



Date: 12 December 2016

Our Ref: Report 3 of 2016

Per: E- mail

This report is sent exclusively to SANAPS members. We recommend that you share this with your office staff and deputies as there is beneficial information which may enhance your daily operations. It is up to you whether you wish to share this report with non- SANAPS members.

Report 3 of 2016

Since our last report on the 18th May 2016 the following has transpired

1. Meetings:

1.1 Law Society Meetings:

Meetings were held with the various Law Societies nationally. Some of these have been cancelled or postponed.

The essential issue is complaints by attorneys of sheriffs over charging and poor service and sheriffs complaining of none or poor payment. This is an issue carrying on for years and we have forwarded this to the Deputy Minister who has taken up the matter further on our behalf and which we will still try and resolve. Attached herewith please refer to **(Annexures A & B)**.

1.2 SANAPS 10TH AGM:

A feedback has already been forwarded and the formal draft minutes will be forwarded shortly.

1.3 Consultative Forum Meetings:

Meetings were held on:

20 June 2016.

15 September 2016.

15 November 2016.

We are no longer going to attend these meetings. A memo has been forwarded to all members. There are many issues still to be dealt with and many new ideas that we wish to exchange for the benefit of the profession but regrettably, the Consultative Forum is not being used effectively for this purpose.

- Some of the ideas which we intend to take up is a model for the SABFS to cover sheriffs PI Insurance as does the Law Society for its attorneys, in other words, this cover should not cost the sheriffs anything.
- We also wish to discuss a comprehensive training programme provided by sheriffs for sheriffs that will encompass every aspect of the industry including training on usage of the new sheriff's programme which is currently being developed.

We have reiterated our stance that we are willing to participate should the Board make a concerted effort to address our concerns.

1.4 CCMA and Labour Court:

We have had several meetings with the CCMA and have been keeping all colleagues abreast of developments. It seems that most of the issues have been resolved save for problems relating to service delivery and payment. We urge colleagues to be circumspect in refusing to do the work or turning applicants away without first consulting with the CCMA. The contact person where all problems could be escalated is Mr Wabile Tel: (011) 377- 6650 e- mail: KatlholoW@CCMA.org.za.

The CCMA is willing to furnish Rule 38 securities but the question of interpleader costs has not as yet been settled.

A number of questions have risen regarding the suspension of Labour Court writs by way of review. In terms of Section 145 (7) of the Labour Relations Act, the appropriate security bond must be furnished by an attorney against funds held in trust. Where there is no attorney the funds should be placed in the sheriff's trust account and the sheriff merely needs to notify the Labour Court of the funds and undertake not to deal with the funds until the matter has been settled. Attached herewith is an example of a security bond by an attorney (**Annexure C**). See **Moghaka Local Municipality v sheriff of the High Court Kroonstad Labour Court Case No: JS1505/16**. (Thank you Moses Segwana).

1.5 Banking Forum:

A meeting was to be held on the 06 December 2016 exclusively on allegations of illegal vehicle attachments by some of the banks. Unfortunately the meeting has been cancelled and hopefully will be reconvened early next year. We have the evidence and if there is any new evidence please forward this to the Secretary. **(NB: kindly note the new e- mail address which is secretary@sanaps.org.za).**

1.6 Eastern Cape Workshop:

A meeting was held in East London in the Eastern Cape on the 03 December 2016.

1.7 20th Anniversary of the adoption of the South African Constitution:

We have received an invitation from the Minister of Justice to attend a meeting hosted by President Zuma celebrating the 20th anniversary of the adoption of the South African Constitution.

2. Comments on Rules:

We have commented on the following Rules:

- ❖ Rule 46 High Court
- ❖ Item 5c (iv) of Uniform Rule 68 and Item 14 (a) of Table C Annexure 2 Magistrate Court
- ❖ Section 5(1A)(a) and 5(1A)(b) of the Sheriff's Act 90 of 1986
- ❖ Rule 41 (7) (e) and (f) Magistrate Court
- ❖ Rule 49 (11) High Court
- ❖ Uniform Rule 70 (4) Taxation

Colleagues attention is drawn to the fact that the Magistrate's Court Rule 44 (2) (a) has been amended from "10 days prior to hearing" to "within 10 days of claim being lodged" This amendment has come into effect since 15 October 2010. (Thank you Lana Nel).

