuneration.

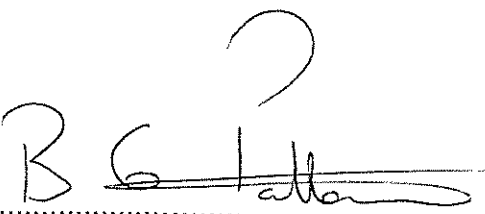
NOW THEREFORE, I the undersigned **BRIAN GEORGE PATTERSON** of **EDWARD NATHAN SONNENBERGS INC** confirm that **EDWARD NATHAN SONNENBERGS INC** holds, in its trust account, and is held firmly bound to **MR GLADWIN MOKHELE**, the First Respondent, to discharge for and on behalf of the Applicant a sum not exceeding **R1 150 368.00 (one million, one hundred and fifty thousand, three hundred and sixty eight Rand)**, being an amount equivalent to 24 (twenty four) months' remuneration, on demand and within 15 (fifteen) Court days of the Review Application, or any Appeal pursuant thereto, having been finally determined and being dismissed by the above Honourable Court, or the Appeal Court (as the case may be), and should the Applicant fail to comply with the terms of the Award when called upon by the First Respondent or when required by law to do so.

Dated at SANDTON on 17th day of August 2016.

Witnesses

1. 

2. 



Signature

BRIAN GEORGE PATTERSON

.....
Print name and Surname

.....
Signature

.....
Registrar of the Labour Court

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	70. Bert Qhuidon Miuqhyl Geerts	Richmond	asgmilling@gmail.com	Tel: 033 007 0658 Cell: 082 872 4224
	71. Ms. Y. S. Martin	Lower Umfolozi	yvonne@sheremp.co.za	Tel: 035 772 3532/ 792 6698/ 792 5312 Cell: 082 417 9150
	72. Mr. D. Liebenberg	New Hanover/ Maphumula	Sheriffdan1@gmail.com	Tel: 033 501 1821 Cell: 082 410 1147
	73. Mrs. Y. Thompson	Madadeni	sheriff.madadeni@newcastle.co.za	Tel: 074 181 3454/59 Cell: 082 853 1451
Western	74. Ms. H. Mc	Mitchells Plain South	sheriffmpsouth@gmail.com	Tel: 021 393 3171

Cape	Helm			Cell: 084 032 3314
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	78. Ms. S. du Toit	Mossel Bay	jm.matthee@gmail.com / baljumsb@intellect.co.za	Tel: 044 690 3143 Cell: 082 772 3216
	79. Mr. S. Ismail	Kuilsriver North	shafiekismail99@gmail.com	Tel: 021 200 6867 Cell: 082 786 0406
	80. Mr. N. Ntsibantu	Cape Town West	admin@sheriffctwest.co.za	Tel: 021 465 7671 Cell: 082 662 7032
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	93. Mr. R. Lewis	Stellenbosch	stellenbosch@sheriffnet.co.za	Tel: 021 887 3839 Cell: 084 919 9090
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	Roberta Vlotman			
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RESOLUTION

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS (SANAPS)

At the SANAPS National Working Committee meeting held on 15th July 2016 the meeting RESOLVED THAT:

1. A Memorandum of understanding between SANAPS and Unoos Adam and Clint Pegram be hereby concluded on the following terms:
 - 1.1 SANAPS requires a Sheriff's Management Solution to be developed by Unoos Adam and Clint Pegram.
 - 1.2 The ownership of the source code for the solution would always remain with SANAPS.
 - 1.3 SANAPS will in its absolute discretion decide who may share the solution and at what costs.
 - 1.4 SANAPS at this stage require a tentative quotation from Unoos Adam and Clint Pegram as to how much it would cost for such a solution to be developed and the time frame for completion of each of the modules of the solution.
2. The solution must, **amongst others**, consist of the following:
 - 2.1 A word processing module with standard and non- standard features such as a drop box and editing features.
 - 2.2 An accounting module that will deal with both business and trust accounts.

- 2.3 A module that would enable registration of processes in all courts as required by law.
 - 2.4 A module that would enable return of services for all courts as is required by law.
 - 2.5 A module for auctioneering as required by law.
 - 2.6 A business intelligence module that gathers operational data and provides statistical data enabling the sheriff to facilitate and enhance the working operations of his/ her office.
 - 2.7 A secure platform for data backup, fail- over and disaster recovery.
 - 2.8 A module that allows deputies completing instant returns on hand held devices.
 - 2.9 The solution must allow the secure access of sheriff information anywhere, anytime.
 - 2.10 A module that will allow third party stakeholders such as attorneys to view electronic communications, progress on returns, invoices and statements, etc.
 - 2.11 The module needs to be updated, amended and enhanced from time to time as is required by the profession and possibly through latest technology.
3. It is agreed between the parties that nothing should be developed until a price and contract has been agreed to by the parties.
 4. Messrs I D Mahomed and Ashraf Dawood are hereby authorised to act on behalf of SANAPS and do whatever is necessary to finalise the development of Sheriff's Management Solution.

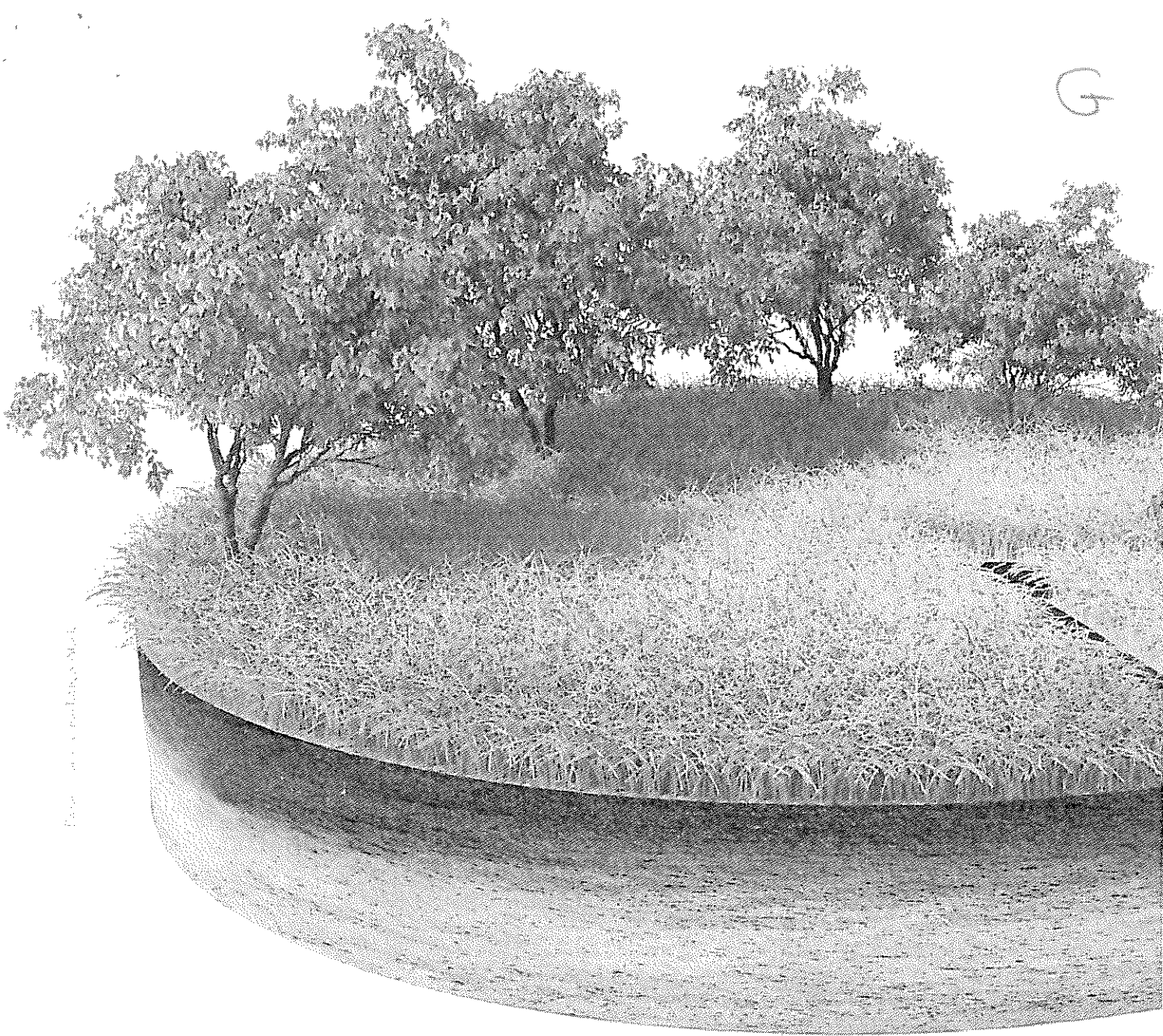
Signed by:



