

# **MAGISTRATES COURT(PENDLEX)**

## **(MCP)**

### **MCP SECTION 14 – SHERIFF MAY IN CERTAIN CIRCUMSTANCES REFUSE TO SERVE OR EXECUTE PROCESS**

- (1) A sheriff receiving any process for service or execution from a practitioner or plaintiff by whom there is due and payable to the sheriff any sum of money in respect of services performed more than three months previously in the execution of any duty of his office, and which notwithstanding request has not been paid, may refer such process to any judicial officer of the court out of which the process was issued, with particulars of the sum due and payable by the practitioner or plaintiff; and the judicial officer may, if he is satisfied that a sum is due and payable by the practitioner or plaintiff to the sheriff as aforesaid which notwithstanding request has not been paid, by writing under his hand authorize the sheriff to refuse to serve execute such process until the sum due and payable to the sheriff has been paid.
- (2) A judicial officer granting any such authority shall forthwith transmit a copy thereof to the practitioner or plaintiff concerned and a sheriff receiving any such authority shall forthwith return to the practitioner or plaintiff the process to which such authority refers with an intimation of his refusal to serve or execute the same and of the grounds for such refusal.
- (3) If any process referred to in subsection (1) was issued out of any court of a civil or family division, the sheriff may refer it to any judicial officer of any civil court of a district situate within that civil or family division, who may exercise the powers contemplated in that subsection.

### **MCP SECTION 15(1)(B)**

The fees payable in respect of or in connection with any such service to a sheriff shall in any such case be chargeable but shall be paid into the National Revenue Fund.

## **MCP SECTION 16 - SHERIFF'S DUTIES RELATIVE TO DETENTION OF PERSONS BY ORDER OF COURT**

The sheriff shall receive and cause to be lodged in a prison all persons arrested by such sheriff or committed to his custody.

## **MCP SECTION 17 - SHERIFF'S RETURN TO BE EVIDENCE**

The return of a sheriff or of any person authorized to perform any of the functions of a sheriff to any civil process of the court, shall be prima facie evidence of the matters therein stated.

## **MCP SECTION 65L(B)**

When the judgment creditor or his attorney or the sheriff certifies in writing that the judgment debt and costs mentioned in the warrant have been paid, or in the case where a court has given judgment for the payment of an amount of money in specified instalments, that the amount of any arrear instalment and costs have been paid, which certificate shall be handed by the judgment creditor or his attorney or the sheriff to the officer in charge of the prison as soon as practicable after any such payment;

## **MCP SECTION 66(6)**

A judgment creditor (whether by virtue of a judgment given in the Supreme Court of South Africa or in a civil court) desiring to attach immovable property that is already under attachment and in respect of which a sale in execution is not pending, and who has lodged a warrant of execution with the sheriff, may, after notifying the interested parties, apply to the court for an order to the effect that the property may be sold in terms of this warrant.

## **MCP SECTION 66(7)**

A sheriff who is directed to attach immovable property, shall not be precluded merely by the absence of the execution debtor from his place of residence or business, from discharging his duties, but may discharge his duties if he is able to do so and shall endorse a return of service to the court on the warrant.

## **MCP SECTION 66(8)**

If the execution debtor, having been requested by the sheriff to point out property in order to satisfy a warrant of execution against movable property, declares that he has no movable property or insufficient movable property and the sheriff is unable to find sufficient movable property to satisfy the warrant, the sheriff shall request the execution debtor to declare whether he has immovable property which is executable and shall enter the execution debtor's reply in his return of service endorsed on such warrant.

## **MCP SECTION 68(1)**

The sheriff executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution cheques, bills of exchange, promissory notes, bonds, or securities for money belonging to the execution debtor.

## **MCP SECTION 68(2)**

The sheriff may also hold any cheques, bills of exchange, promissory notes, bonds or securities for money which have been seized or taken, as security for the benefit of the execution creditor for the amount directed to be levied by the execution so far as it is still unsatisfied; and the execution creditor may, when the time of payment has arrived, sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might have sued, for the recovery of the sum secured or made payable thereby.

## **MCP SECTION 68(3)**

The sheriff may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledged or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property movable or immovable leased to the execution debtor or sold to him under any hire purchase contract or under a suspensive condition.

## **MCP SECTION 68(4)**

Whenever, if the sale had not been in execution, it would have been necessary for the execution debtor to endorse a document or to execute a cession in order to pass

the property to a purchaser, the sheriff may so endorse the document or execute the cession, as to any property sold by him in execution.

### **MCP SECTION 68(5)**

The sheriff may also, as to immovable property sold by him in execution, do anything necessary to effect registration of transfer.

Anything done by the sheriff under this subsection or subsection (4) shall be as valid and effectual as if he were the execution debtor.

### **MCP SECTION 70 - SALE IN EXECUTION GIVES GOOD TITLE**

A sale in execution by the sheriff shall not, in the case of movable property after delivery thereof or in the case of immovable property after registration of transfer, be liable to be impeached as against a purchaser in good faith and without notice of any defect.

### **MCP SECTION 71 — SURPLUS AFTER EXECUTION**

If, after a sale in execution, there remains any surplus in the hands of the sheriff, it shall be liable to attachment for any other unsatisfied judgment debt.

### **MCP SECTION 71A — MOVABLE PROPERTY WHICH SHERIFF CANNOT DISPOSE OF IN TERMS OF THIS ACT, SHALL BE SOLD BY PUBLIC AUCTION**

- (1) Any movable property in the custody of the sheriff or any other person acting on his or her behalf in respect of which attachment has been withdrawn or which is released from attachment and in respect of which the owner or person from whose possession the property has been removed, cannot be traced, and which cannot be disposed of in terms of this Act, shall be sold by the sheriff by public auction, and the proceeds of the sale shall, after deduction of the sheriff's costs, be paid into the National Revenue Fund: Provided that such sale shall not take place unless such property has remained unclaimed for a period of fourteen days after the sheriff has published, in one English and one Afrikaans newspaper circulating in the district where the last known address of the judgment debtor is situate, a notice containing the name of the judgment debtor and a description of the property and stating

the intention to sell such property if it is not claimed within the periods specified therein.

- (2) After the public auction referred to in subsection (1), the sheriff shall draw up a venue roll as if the sale was a sale in execution of property and shall attach the roll to his or her return in respect of the relevant process of the court in the case together with proof that the proceeds of the sale have been paid into the National Revenue Fund.
- (3) The proceeds of a sale paid into the National Revenue Fund in terms of this section, shall be refunded out of accruing revenue to any person who satisfies a civil magistrate of the district in which the sale took place that he or she would have been entitled to receive the property referred to in this section after the attachment thereof had been withdrawn or the property had been released from attachment.