3. New Post Advertisements:

Attached herewith is a copy of the advert (**Annexure D**). Please forward this to anyone who may wish to apply. We wish all applicants the best of luck. The advert with maps is also available on the following websites: www.justice.gov.za and www.sheriffs.org.za. **Remember the closing date is the 20th January 2017.**

4. Membership:

We are now 155 members out of 284 sheriffs nationally. We are the biggest association and we welcome any independent authority to verify this. We attach herewith the membership list per province (**Annexure E**). Members are requested to please ensure that your name appears and your contact details remain the same. If your name does not appear on the list or your contact details have changed please complete new membership application form updating new information and fax to: **(021) 872 7545** or e- mail to: sheriffpaarl@telkomsa.net. The most effective way of communicating, cost- wise and time- wise, is through e- mails and we therefore urge all colleagues to heed to this please so that you may be kept informed of developments.

5. New Sheriffs Computer Programme:

The programme is still under development. As a reminder this is a programme being developed by SANAPS exclusively for SANAPS members. The programme itself will be freely available but there will be a maintenance, upkeep and security costs. Please refer to (**Annexure F**).

6. Free Computers and Printers to Needy Members:

There are 2 new computers and printers still available for any needy member. Terms and conditions apply. Please contact the Secretary via e- mail: secretary@sanaps.org.za should you require assistance. We have thus far donated over 25 computers and printers to our less fortunate colleagues as part of our commitment to empowerment. Below are photographs of some of our recent donees.







7. **Case Law:** (Full judgements available on request)

- **Nomsa Nkata and First Rand Bank Limited and the sheriff for Western Cape and 3 Others Constitutional Court of South Africa Case No: CCT73/15.**

The court held in this matter that where parties re- negotiate a credit agreement (a bond in this case) the immovable sale must be cancelled where the defendant has complied with the new terms. It is not necessary to rescind the judgement. What does this mean to the industry? A new defence has been created and this could mean less immovable sales in execution or cancellations thereof. (Thank you Ravind Singh).

- **Peniel Development Pty Ltd and another v Isak Smolly Pietersen and 5 Others Gauteng High Court Johannesburg Local Division Case No: 34819/13 (Unreported).**

The grand debate as to whether a rescission in itself will stay an execution rages on. The court has held that the rescission will do so by itself and that it is not necessary to make an application to stay the execution.

➤ **5 Gauteng home and business owners v the Tshwane and Ekurhuleni Metros Pretoria High Court**

On the 16th October 2016 the Pretoria High Court held that the new property buyers can no longer be forced to pay former owner's historical debts owed to the Municipalities in terms of Section 118 (3) of the Local Government Municipal Systems Act. What does this mean to the industry? The sheriff should no longer entertain any Section 118 (3) claim by the municipalities. We are not certain if the matter is going on appeal or not.

➤ **Statistics South Africa ("Statistics SA") v NEHAWU obo Netshivungululu and Others Labour Court**

Statistics SA attempted to prevent the sheriffs from executing the writs pointing out some serious irregularities perpetrated by the applicant. The sheriff, notwithstanding this, proceeded. The court held that the sheriff *"acted precipitously and unreasonable in persisting with the execution of the writ and subsequent attachments. Common sense given the circumstances of the case would have dictated that the sheriff should have afforded Statistics SA an opportunity to contest the writs, especially where he had been informed that an urgent application had already been filed and a hearing date allocated."*

Colleagues are therefore advised to tread cautiously.

➤ **Tryphena Molete and Another v Daniel Molete and 7 Others Pretoria High Court Case No: A1044/13**

As a result of a comedy of errors between attorneys the sheriff, despite acting as was required suffered a substantial loss of storage and attachment fees.