Ms ML Lephadi
SECRETARY: SANAPS

Date: 8 August 2016





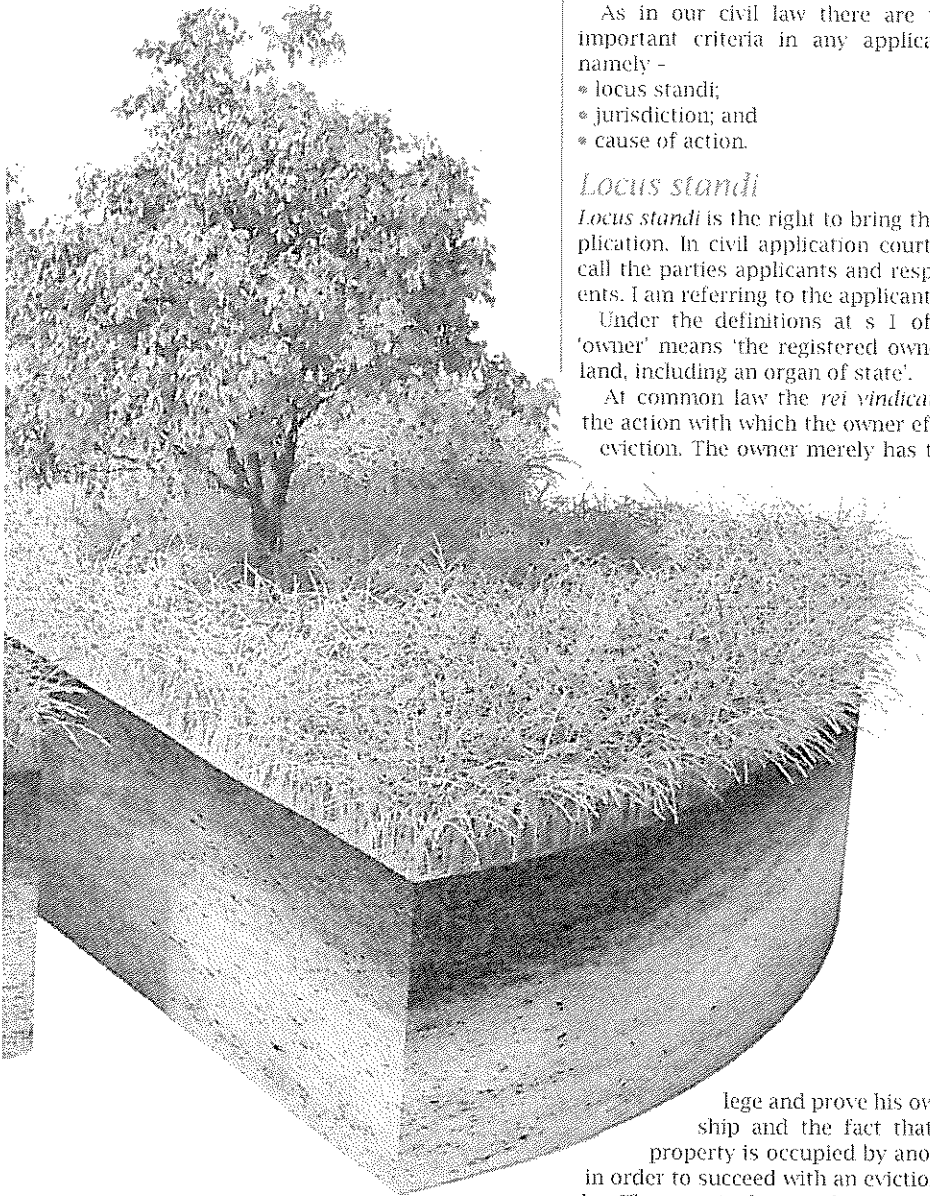
Having a slice of PIE – *understanding the Act*

By
Mohammed
Moola

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) came into operation on 5 June 1998. PIE was promulgated to provide for the prohibition of unlawful occupation and to put in place fair procedures for the eviction of unlawful occupiers who occupy land without permission of the owner or person in charge of such land.

PIE also provides that no one may have their home demolished or be evicted without a court order after considering all the relevant circumstances.

PIE applies to all evictions from buildings or structures utilised for dwelling



- * households headed by women.
- As in our civil law there are three important criteria in any application, namely -
- * locus standi;
 - * jurisdiction; and
 - * cause of action.

Locus standi

Locus standi is the right to bring the application. In civil application courts we call the parties applicants and respondents. I am referring to the applicant.

Under the definitions at s 1 of PIE, 'owner' means 'the registered owner of land, including an organ of state'.

At common law the *rei vindicatio* is the action with which the owner effects eviction. The owner merely has to al-

lege and prove his ownership and the fact that the property is occupied by another, in order to succeed with an eviction order. The onus is then on the respondent to allege and prove a right to stay in possession.

The owner need not, in addition to his ownership allege or prove that the occupiers occupation is unlawful (see *Graham v Ridley* 1931 TPD 476 and *Chetty v Naidoo* 1974 (3) SA 13(A)).

Ownership in the case of the *rei vindicatio* is proved by attaching a copy of the title deed or deeds office search.

PIE defines 'person in charge' as: 'A person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question.'

Section 4(1) of PIE states 'an owner or person in charge of land' may apply for eviction of an unlawful occupier.

PIE defines the 'unlawful occupier' as 'a person who occupies land without the express or tacit consent of the owner or

person in charge'.
The following persons have *locus standi* -

- * the owner of the land;
- * the executor where the owner has died;
- * the *curator bonis* of the owner in instances where one has been appointed;
- * the person in charge of the property - a person who has or at the relevant time the legal authority to give permission to a person to enter or reside on the property in question;
- * a lessee; or
- * a person acting as an agent for the owner. This does not automatically include an estate agent. For an estate agent to have *locus standi*, he must have power of attorney (see *Manguung Local Municipality v Mashale and Another* 2006 (1) SA 269 (O)).

The lessor need not be the owner of the property let and applicants in common law are, therefore, not limited to the owner.

The person, other than the owner must prove *locus standi*.

Jurisdiction

Section 1 under PIE's definitions refers to 'court' and states: 'Any division of the High Court or the magistrate's court in whose area of jurisdiction the land in question is situated'.

The court must ascertain that the property is residential property and whether the structure concerned performs the function of a dwelling.

The High Court and the magistrate's court have jurisdiction and the amount of the rent and/or the value of the occupation is irrelevant (see s 4(1) of PIE and also *Nduna v Absa Bank Ltd and Others* 2004 (4) SA 453 (C) at 457C).

The word 'proceedings' in s 4(1) of PIE includes proceedings by way of application. Applications may therefore be brought in the magistrate's court without the issuing of a summons and a final order may be granted on application.

Cause of action

The procedural requirement for PIE laid down in s 4(2), which provides that at least 14 days before the hearing of the proceedings contemplated in subs (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction. This is commonly known as an *ex parte* application (see *Cape Killarney Property Investment (Pty) Ltd v Mahamba and Others* [2001] 4 All SA 479 (SCA)).

Eviction proceedings cannot commence unless the lease has been cancelled. Study the lease to determine the procedure. It may be necessary to deliver a notice to place the tenant *in mora*.

purposes (see *Ndlovu v Nqobco; Bekker and Another v Jika* 2003 (1) SA 113 (SCA)).

Structures that do not form the function of a dwelling do not fall under PIE (see *Shoprite Checkers (Pty) Ltd v Jardim* 2004 (1) SA 502 (O) at 506E - 507E and *Kanescho Realtors (Pty) Ltd v Maphumulo and Others and three similar cases* 2006 (5) SA 92 (D) at 94F).

If commercial property is utilised for dwelling purposes, PIE applies, however, holiday homes do not fall under PIE (see *Barnett and Others v Minister of Land Affairs and Others* 2007 (6) SA 313 (SCA) at 328B - C).

PIE also requires special consideration be given to -

- * the rights of the elderly;
- * the rights of children;
- * the rights of disabled persons; and

A notice of cancellation must be clear and unequivocal and only takes effect from the time it is communicated to the relevant party (see *Morkel v Thornhill* (unreported case no A105/2009, 4-3-2010) (Hancke J)).

If the lease is for a fixed term, determine if the Consumer Protection Act 68 of 2008 (the CPA) applies to the lease. Section 14 of PIE limits the landlords' right of cancellation to the giving of 20 business days written notice of a breach and cancellation may only follow on failure by the tenant to rectify the breach.

If the CPA applies bear in mind that if the lease has expired, it continues automatically on a month to month basis unless specifically cancelled.

Why must the municipality be cited?

Jafta J in the matter of *Occupiers of Erf 101, 102, 104 and 112 Shorts Retreat Pietermaritzburg v Daisy Dear Investments (Pty) Ltd and Others* [2009] 4 All SA 410 (SCA) at p 411 held that the Municipality is and remains a party with an interest in the outcome of proceedings and therefore needs to be joined as party to the proceedings.

The court will be called on before service of the notice to consider the contents of the notice and the suggested manner of service and to endorse his or her approval or disapproval thereof on the application.

Once the *ex parte* order has been granted the s 4(2) notice may be served on the respondent(s) and the municipality. The service must take place in accordance with the directions of the court and at least 14 days before the hearing takes place. The 14 day period refers to ordinary days and not court days.

What to look for in the s 4(2) notice?

The notice must comply with the requirements of s 4(5), which are set out below:

(a) state that proceedings are being instituted in terms of subs (1) for an order for the eviction of the unlawful occupier;

(b) indicate on what date and at what time the court will hear the proceedings;

(c) set out the grounds for the proposed eviction; and

(d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid.

The notice may also advise the recipients that they should inform the court of facts relevant to the impact which an eviction would have on the rights and needs of the occupiers, particularly when the occupiers are elderly persons, children, disabled persons and households headed by women (see s 4(6)). There is

no authority for this but it is advisable.

Procedure after order for service is granted by magistrate

The applicant or their attorneys will ensure that the *ex parte* application together with court's order for service and notice of motion and affidavit with annexures is served personally by the deputy Sheriff on the respondent(s). Service on the local municipality may also be effected by hand.

All the documents are then filed at court.

The applicant is required to place the matter on the roll for hearing by giving the clerk of the court notice of set down five days before the day on which the application is to be heard.

Opposing affidavits and replying affidavits may be exchanged between the parties and served and filed.

Return date

On the day of the hearing of the eviction application, the court will hear evidence on the equity provisions as set out in s 4(6) with regard to elderly people, children, and households headed by women. The court must then in the light of all the facts placed before it make an order as to what it is just and equitable to grant the order for eviction by taking into account the provisions of subs 4(6), 4(7), 4(8) and 4(9) of PIE.

Settlement

In the event of the matter being settled an order may be taken in the form of s 4(8). Refer to the form attached as a precedent to be used, which makes the specific provision that the parties are aware that the order is not appealable (see *Fourie NO v Merchant Investors (Pty) Ltd and Another* 2004 (3) SA 422 (C) 424 H - J and s 83 Magistrates' Courts Act 32 of 1944).

Urgent applications

Only an urgent interim application for eviction may be granted under the PIE Act. Urgent applications for eviction may not be granted. This is governed by s 5(1) of PIE.

The following must be satisfied for such an order of eviction to be granted -

(a) ... real and imminent danger of substantial injury or damage to any person or property ... ;

(b) the likely hardship to the owner or any affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier; and

(c) there is no other effective remedy available.'

General matters of interest

* Defaulting mortgagors - a defaulting occupier after the sale of the property in

execution can only be evicted in terms of PIE. Unlawful occupation is not at the fall of the hammer but only after registration of transfer (see *Sedibe and Another v United Building Society and Another* 1993 (3) SA 671 (T)). The Sheriff acts as executive of the law until the transfer is effected. Be wary of the conditions of sale of a Sheriff where properties are sold in execution.

* Spouses - where one spouse seeks to evict the other and no principle in law justifies continued occupation, the procedure of PIE should be followed (see *Seaton v First National Trust Asset Management and Trust Company (Pty) Ltd and Others* (D) (unreported case no 3878/2005, 22-5-2008) (Nitshangase J)).

* Land invaders and informal settlement occupiers - ensure that all occupiers are identified as far as possible and effect service properly.

In all cases where the right of occupation has not been terminated such as in case of a lease, a reasonable notice to vacate should be given. A period of 30 days is usually regarded as reasonable unless special circumstances apply.

Mandament van spolie is available to unlawful occupiers that are forcefully removed by an owner without a court order (see *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality and Others* 2007 (6) SA 511 (SCA) at 519 - 522). The court ordered replacement of destroyed structures. In the case of *Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another* 2013 (1) SA 323 (CC) at para 30 the Constitutional Court confirmed that the *mandament* '... should not serve as the judicial foundation for permanent dispossession ...'.

Mohammed Maalla BProc (UKZN) is a senior magistrate at the Wynberg Magistrate's Court in Cape Town.

If you thought this article was interesting, read the following article:

Step-by-step guide to residential housing eviction proceedings in the magistrate's court (2016 (July) DR 26)

You are welcome to send your views to derebus@derebus.org.za

H

... they are linked in some

McAlpine, who had celebrat-

... found on May 10, about 2km from the mall.

... can't rule out the possibility of a serial offender."

'Get out!' township tells white speculator

PHILANI NOMBEMBE

PENNY Thomson has learnt the hard way that, for whites, trying to be a property mogul in Khayelitsha is a costly fantasy.

Thomson bought six repossessed homes in Khayelitsha and Philippi, in the Western Cape, three years ago. But four of the previous owners are defying court orders to vacate the homes — and the community has made it clear that white landlords are not welcome. The properties have a combined value of about R1.2-million.

Meanwhile, the City of Cape Town has billed Thomson tens of thousands of rands for water and rates and she has spent more than R50 000 on legal fees to gain access to her assets. She has also taken legal action against the sheriff for failing to enforce an eviction order.

"When ... an eviction takes place in Khayelitsha, it is fraught with danger," she said.

"If the property is not protected with armed security, as soon as the sheriff leaves the evicted occupants ... reoccupy the property. The owner must

then lay a trespassing charge and take legal action ... which is a lengthy process."

The defiant Khayelitsha residents are supported by an anti-eviction organisation, Vukani ma-Afrika Kwanele, led by Solomon Nywebeni, the PAC's deputy chairman in the area.

"You are a white settler, a product of thieves who robbed us of our land," said Nywebeni of Thomson. "To hell with the sheriffs: they are puppets. Our people must be given these homes back as part of land redistribution."

Thomson, who has lodged a rates dispute with the city because she is not benefiting from the properties, claims that one of the occupants — Easy Nofemela, who killed American student Amy Biehl in 1993 — threatened her life. "[He] told me directly [that] he knows where I live, insinuating violence should I pursue my claim to occupation. Easy told me that white people have no right to own land in Khayelitsha. This view was publicly voiced by the PAC in a court hearing." Nofemela declined to comment



HARD TIMES: Businesswoman Penny Thomson in Khayelitsha, Cape Town

Thandeka Mngantsa, who lives in another of Thomson's homes, is running a crèche and letting out rooms. She said the house had belonged to her mother, who died in 2014, and that she and her family had been in talks with Thomson to buy the property.