It would seem that the courts persistently make judgements adverse to sheriffs without even allowing sheriffs any opportunity which is a blatant violation of the audi alterem patem rule.

Should any colleague have a similar experience please forward this to the Secretary as we intend to take this up with the Chief Justice.

➤ **Sheriff of Johannesburg North v Yellow Dot Property Investments (2013/26871 [2016] ZAGPPHC 04 March 2016)**

In this matter the court held that the sheriff must advise the purchaser of the exact outstanding rates (see also **Sheriff of the High Court Johannesburg East v Chetty and Others** and **FNB Ltd v Chetty** and the court will not grant a Rule 46 (11) cancellation where the sheriff has failed to provide these amounts in the conditions of sale.

➤ **The University of Stellenbosch Judgement (Western Cape High Court)**

The judgement by Judge Shiraz Desai has been upheld by the Constitutional Court. What does this mean for the profession? We will be receiving less EAO's because the clerks of the court are no longer authorised to issue this without judicial oversight by a Magistrate.

8. PIE Acts:

We attach herewith an interesting article (**Annexure G**) regarding the application of the PIE Act published in the October 2016 De Rebus.

9. Media Reports:

9.1 Mail & Guardian 04 November 2016:

Quoted below is an interesting article forwarded to us by the Rules Board. We are pleased with the prominence given to SANAPS in the article.

“High noon as sheriffs do the dirty debtor work

Evictions, auctions, repossessions and serving summonses are just part of a day’s work.

· **Mail & Guardian**

· 4 Nov 2016

· Lisa Steyn

Photo: Delwyn Verasamy

In the otherwise empty storehouse, an overoptimistic number of chairs are set out for today’s auction. There are just six people to bid on the property — a four bedroom, two-bathroom house in an urban area of Johannesburg.

Along the walls, shelves dip and buckle under the weight of the case files kept here. Another hefty file, about 10cm thick, will join them soon.

The sheriff of the court stands unassumingly in front of two trestle tables and, once the Absa bank representative arrives, the bidding can begin.

He cannot be named without the permission of the South African Board for Sheriffs.

Data from the property specialist Lightstone shows the four-bedroom house was last sold for R70000 in 2002. The municipal valuation of the house now is R320 000.

The bidding opens at R20 000 and quickly ratchets up. In just under three minutes, the sale closes at R251 000. An additional R12 700 is payable to clear the outstanding rates and taxes as well as other historical debt owed to the municipality.

Three other houses were on the original auction list but were cancelled in the run-up to the auction date — the sheriff explains later that this is normal, as people often make hasty arrangements when faced with the prospect of eviction and an auction. The auction of this particular property followed after the owner had exhausted all avenues to get help, without success.

Investing in this kind of property can be lucrative, but it can also be a nightmare. “If people don’t do their homework, they can get their fingers burnt,” the sheriff says. “I had one purchaser who abandoned the house [he bought on auction]. He paid up the deposit and took out a bond. But the occupants just didn’t want to budge. There was violence involved. The poor guy eventually just walked away.”

Sheriffs for different jurisdictions and different courts are appointed by the Minister of Justice and are regulated by the Board for Sheriffs. If they employ deputies, they must be approved by the board. Although appointed by the state, sheriffs must run their own business in line with the fees and tariffs prescribed by law. Like attorneys, sheriffs handle trust accounts. But higher education is not a qualifying criterion to become a sheriff.

Sheriffs carry out several duties, which include serving divorce papers, bringing people to court, issuing summonses and warrants for arrest, attaching assets and executing eviction orders. Unsurprisingly, the sheriff is often viewed as the bad guy. “I take it in my stride. I fully understood that it came with the job,” he says, noting that the job requires a thick skin and a cool head.

Rain or shine

Come economic bumps or slumps, tighter or looser regulation, the sheriff says his business has brought in a stable income over the years.