Sickly Nokuzola Mnjanga, 62, has been given until December to vacate Thomson's third Khayelitsha house. Mnjanga

who has lived in the home for more than a decade, was boarded in 1996 from her job as a cleaner at Groote Schuur Hospital. "My house was auctioned when I fell behind on the bond. I live on a state pension; I have nowhere to go," she said.

ANC ward councillor Patrick Mngxunyeni condemned Nywebeni's stance, saying: "The discriminatory element is wrong."

Regarding the failure to evict former owners, he said he knew of more than 15 such cases, and it was "difficult" for the Khayelitsha sheriff, who had numerous orders to execute.

"We can hardly intervene as councillors because we risk having our own homes torched by the community."

Charmaine Mabuza, chairwoman of the South African Board for Sheriffs, said evicting Mngantsa proved difficult as there were children involved.

But she said Thomson failed to arrange "security" — to prevent reoccupation — and therefore cancelled the process. The eviction has been scheduled for Thursday.

I

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AUTHOR PROFILE



Antoinette Slabbert

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So this is money paid for goods at auctions? I thought the auctioneer held it in trust - never thought sheriffs handled money and accounts....

- by Louise BCook

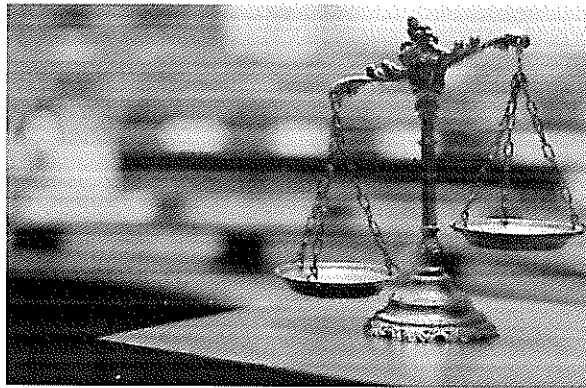
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South Africa

Dear SAPS, please investigate the sheriff

Money missing, trust account frozen.

Antoinette Slabbert / 18 November 2016 00:05



The South African Board for Sheriffs has laid charges of fraud and theft against the Sheriff for Alberton on the Gauteng East Rand after an inspector found in September that there was money missing from her trust account.

This comes as the Board dealt with 2 530 informal and 207 formal complaints against sheriffs in the previous financial year. In its annual report the Board states that the common areas in these complaints are theft of trust money, delay in payment of trust money, delay in serving processes (court documents) and delay in responding to correspondence.

Proceeds of sheriffs auctions, which often include fixed property to the value of millions, are paid into sheriffs' trust accounts and should ultimately be paid to the creditors of insolvent estates. Misappropriation could impact such transactions and raise legal questions about ownership that might only be resolved after protracted legal action.

Moneyweb has been told that at least one client of the Alberton sheriff Zodwa Seti is allegedly missing R2 million that was supposed to be held in trust in relation to a property transaction and that queries relating to her conduct total almost R17 million. The client asked not to be named.

Seti has since resigned as sheriff and a former employee told Moneyweb many people are looking for her. He says he also lent her money to help her pay salaries, but has not been able to recover the loan.

Moneyweb has not been able to get hold of Seti as her cell phone and landline numbers seem to have been disconnected.

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The trust account has been frozen in terms of a court order, but Moneyweb has been told that clients without knowledge of the situation are still paying money into the account. Seti doesn't have access to the account anymore, but neither do the clients, which results in prejudice due to transaction delays.

In the meantime, the department of Justice has appointed the sheriff of Germiston North to act in Alberton. The website of the Alberton sheriff has, however, not been changed and anybody doing a Google search or accessing the website would be under the impression that Seti is still the sheriff.

Seti's resignation places her outside of the jurisdiction of the Board. The Board is nevertheless "investigating claims against the Fidelity Fund as a result of claims of misappropriation of trust funds by Ms Seti. The claims have also been lodged with our indemnity insurer."

Moneyweb has been told that the department of justice is managing the transfer of Seti's trust account to the acting sheriff and that it should be released soon. The transfer is also expected to address the out-dated website.

The board stated in its annual report that the high volume of complaints about the country's 285 sheriffs might indicate poor administration and systems in sheriffs' offices. Many queries are resolved by intervention by the board.

69% of the formal complaints were closed during the year. A total of 48 sheriffs were charged with improper conduct for failure to submit their trust audit reports. More than 40% of them pleaded guilty and paid fines totalling R154 000. These cases did not lead to prejudice to the public and compliance improved to a point where 99% of the sheriffs had submitted their reports by the end of last year.

Formal complaints that cannot be resolved result in disciplinary hearings.

The Board has recently improved its systems to include proactive inspections of each sheriff's trust account at least once every three years in an effort to protect the public, the board stated.

Recent action by the board resulted in the conviction of two sheriffs.

The former acting sheriff for Sasolburg Thulane Simelane was arrested in April this year after the Board discovered that almost R2 million was missing from the trust fund. "Thereafter, we were informed that the National Prosecuting Authority has withdrawn the charges and despite making enquiries with the NDPP, the reasons for the withdrawal of the charges are unknown to us.

"The Board is investigating claims against the Fidelity Fund as a result of claims of misappropriation of trust funds by Mr Simelane. The claims have also been lodged with our indemnity insurer", the Board stated.

The Board in April brought criminal charges of theft against Liezl Gertze, sheriff of Bredasdorp for alleged theft of trust monies. The board also applied to the deputy minister of Justice for her removal as sheriff after two inspections of her office to verify complaints received for failure to pay over trust monies. "A disciplinary inquiry was held and she was found guilty and it was recommended she be removed from office", the board stated.



Moneyweb Investor Issue 19

Despite the best efforts of some politicians, South Africans carry on regardless. Nowhere is this more evident than at [Yoco](#), a young, promising and innovative start-up. Read about it in this month's issue of [The Moneyweb Investor](#).

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Sheriff Camperdown High & Lower Courts

OUR REF:
YOUR REF:

J

22 October 2014

Dear Sir/Madam

SHERIFF'S TRUST ACCOUNT

When I was appointed in December 2012 I had a high hope to make a success of this office, however that did not surface. I write to inform you that I have caused a problem in the office trust account.

After several attempts of trying to acquire the Capital I did not succeed in acquiring one. I started my office in debt through negotiations with several creditors after a few months the debt increased and became too high, caught in a conner with no way out I than took out funds in the trust account on several occasions and used them on business operation. The total calculation of those funds is R507500.00. I did pay back R60000 leaving a balance of R447500.

It was never my aim to compromise neither the office nor the profession but now I have put myself in dilemma that I cannot save myself from at the moment. In the past year I applied for loans with several banks and loan providers but with a poor credit score I was not success full. I have not given up hope as it is not in my nature to give up. I am not willing to quit my job as I do want to correct my mistake also I pray I do not lose my job.

I am there for bagging the board to give me chance to try and gather these funds and repay each cent that I have took in the past year.

Yours faithfully



Ms M.Z. Sibisi
SHERIFF CAMPERDOWN H & L COURTS



23 November 2016

Per Email

Mr. Andrew Shabalala
Chairperson
SANAPS
Email: andrewshabalala@gmail.com

cc. Ms M Lephadi
Email: lephadi@sheriffrandburgsw.co.za

Dear Mr Shabalala

RE: PI INSURANCE

We acknowledge receipt of your letter dated 18 November 2016, the contents of which have been duly noted.

The information provided to you by Protecktum and Primak as noted in your letter is the correct position. The SABFS has always subsidised sheriffs who took out insurance with the authorised broker. STP Brokers have been awarded the bid by the Board following a competitive bidding process. The SABFS's has to comply with supply chain management policies and processes before we can expend money. This is in line with the PFMA and PPP Act. The SABFS's supply chain management processes are stringently audited and as you are aware we have received clean and unqualified audit reports.

Below is the Board decision:

Resolution

The Board approved STP brokers as the preferred broker for PI Insurance. The Board resolved to continue to subsidise Sheriffs who used the preferred broker.

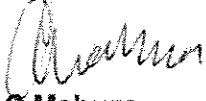
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88 Loop Street, Cape Town. PO Box 15223, Vlaeberg 8018
Tel: 021 426 0577, Fax: 021 426 2598, E-mail: contact@sheriffs.org.za
www.sheriffs.org.za

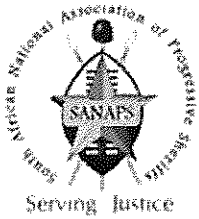
South African Board for Sheriffs - Established Act 90 of 1986
Mrs C Mabuza (Chairperson), Adv H Mohamed, Mrs P Roodt, Mr T Tembe, Ms N Soga,
Mr L Mashapa, Prof L Fernandez, Mr M Magida, Ms N Skosana, Ms M Lephadi, Mr I Klynsmith. Ms K Sigenu

The intention behind the SABFS securing a broker has been set out in our correspondence to industry. Sheriffs are free to take out insurance with providers of their choice, however this will not be subsidised by the SABFS.

Sincerely



Mrs C Mabuza
Chairperson
South African Board for Sheriffs



SANAPS

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS

www.sanaps.org.za

SECRETARY: M LEPHADI P.O. BOX 1290 FERNDAL 2160 TEL: 011 7910771 FAX: 011 7910484 CELL: 0828287452 E-MAIL: Lephadi@sheriffrandburgsw.co.za

Date: 23 November 2016

Our Ref: PI Insurance Subsidy

Per: E- mail

Dear Colleagues,

PI Insurance Subsidy

Mrs. Snell has indicated that the only insurance the Board will subsidise is with its preferred insurance that is STP Brokers.

We have also been informed by STP Brokers that their quoted premium was based on the assumption that all sheriffs would purchase their product and if fewer sheriffs do this, there is a possibility that the premiums would be re-quoted, understandably, at a higher rate.

What would the Board's position be that after having been re- quoted, sheriffs opt for the unpreferred brokers? The new brokers – understandably by quoting at a higher rate will therefore possibly not have met the bidding criteria. Not having met the criteria, there is no preferred bidder. Does this mean that the Board will subsidise no one and will benefit on the subsidies meant for the smaller sheriffs? We are not satisfied with the Board's response as to the subsidy arrangements and intend to take this further.

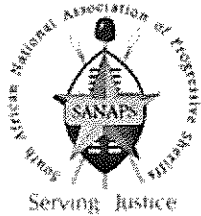
In the interim it is now left up to each sheriff to choose which insurance best suit their needs given the looming deadline of the 30 November 2016.

Should there be any further queries kindly contact us preferably via e- mail.

NB: Kindly take note of the Secretary's new e- mail address.

Yours faithfully,

Mr. A. Shabalala.



SANAPS

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS

www.sanaps.org.za

SECRETARY: M LEPHADI P.O. BOX 1290 FERNDALE 2160 TEL: 011 7910771 FAX: 011 7910484 CELL: 0828287452 E-MAIL: Lephadi@sheriffrandburgsw.co.za

M

Date: 18 November 2016

Our Ref: PI Insurance

Per: E-mail

The South African Board for Sheriffs

The Chairperson

For Urgent Attention: Mrs C. Mabuza

Dear Madam,

PI Insurance

We address you on behalf of our members.

Our members inform us that they are in turn informed by Protektum and Primak Brokers that the Board will no longer subsidise those sheriffs who were previously subsidised, hence the increase in premiums.

We are given to understand that the said subsidy will only operate if the sheriff was to contract with STP Brokers. If this is the case we find this particularly disturbing in that:

- In the Board's letter dated the 27th October 2016 it is categorically stated: **"Professional Indemnity Insurance will still be subsidised by the Fidelity Fund for smaller offices, as was the practice in the past."**
- The refusal to subsidise Primak and Protektum Brokers has never been discussed with the profession nor has the profession been informed of this change unilaterally made by the Board.

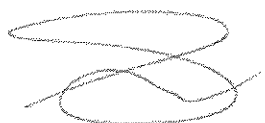
We also wish to bring to your attention that it is our understanding that this act by the Board is a contravention of chapter 2 of the Competition Act under the heading of Abusive Dominance which we intend to take further.

If the subsidy re- arrangement is correct as we have stated, please notify us urgently (given the 30th November 2016 deadline) what the Board expects from sheriffs and how is this to be rectified?

We trust that you will deal with this matter extremely urgently and await your response.

Yours faithfully,

Mr. A. Shabalala.

A handwritten signature in black ink, appearing to be 'A. Shabalala', written in a cursive style.

Sales in execution:
The conveyancer and the sheriff

By Johan Fourie

Sheriffs are inundated with various interpretations by attorneys and banks when it comes to the role of conveyancers appointed by the execution creditor to transfer immovable property sold in execution.

The sheriffs' profession and banks have made representations to the Rules Board in respect of the revision of the form 21 conditions of sale in execution of immovable property, as contained in the first schedule to the Uniform Rules of Court for the High Court. Various other representations have been made regarding possible changes to r 46 of the Uniform Rules of Court that will be considered in the Civil Justice Review Project of the Justice Department.

The abovementioned recommendations to the Rules Board do not, however, deal with many other issues relating to the correct procedures that should be followed by conveyancers and sheriffs in regard to the payment of the proceeds of the sale in execution and transfer, which seem to be locked in a quagmire of misconceptions by some attorneys, conveyancers and sheriffs.

Simply put, the execution creditor has the right to appoint the conveyancer. However, while this appointment is by the execution creditor, who is not a party to the execution sale contract, some conveyancing attorneys think that they need to

answer to the execution creditor and not the sheriff on issues relating to the transfer following a sale in execution.

This perception is incorrect as the conveyancer must answer to the sheriff and, in doing so, all the conditions of sale, as well as the requirements of the rules of court, should be complied with before transfer is authorised by the sheriff and the relevant documents are lodged at the deeds office by the conveyancer.

To get to the root of the problem, it is necessary to analyse the procedures that should be followed after a sale in execution.

Calculating the amount of the debt

The execution creditor's claim is calculated from the writ of execution issued in terms of the judgment and the sale in execution is conducted in terms of this authority.

There is no similar High Court provision to s 66(4) of the Magistrates' Courts Act 32 of 1944 that provides for an attachment of immovable property to lapse after one year if the sale in execution has not occurred by then. Attachments of fixed property in terms of r 46 of the Uniform Rules of Court do not, therefore, lapse. This means that the original writ will undoubtedly become outdated in financial terms should the sale not take place immediately after judgment.

In practice, in the vast majority of sales in execution, the execution creditor will, over a period of time from the judgment and attachment of the property by the sheriff, consider arrangements made by the debtor to prevent the attached property being sold.

In some cases arrangements are made in terms of which vast sums of money are paid by the debtor and accepted by the execution creditor to stay the procedures.

This is done to accommodate the debtor and prevent the property being sold. In my

opinion, this is good practice and is for the benefit of both the debtor and the execution creditor.

However, this practice causes a severe problem as there is no mechanism in the Uniform Rules of Court whereby this exchange of money is officially recorded.

These payments or costs are not recorded on the writ or in the court file. Further, the sheriff is not informed of this exchange of money and the quantum thereof. The sheriff is simply informed not to proceed with the sale and the sale is stayed. The attachment is not withdrawn and the execution creditor has the option to proceed at a later stage if necessary.

Should the debtor keep to his undertaking, this may not be problematic. However, should the execution creditor decide to proceed with the sale at any time after such payment and arrangement, it becomes difficult for the sheriff to determine the correct amount of the debt as the judgment amount in the writ is no longer a true reflection of the indebtedness of the debtor.