The bulk of his day-to-day work involves orders relating to unpaid debts. Until recently, emolument attachment orders (EAOs) comprised a big part of that, he says. But following widespread abuse of these orders, which allow the deduction of debt repayments directly from a person’s salary, a court judgment in September declared that they can now only be granted by a presiding officer of the court, such as a magistrate or a judge. Issuing such orders now requires a great deal more judicial oversight.

“You know, even though as sheriffs we are supposed to act impartially, I mean, the perception out there is that we are heartless. But given the volume of EAOs we have got and the manner in which they were granted — all these issues that were brought up in the court case were things we have previously brought up with the authorities,” the sheriff said.

In his office, at least, the number of EAOs coming through has dropped by as much as 70%.

The attachment of goods is another way to recover debts — an order the sheriff must also execute.

“Those goods are then brought to my storeroom, where they are auctioned off. We do that quite often but that part of my work has dropped off a bit. After all these years, I have probably taken out everything [all types of possessions] I could possibly take out. Really, it’s as bad as that.”

He says it’s not unusual to attach goods from the same people several times.

Anything ranging from appliances and lounge suites to jewellery, firearms, company shares and rental leases can be attached, but sheriffs cannot attach anything that will diminish a person’s basic human rights.

“Clothing, blankets, food and your tools of trade, up to a certain amount, we can’t take. We can’t take a bed but, of course, if it’s a hotel, it’s different.” Hardest part.

“If you ask any sheriff what is the toughest part of our job, it is to take people out of [their] homes. But unfortunately it has to be done. The eviction process means you have to take out all persons occupying that particular property, together with all movables — furniture and things like that — and virtually put those things on the pavement ... on the pavement!”

The sheriff says he and others have approached the department of justice requesting that a more humane approach be taken, as in some other countries where items are housed in municipal compounds.

“I suppose the department may have more urgent things to deal with but so far this sort of appeal has fallen on deaf ears,” he says.

Head of the deputy minister of justice’s office, Nicholas Maweni, said the matter has not been raised directly or officially with the department of justice and constitutional development by the sheriffs.

However, "if items are to be placed in storage, who is to pay for that storage? The judgment debtor already has no money as his/her goods are being attached, and to expect the judgment creditor or the sheriff to carry the costs is unreasonable," Maweni said.

He said, the South African Rules Board for Courts of Law is currently finalising the amendments to rules relating to execution, and judicial oversight which will be released before the end of the year.

The emotional nature of an eviction means police need to accompany the sheriff in executing such an order. An increasing degree of lawlessness has also made a police presence vital.

"Believe you me; I have had petrol bombs placed under my vehicles. I have had my deputy attacked with an axe. The role of police is to stand by and ensure all parties are protected. But they are not expected to pick up a teaspoon."

But a lack of police assistance has frustrated evictions this year.

"In my area, because of a lack of police assistance, I have not been able to successfully evict anyone for months.

"Everything came to a standstill, I thought, because of the local elections. But now the local elections are over and I still can't make any headway with the SAPS [South African Police Service]."

In a presentation to a recent Board for Sheriffs workshop, the South African National Association of Progressive Sheriffs (SANAPS) said: "Many sheriffs have not received any assistance from the SAPS since March 2016 ... It would seem no local SAPS has access to the SAPS's legal department, which verifies the authenticity of all court orders where police are required for assistance," the association said. As a result, one sheriff is being sued for damage to a building because of his failure to evict the occupants, it noted. The SAPS did not respond to questions on the matter. Breaking down the sheriff sees lawlessness as filtering into all quarters. For example, he says, an increasing number of fraudulent eviction orders are doing the rounds. He received one recently.

"People are taking the law into their own hands. Possibly, landlords are frustrated in getting a legal court order and so go and get an illegal eviction order." Others with

legal orders see the sheriff taking no action and so might decide to take the law into their own hands.

In the presentation to the board, SANAPS said: “We have heard instances of self-help [where] parties would use forged court orders for evictions — at times with the assistance of rogue SAPS officers after hours, during weekends, in the evenings, whilst it rains and/or in midwinter — and the sheriff is then blamed for this inhumanity.”