In other words, the amount owed to the execution creditor in terms of the original judgment is no longer correct and this writ no longer serves as a trusted source for the sheriff in determining the judgment debt when the sale is conducted and distribution of the proceeds of sale is finalised.

This dilemma in the High Court is addressed in r 36(4) and (5) of the magistrates' courts rules, which provide for the writ to be reissued after receipt of payments after the judgment and before a sale takes place. The High Court rules do not contain such a provision and some recommendations have been made to the Rules Board in this regard.

I acknowledge that an execution creditor with a High Court judgment may issue as many writs as necessary under the same judgment but I do not believe this route will solve the problem.

As long as this is not resolved, the problem will persist and must be addressed in a reasonable interim procedure to ensure that the interests of the debtor, as well as the creditor, are protected.

Payment of proceeds

The payment and distribution of the proceeds of the sale in execution constitute a further bone of contention, which is sometimes widely misunderstood by transferring attorneys and sheriffs.

The sheriff is mandated by the rules of court to deal with the proceeds of the sale and should not pay this money to the execution creditor or another beneficiary before transfer has taken place (see r 46(14)(a) of the Uniform Rules of Court).

The sheriff shall receive a 10% deposit and either receives the balance of the purchase price plus interest on transfer or, should payment be made earlier than transfer for any reason, the proceeds shall be in the hands of the sheriff and not the conveyancer.

The provision in r 46(14)(a) that the proceeds can be transferred into the account of the magistrate of the district has been overtaken by s 22 of the Sheriffs Act 90 of 1986, which requires that the sheriff shall pay all funds received into his trust account. The Rules Board has been requested to amend the rules by removing the section requiring payment to the magistrate from r 46 (this should have been done at the time of the enactment of the Sheriffs Act).

Some conveyancers have developed a practice of collecting the purchase price or the balance thereof and depositing it into their trust accounts without the knowledge or instruction of the sheriff.

In some instances, the security for the balance of purchase price, which should be handed to the sheriff and which requires payment of the outstanding money to the sheriff, is not handed to the sheriff but is retained and the proceeds are collected from the purchaser by the conveyancer and kept in his trust account without the sanction or instruction of the sheriff.

In some cases the balance of the purchase price is collected by the conveyancer and invested on instruction from the purchaser in an interest-bearing account for the benefit of the purchaser, who is also then exempted from paying interest due to the early payment, and the purchaser is refunded the interest earned on the proceeds on transfer. The sheriff is then paid the outstanding balance of the proceeds without interest. This is also done without the sheriff's instruction or knowledge. This practice is highly prejudicial to the debtor and should not be allowed.

It is clear that the conditions of sale and the rules of court are misinterpreted by those who indulge in the abovementioned practices.

The correct procedure to be followed in terms of the rules is:

- Should the purchaser choose not to pay the balance of the purchase price but provide a guarantee, this amount should be paid to the sheriff on transfer and the purchaser must, in addition, pay the stipulated interest at the same time.
- Should the purchaser choose to pay within the first month after the sale and thereby qualify to be exempted from paying any further interest, such payment must be made to the sheriff and not the conveyancer.
- The sheriff must receive and keep all money received in his trust account and, for the purposes of the proceeds of the sale, in an interest-bearing account.
- The interest earned on the proceeds of the sale is for the benefit of the debtor and not the execution creditor. For a brief time this money is managed by the sheriff on behalf of the debtor and for his benefit.

- The interest earned from the date of the sale to the date of transfer is added to the quantum of the proceeds to make up the total benefit accruing to the debtor for the sale of the property.

Who is mandated to authorise transfer?

The conveyancer does not have a mandate of his own, nor does he take instructions from the execution creditor. The conveyancer takes instructions from, and is accountable to, the sheriff. Transfer is passed only after all the requirements of the conditions of sale contract, the rules of court and the sheriff are met. This should be confirmed by the sheriff to the conveyancer before any lodgment at the deeds office. The execution creditor, its attorney of record and the debtor have no role in this.

The sheriff takes the responsibility for ensuring that all relevant conditions have been met and it is the sheriff who authorises transfer to proceed – no one else. The conveyancer has the professional obligation to lodge the necessary documents for transfer once satisfied that the above has been confirmed by the sheriff.

Once the sheriff is informed that transfer has passed, he shall (without any avoidable delay) pay out in terms of the distribution account.

Any other encumbrances, such as those relating to rates and taxes or any applicable body corporate or homeowners' association levies, should be counter-checked and sanctioned by the sheriff prior to payment.

In order to perform the above, the sheriff must be able to confirm that all money has been paid and that he can now distribute the proceeds.

Calculating balances and distributing the proceeds

To finalise the distribution account, the sheriff needs to know the extent of the debtor's indebtedness and will need a balance certificate from the execution creditor of the balance of the judgment debtor's bond account at the time of the sale in execution. This certificate should incorporate any amounts received since the judgment and the issue of the writ.

This will enable the sheriff to make an informed determination from the balance reflected on the certificate against the proceeds of the sale of a possible shortfall or surplus. Once this is clear, the account can be finalised and payment can be made to those entitled to it.

When the execution creditor becomes the purchaser

Sheriffs face serious challenges when the execution creditor purchases the property at sales in execution and wishes to be exempted from paying any money or provide any guarantees to the sheriff. The conditions of sale are constructed to accommodate the financial preferences of the banks.

This deviated procedure manifests in additions to the form 21 conditions of sale and is done in such a way as to provide that the guarantee for the purchase price will be provided by the execution creditor to the sheriff only if the proceeds of the sale exceed the debt.

It is the sheriff's obligation to make this determination at the time of the sale and he is unable to do so in the absence of the true quantum of the debtor's indebtedness.

Further, set-off by banks in such circumstances is not possible as the debt owing to it would not have become due on transfer (see *Absa Bank Ltd v the Sheriff of the High*

Court, Simon's Town In re Absa Bank Ltd and Expidor 124 CC (WCC) (unreported case nos 26018/2010; 3045/2010, 9-5-2011) (Blignault J).

To accommodate this procedure, as mentioned above, sheriffs and banks have formulated additions to the form 21 conditions of sale, which are currently being considered by the Rules Board.

The certification and other procedures, as indicated above, are essential for the sheriff to perform properly in terms of the rules of court.

The certificate of balance needs to be available to the sheriff at the time of the sale to ensure that if a surplus exists according to the calculations made by the sheriff from the balance certificate, it will be possible to make an informed determination of the obligations of the execution creditor as purchaser.

When the above is concluded, all that remains is that the execution creditor must provide the sheriff, on transfer, with proof of payment of the full amount credited to the account of the debtor, together with the amount of the interest paid on the purchase price, if any.

In my experience, there remains misinterpretation by banks and conveyancers as to the obligation of the bank to pay the interest on the purchase price under such circumstances.

Who pays and benefits from the interest?

The issue of banks paying interest is simple: Should the execution creditor pay/credit the full amount of the purchase price within one month of the sale date, it does not need to pay any interest. Should the execution creditor choose not to make this financial adjustment to the credit of the debtor, it will be liable to pay interest as stipulated by the conditions of sale from the date of sale to the date of transfer.

Some attorneys and sheriffs do not ensure that this procedure is meticulously followed and therefore fail to protect the interests of the debtor and become susceptible to damages claims by debtors who have not received the full benefit of the sale of the property. It is the sheriff who is likely to be liable as it is he who is responsible for ensuring that all of the requirements of the rules and the conditions of sale are met before transfer.

Should the transferring conveyancer not ensure strict compliance, he may also find himself liable for damages or guilty of misconduct.

To address these issues, attorneys, banks and sheriffs should be more vigilant in the execution of their duties. The debtor does not have the advantage or the finances to be able to protect his interests and is reliant on the various role players, especially the sheriff, to ensure that justice is delivered.

The issue of interest may at first seem insignificant, but millions of rands are at stake that do not find their way to the benefit of debtors, who are the most vulnerable parties in relation to these procedures.