The matter has also become politicised with party-affiliated community members interfering in evictions. The sheriff recalls cases where the rightful occupants have been placed in their homes, only to be kicked out by the community after the sheriff has left. Sheriffs can, and have been, suspended and criminally charged if they are found to have misused their position.

“I believe this lawlessness is about a breakdown. There is a breakdown in government. Everything is linked in one way or another, and people will sometimes take the law into their own hands because they are so frustrated,” the sheriff said.

“That’s why I say buying a house on auction is risky. We have moved to the point where the government has placed all its obligations it owes to its citizens on the landlord.” The legal route may not be all that easy but it is not used enough, the sheriff says. If you approach the courts, you could possibly save yourself from eviction.

“Of course, I feel for these people,” he says. “But it makes me so angry; you come to me as a sheriff and, when I ask you to approach the court, you sit and do nothing and rather fight with me in the street.”

The Board of Sheriff’s code of conduct prohibits sheriffs from speaking to the media about their office without permission from the board. Attempts were made to get permission, but this had not been granted by the time of going to print.

mg.co.za/article/2016-11-03-00-high-noon-as-sheriffs-do-the-dirty-debtor-work

Yours sincerely,

Raj Daya

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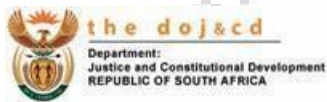
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9.2 Sunday Times 05 June 2016:

We attach herewith the copy of the article of which is self- explanatory (**Annexure H**). This is some of the difficulties the country faces in a very complex social environment and how immovable execution sales are impacted.

9.3 Money Web 18 November 2016:

We attach herewith (**Annexure I**) the content of which is self- explanatory. Whilst we under no circumstances pre-empt the disciplinary process and uphold the presumption of innocent until proven guilty, we find this article extremely disturbing given that Mrs. Nduna Zodwa Seti was a previous Chair of the SABFS. In the public's as well as the industry's interest, we hope that this matter will be dealt with expeditiously.

Attached herewith also (**Annexure J**) the content of which is self- explanatory. We urge colleagues please do not bring the industry into disrepute as there are talks within the Law Societies to privatise our industry. Actions of this nature strengthen their argument to our detriment.

We urge all colleagues to uphold principles of honesty and integrity and if there is any difficulty with compliance please contact us timeously for assistance and advice – our doors will always remain open.

9.4 Citizen 02 December 2016:

SANRAL'S Missing Billions

According to the article SANRAL has R7, 2 billion rand outstanding debt due to it for e-tolls which payment is being boycotted in Gauteng. There is a great deal of work to be done here and if SANRAL will not write off the debt this will be pursued in court with the sheriffs actively participating in their role as judicial officer.

10. PI Insurance:

We attach herewith **(Annexures K, L & M)** the content of which is self-explanatory.

We trust by now that colleagues have complied with this requirement. We will continue to deal with the shortcomings on the cover with the brokers in order to get the best possible price with the widest possible cover for the industry. As mentioned earlier, we have a financial model as to how the Board can afford to pay this premium on behalf of the profession which will surely go a long way in easing our financial burdens.

To colleagues who wish to change their brokers and cancel their existing policy, you have until the 23rd December 2016 to do so. You are to notify your broker to cancel, the SABFS of the cancellation and the new broker to cover you. All this has to be done simultaneously. Cancellation at this stage will allow you a full refund from your previous broker.

11. 16 Days of Activism against violence for women and children:

This commenced as of the 25 November 2016. We trust that all colleagues who were in a financial position to do so, rendered family violence summonses free of charge in support hereof as we have done in the past.

12. Master of the Supreme Court:

Colleague's attention is drawn to the fact that the Master of the Supreme Court (as per Advocate T.V. Maqala Acting Chief Registrar Gauteng High Court Johannesburg) will not pay for any return of services in connection with any sequestrations and liquidations. The monies should be claimed from the insolvent estate and the sheriff's claim, as we know, is that of an unsecured ordinary creditor.

13. Ad hoc and Deputy Sheriff Appointments:

We have been liaising with the Deputy Minister on behalf of 2 of our colleagues. We have pointed out, according to us, some inconsistencies in the ad hoc procedures to which the Deputy Minister has responded. The Deputy Minister has pointed out that he makes these appointments in consultation with a judicial officer. We have kindly informed him that the judicial officer, with respect, is not aware of the appointee's income and numbers of complaints at the SABFS (if any), information that is easy accessible to the Deputy Minister and that the Deputy Minister should therefore be more circumspect on his final decision. We are as yet awaiting feedback from the SABFS as to statistical data regarding ad hoc and acting appointments in relation to sheriff's membership to the voluntary associations as we believe that the appointments are skewed.

14. Immovable Sales in Execution:

The role of the sheriff and the conveyancer is clearly explained by our colleague Johan Fourie in this article as per **(Annexure N)**.

Colleagues have to be mindful of any surplus due to the execution debtor. The sheriff is responsible for the surplus and not the bank or bank's attorneys and the sheriff must be able to explain the amount, hence the necessity of a Certificate of Balance. It would seem that the market has seen a gap in the collection of these surplus funds on behalf of execution debtors. One such collection agency is Surplus Collect.

15. Conditions of Sale of Company and CC Shares:

We attach herewith **(Annexure O)** a copy of each of the above which may be of some assistance to colleagues who are required to sell shares in a company and membership interests in a closed corporation. (Thank you Carey- Lee Seema).

16. Notice in terms of Section 34 (1) of the Insolvency Act No: 24 of 1936 as amended:

We have received a number of queries from colleagues who are not too certain whether to proceed with an attachment where it is alleged that the business has changed hands by way of a sale. Colleagues are reminded to demand a copy of the above mentioned notice which has to be advertised in the appropriate local newspaper and the Government Gazette failing which the sheriff needs to proceed.

17. SASSETA:

All paperwork has been submitted and approved by SASSETA. An inspection took place on Friday 02 December 2016 which was the final requirement and we will hopefully know soon whether our application to become an accredited service provider is successful or not.

As a reminder to colleagues a successful application would empower us to provide training, raise our own finances to be used for the new sheriff's programme and other matters and will greatly enhance our ability and finances in promoting all future programmes.

The Chair thanks all, including the SABFS, for their assistance and contributions in this application.

18. Tayob v SANAPS and ID Mahomed:

The matter is progressing well and has set down in the Pretoria High Court on 6th to 17th March 2017. Members will be kept informed of developments.

19. Know Your Rights:

This is a new feature prepared by our National Co-ordinator Andrew Nkhumise. The purpose of this is for sheriffs to know their rights when faced with complaints, inspections and disciplinary hearings. Colleagues are advised to forward this to their attorneys if you face any of these challenges.

KNOWING YOUR RIGHTS AS A SHERIFF

There are obligations that the sheriff has to adhere to & rights that the sheriff has to know:

The obligations are governed by the Sheriff's Act and regulated by the SABFS. A sheriff is duty bound to comply with the obligations. To highlight just a few:

1. Obligation to comply with the Legal Obligation Phase 1 and phase 2.
2. To answer all the correspondence directed to your office.

As a private person and also a business person, a sheriff has rights and some of the rights can be identified as follows and are enshrined in the Constitution & Bill of Rights: **(day to day rights relating to the execution of your duties as a Sheriff)**