Who is responsible to remedy this?

It is the prime responsibility of those who apply the law to ensure that those who do not have easy access to justice are afforded the best possible protection.

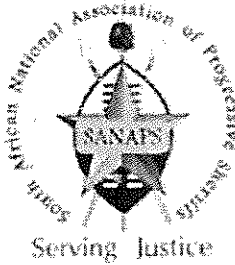
The South African Board for Sheriffs should take note of this shortcoming and be vigilant in their disciplinary mandate to protect the interests of debtors.

The board should also take note of the consequences of non-performance by sheriffs and the threat this poses for the Fidelity Fund for Sheriffs.

Conveyancers and sheriffs who do not deliver properly in terms of transfers should ensure correct compliance or face disciplinary procedures from the competent authorities.

Further, such negligence could result in damages claims against sheriffs and ultimately the Fidelity Fund for the profession.

Johan Fourie is the sheriff for Simon's Town in Cape Town.



Sheriff For SIMON'S TOWN
C J V/D L FOURIE

PO BOX 26
SIMON'S TOWN 7995

131 ST GEORGES STREET SIMON'S TOWN 7995

Tel 021 786 2435
Fax / Faks 086 516 4978
Email / Epos sheriff1@iafrica.com

LETTER OF INSTRUCTION TO THE APPOINTED CONVEYANCER after SALE IN EXECUTION

In the matter between: **CASE NUMBER: 19811/12**
ABSA BANK LIMITED (REG NO: 1986/004794/06) - PLAINTIFF
and
REVAAN NAIDOO (ID 9001045167086) - DEFENDANT
PURCHASER: MR M.N. MATIKINCA & MRS N.F. MATIKINCA
DATE OF SALE: 25-November-2014
CONVEYANCER: STRAUSS DALY ATTORNEYS CAPE TOWN PO BOX 3092 CAPE TOWN CAPE TOWN 8000
CONVEYANCER REFERENCE NUMBER: ABS10/1320/FERIAL

In order to complete the transfer of the property sold kindly note the requirements of the Sheriff which you are requested to comply with to complete the above transfer.

The signed conditions of sale were handed to the representative of the Creditor who attended the sale.

The transfer documents sent to the Sheriff must be accompanied by the guarantee for the balance of the purchase price which shall indicate payment of the purchase price or balance to the Conveyancer upon transfer.

The Conveyancer shall as soon as the payment has been received as indicated in the above paragraph, immediately pay to the Sheriff such funds received on behalf of the Sheriff.

Should the purchaser opt to pay the full purchase price within the 21 day period, such funds shall be paid to the Sheriff within the prescribed 21 day period failing which, the Sheriff will insist on interest as indicated by the conditions of sale from the expiration of the 21 days to the date of transfer.

When the property is purchased by the Execution Creditor:

1. The Sheriff shall be provided with a certificate of balance of debt issued by the execution creditor before the sale . If such certificate is not in place the Conveyancer shall provide such certificate to the Sheriff before any transfer documents can be signed.
2. Should the Sheriff make a comparison between the balance owed and the certificate and find that there exist no surplus, the Sheriff will accept that the bank pay into the bond account of the debtor the full purchase price. This can happen on condition that the Sheriff be provided proof of such payment, which proof will include the date of payment, the amount paid and the account number in which the amount has been paid.
3. Should the amount so paid as mentioned in the above paragraph be made within the 21 days the Execution Creditor will be exempted from paying any interest on the purchase price.
4. Should this payment not be made within this 21 day period the Execution Creditor will pay the interest as indicated by the conditions of sale for the period 21 days after the sale to date of transfer.
5. Should there be a surplus the Sheriff will accept the above procedures provided the Execution Creditor shall provide the Sheriff with a guarantee for the amount which exceeds the amount of the debt as per the certificate of balance of debt. This amount should be paid to the Sheriff upon transfer.

No part of the proceeds of the sale may be invested on behalf of the purchaser by the Conveyancer.

The Conveyancer is obliged to keep the Sheriff informed of any failure of the purchaser to perform any of the requirements of the conditions of sale within the prescribed time frames .

C J FOURIE
SHERIFF FOR SIMON'S TOWN

IN THE SOUTH GAUTENG HIGH COURT OF SOUTH
JOHANNESBURG

(REPUBLIC OF SOUTH AFRICA)

CASE NUMBER: 19374/2012

In the matter between:

TRUE GROUP FUNDING (PTY) LTD

Plaintiff

and

REAL CIVIC INVESTMENTS HOLDINGS (PTY) LTD

Defendant

**SPECIAL CONDITIONS OF SALE IN EXECUTION:
SHARES ON AUCTION**

DESCRIPTION OF PROPERTY AND PARTICULARS OF SALE

The property which, on this the 17th day of April 2015 at 10:00am, will be put up to auction consists of:

**CERTAIN: 595 SHARES OF REAL INVESTMENT HOLDINGS HELD IN
MERETING INVESTMENTS (PTY) LTD, registration number: 1995/011257/07**

THE SALE SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:

1. The sale is held in terms of the **Supreme Court Act 59 of 1959**, as amended, the **Consumer Protection Act 68 of 2008**, as amended, **Companies Act 71 of 2008** and the **Financial Intelligence Centre Act 38 of 2001**, as amended.

2. By virtue of the **Consumer Protection Act 68 of 2008**, as amended, every prospective bidder is required to register as a buyer prior to the commencement of the auction.
3. Every bidder is required to comply with **the Financial Intelligence Centre Act 38 of 2001 (FICA)**, prior to the commencement of the auction (e.g. *BEE Certified Certificate, Sole Proprietor or Close Co operation Registration documents as well as ID document of the bidder present*).
4. By registration as a buyer, the prospective buyer confirms that he/she has familiarized himself/herself with the Rules of Auction and applicable conditions of sale of the relevant auction.
5. The Buyer should have vested with the power duly qualified to perform or bid on shares as stipulated in point 3.
6. The rights, obligations, title and interests of the shares will be introduced by the holding Company to the buyer.
7. No transfer forms have been revalidated as per the requirements of the Companies Act; this will be dealt with by the Transferring Attorneys.
8. Payment of the purchase price as well as Sheriff's commission should be paid in full by the buyer immediately after conclusion of the auction.
9. The purchase price of the shares will be held in the Trust Account of the Sheriff until deed of transfer has been finalized and confirmed.
10. If the buyer agrees to buy the subject price or shares in terms and conditions stated here and after should be adhered to.
11. The Sheriff is not responsible for any discrepancies or issue that may occur during the transfer and obligations of the shares as the Sheriff is the seller and gives no warranties or makes any representations in regard to the state and obligation or requirement of the shares.
12. Should the buyer fail to pay the purchase price and commission on completion of the sale, then the sale shall be null and void and the Sheriff may immediately put the shares up for auction again.

13. The risk in the shares sold, shall pass to the buyer on the fall of the hammer, the buyer will bear the risk of the shares purchased.

I, the undersigned, Sheriff of Kimberley hereby certify that today the _____ day of April 2015 and as advertised, the aforementioned shares was sold for R..... to

SHERIFF

I, the undersigned, _____ on this _____ day of _____ 2015 do hereby confirm and understand the conditions of sale.

PURCHASER

ANNEXURE "A"

Information for Conveyancer:

1. Full names:.....
2. Identity number:
3. Physical address (*domicilium citandi et executandi*):
-
4. Postal address:
-
5. Telephone numbers:
Home:Work:.....
Telefax (if any) Cell Number:.....

IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE HIGH COURT, KIMBERLEY

CASE NUMBER: 774/2013

In the matter between:

L J BOTHA

Plaintiff

and

J H G VENTER

Defendant

**SPECIAL CONDITIONS OF SALE IN EXECUTION:
MEMBERSHIP INTEREST ON AUCTION**

DESCRIPTION OF PROPERTY AND PARTICULARS OF SALE

The property which, on this the 19th day of June 2015 at 10:00am, will be put up to auction consists of:

CERTAIN: MEMBERSHIP INTEREST OF JHG VENTER & M E VENTER OF J & B SATELITES: REG NO: 2007/149552/23, REG DATE: 03/08/2001 WITH MEMBERS JHG VENTER & M E VENTER (married in community of property)

THE SALE SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:

1. The sale is held in terms of the **Supreme Court Act 59 of 1959**, as amended, the **Consumer Protection Act 68 of 2008**, as amended, **Companies Act 71 of 2008** and the **Financial Intelligence Centre Act 38 of 2001**, as amended.

2. By virtue of the **Consumer Protection Act 68 of 2008**, as amended, every prospective bidder is required to register as a buyer prior to the commencement of the auction.
3. Every bidder is required to comply with **the Financial Intelligence Centre Act 38 of 2001 (FICA)**, prior to the commencement of the auction (*e.g. BEE Certified Certificate, Sole Proprietor or Close Co operation Registration documents as well as ID document of the bidder present*).
4. By registration as a buyer, the prospective buyer confirms that he/she has familiarized himself/herself with the Rules of Auction and applicable conditions of sale of the relevant auction.
5. The Buyer should have vested with the power duly qualified to perform or bid on Membership Interest as stipulated in point 3.
6. The contents, financial affairs, value of the company's assets, revenue earnings, profit, lease agreements, outstanding leave pays, licensing requirements, permits, zoning, guarantees or obligations to others, pending damage claims or lawsuits will be introduced by the Instructing Attorneys or Other Members of the Company to the buyer.
7. No transfer forms have been revalidated as per the requirements of the Companies Act; this will be dealt with by the Transferring Attorneys.
8. Payment of the purchase price as well as Sheriff's commission should be paid in full by the buyer immediately after conclusion of the auction.
9. The purchase price of the Membership Interest will be held in the Trust Account of the Sheriff until deed of transfer has been finalized and confirmed.
10. If the buyer agrees to buy the subject price or Membership Interest in terms and conditions stated here and after should be adhered to.
11. The Sheriff is not responsible for any discrepancies or issue that may occur during the transfer and obligations of the Membership Interest as the Sheriff is the seller and gives no warranties or makes any

representations in regard to the state and obligation or requirement of the Membership Interest.

- 12. The Sheriff and his duly authorized employee, in their sole and absolute discretion, shall conduct regulate and record (mechanically or otherwise) the auction. The recording of the auction shall constitute prima facie proof of the auction proceedings.
- 13. The sale of the Membership Interest are sold as "voetstoets" to the prospective bidder, any enquiries and questions may or can be directed to the instructing Attorneys on the day of Auction and their after will be accepted that the prospective bidder has irrevocably accepted the condition and the state of the Membership Interest.
- 14. Should the buyer fail to pay the purchase price and commission on completion of the sale, then the sale shall be null and void and the Sheriff may immediately put the Membership Interest up for auction again.
- 15. The risk in the Membership Interest sold, shall pass to the buyer on the fall of the hammer, the buyer will bear the risk of the Membership Interest purchased.

I, the undersigned, Sheriff of Kimberley hereby certify that today the _____ day of June 2015 and as advertised, the aforementioned shares was sold for R..... to

SHERIFF

I, the undersigned, _____ on this ____ day of _____ 2015 do hereby confirm and understand the conditions of sale.

PURCHASER

ANNEXURE "A"

Information for Conveyancer:

1. Full names:.....

2. Identity number:

3. Physical address (*domicilium citandi et executandi*):

.....

4. Postal address:

.....

5. Telephone numbers:

Home:Work:.....

Telefax (if any) Cell Number:.....

P

Example 3: *Nulla bona* certificate

**IN THE MAGISTRATES' COURT FOR THE DISTRICT/REGIONAL
DIVISION OF**

.....

HELD AT

Case No

In the case between:

..... PLAINTIFF/APPLICANT

and

..... DEFENDANT/RESPONDENT

NULLA BONA CERTIFICATE

I,,
being the ***judgment debtor/representative of the judgment debtor**
against whom the relevant judgment has been given, acknowledge that the
***sheriff/deputy sheriff** served on me a copy of the warrant in the above
matter after exhibiting the original and explaining the nature and contents
thereof to me. He/she demanded from ***me/the judgment debtor** payment
of the amount due thereunder to satisfy the judgment. I informed him/her
that ***I/the judgment debtor** was unable to pay the amount due and that
***I/the judgment debtor** was unable to pay the amount due and did not
possess any disposable property to satisfy the judgment.

The consequences of signing this certificate have been set out to me, inter alia
that—

1. ***my/the judgment debtor's** estate could be ***sequestered/
liquidated;**

or

2. ***I/the judgment debtor** could be called before a court where ***my/the
judgment debtor's** financial position could be investigated;

and

* Delete that which is not applicable.

3. **if found that *I/the judgment debtor** falsely declared that ***I/the judgment debtor** did not possess or have sufficient property to satisfy the warrant, or neglected or refused to point out such property, ***I/the judgment debtor** could be found guilty of an offence and convicted to a fine or imprisonment.

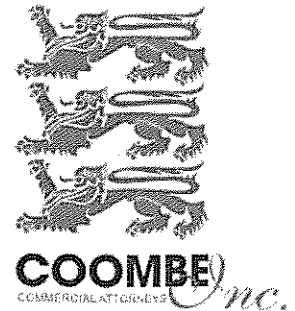
I, ***the judgment debtor/representative of the judgment debtor**, am willing to sign this document and have no objection to it being forwarded to the instructing attorneys.

DATED at on this day of 20.....

.....
Signature

* Delete that which is not applicable.

Tel 012 111 0972
Fax 086 274 1560
Email ceg@coombe.co.za
Physical Address Unit 5, Stand 615
77 Amathola Street, Western Gate, N4 Gateway Industrial Park
Willow Park Manor x65, Pretoria East
Postal Address PostNet Suite #33,
Private Bag X025, Lynnwood Ridge, 0040
Registration No. 2012/045856/21
www.coombeinc.co.za



Thursday, October 27, 2016

The Sheriff Roodepoort South
Mr ID Mahomed
8 Liebenberg Street
ROODEPOORT

BY EMAIL: info@sheriffroodpoortsouth.co.za

Dear Mr Mahomed

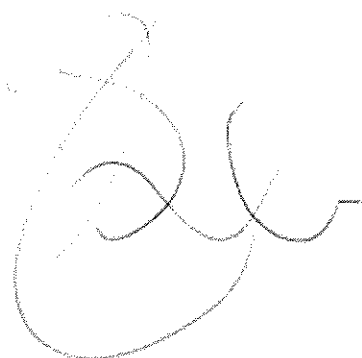
RE: CAPPED SHERIFFS FEE AGREEMENT

1. We refer to the telephonic discussion between myself and Mrs Hartman of your office some days ago with regards to the opening of an account with your office and a misunderstanding about a deposit we paid for several summonses to be served.
2. Our firm have been instructed by African Bank and Residual Debt Services to issue summons against a large number of defaulting consumers and the fee structure with our client currently only allows for a R150 expense per matter towards sheriff fees.
3. We formally request that you consider entering into a fee agreement with our firm for an all-inclusive fee of R150 for service in each individual case number. This will enable Coombe Commercial Attorneys Incorporated to provide yourself with a large number of instructions per month.
4. We understand that you are entitled to your fees in terms of the Sheriff's Fee Tariff Structure published in the Government Gazette, but we believe that a flat fee per matter, irrespective of the distances travelled, will benefit your office not only in terms of the volume of work but also in saving on the administrative burden.

5. We undertake to pay your account promptly on receipt thereof and look forward to our mutually beneficial relationship.
6. Should you have any queries please do not hesitate to contact me on my cell no 0823038693.

We trust you find the above in order and look forward to your most urgent reply.

Regards

A handwritten signature in black ink, appearing to be 'Clifford Coombe', written in a cursive style.

CLIFFORD COOMBE
DIRECTOR

COOMBE *Inc.*