- Common law to sue or be sued.
- Right to lodge a complaint against an Attorney, Court Managers, Magistrates and fellow Sheriffs.
- Right to seek an opinion from your colleague, and your respected Association.
- Right to choose your own Association.
- Right to institute criminal proceedings against a wrongdoer.
- Right to be given state work for service.
- Right to be paid after service has been rendered.
- Right to refuse to serve and/or execute suspicious court order (however it is recommended that you check with the clerk/ registrar of the court to confirm the authenticity of the order).
- Right to hire and dismiss your staff members within the legislation framework.
- Right to take leave/ holiday.
- Right to do extra work apart from your Sheriff's duties (with the approval by the Minister).
- Right to honour your religion.
- Right to use necessary force as allowed by the Act (s).
- Right to enter any premises to effect service.
- Right to allocate suitable dates, times and place to hold auctions.
- Right to seek police escort when executing your duties.
- Right to pay the monies due and payable by cheque or by EFT.
- Right to refuse to issue a Nulla Bona Certificate without satisfying yourself that the Execution Debtor has no movable and/or immovable assets.
- Right to institute any legal action against any person, institution etc. (Such right also include the right to lodge an Application).
- Right to seek an opinion and/or direction from SABFS.
- Right to defend any action lodged against you and/or your office.
- Right to request an instructions letter from the instructor.
- Right to charge any fees in terms of the law (as long as there is a provision for such. An example time spent, after hour's service, etc.).
- Right to take open/operate your office anywhere within the area where appointed.

- Right to disagree with the judiciary on the procedures in the Magistrate's court. (There the is a distinctive difference between the correct procedure and the common practice). Same applicable to the Attorneys.
- Right to make a call and speak to an Attorney and not the PA or candidate Attorney.
- Right to retreat in a hostile situation when serving/ executing court process (especially if you have no escort from the SAPS).
- Right to demand payment for the work you outsource to 3rd person's (e.g. tow trucks, locksmith etc.)
- Right to choose your own Sheriff's program provider.
- Right to respond to any query in English or Afrikaans.
- Right to object to an Ad Hoc appointment.
- Right to apply to any new post advertised for Sheriff's office.
- Right to apply to act on a temporary basis to any vacant office near your office.
- Right to hire/ rent transport (Bakkies, Lorries, Labourers/ Red Ants etc.) also including storage. On condition that you and the Attorney/ instructor agree on the quotation obtained for such services.

NB ALL RIGHTS ARE LIMITED

We also await clarity from the SABFS as to the inconsistent manner in which suspensions are dealt with and will revert in due course.

20. Collation of Questions and Answers Raised by Colleagues:

Nulla Bona Returns:

❖ *Q. Can an attorney instruct a sheriff to provide a nulla bona return without the sheriff ascertaining that this is justifiable?*

A. No. The nulla bona has got dire consequences for the execution debtor. It may allow an immovable to be attached or sequestration.

❖ *Q. Please furnish me with an example of a nulla bona return.*

A. Please refer to Annexure P hereto from the Sheriff's Guide.

❖ *Q. I am unable to ascertain the defendant's assets as the defendant continuously avoids me/ the premises are continuously locked - I can find no assets on the premises or anyone to point out any other asset elsewhere. What should the sheriff do?*

A. The sheriff should include all of the above facts in a nulla bona return and let the court then decide whether the nulla bona is acceptable or not.

❖ *Q. Should the sheriff provide a nulla bona on his own accord where there are insufficient assets?*

A. No. It is preferable that the sheriff should be instructed to do so.

Capped Sheriffs Fee Agreement:

❖ *Q. Please refer to Annexure Q. The attorney has requested a discount on tariffs. Can the sheriff allow the discount?*

A. No. Just as the sheriff cannot overcharge, the sheriff cannot undercharge. These price undercutting would not cause immediate problems but would cause a great deal of problems when sheriffs are appointed under Section 3 (2) (b) of the Sheriff's Act.

Interpretation of Rule 39 (3) Magistrate Court:

❖ *Q. Can the sheriff re- attach the goods on a lapsed warrant that has not been re- issued?*

A. No. The warrant must be re- issued. It follows also, that where the attachment has lapsed, the goods cannot be removed.

21. Contributions:

All comments, criticisms, suggestions, relevant articles and case law pertinent to the industry would be most welcome should you wish to share this anonymously or otherwise. Please forward this to the **Secretary at: secretary@sanaps.org.za.**

22. Best Wishes:

We wish all colleagues, their family and staff a joyous festive season and a prosperous New Year.

This newsletter is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Always contact your legal advisor for specific and detailed advice. Errors & omissions excepted. (E &OE).

Serving Justice