

MAGISTRATES COURT RULES (MC)

MC R2 DEFINITIONS

R2(1) '**Sheriff**' - means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act 90 of 1986), and also a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and deputy sheriff, respectively.

R2(2) A Saturday, Sunday or public holiday shall not, unless the contrary appears, be reckoned as part of any period calculated in terms of these rules.

R2(3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

MC R7 AMENDMENT OF SUMMONS

- (1) Subject to the provisions of this rule, a summons may be amended by the plaintiff before service as he or she may deem fit.
- (2) Any alteration or amendment of a summons before service and whether before or after issue, shall, before the summons is served, be initialled by the registrar or clerk of the court in the original summons, and, until so initialled, such alteration or amendment shall have no effect.
- (3) (a) When no first name or initial or an incorrect or an incorrectly spelt first name is or not all the first names of the defendant are reflected in the summons and the first name or initial or correct or correctly spelt first name of the defendant is or all the first names of the defendant are furnished by the person on whom service of the summons was effected, and such first name or initial or correct or correctly spelt first name s disclosed in the return of the sheriff, or all the first names of the defendant are so disclosed, the registrar or clerk of the court may, at the request of the plaintiff and without notice to the defendant, insert such name or initial in the summons as being the name or initial of the defendant and such amendment shall for all purposes be considered as if it had been made before service of the summons.
 - (b) Rule 55A shall apply to the amendment of a summons after service.

MC R8 SHERIFF OF THE COURT

- (1) Except as otherwise provided in these Rules, the process of the court shall be served or executed, as the case may be, through the sheriff.
- (2) Service or execution of process of the court shall be effected without any unreasonable delay, and the sheriff shall, in any case where resistance to the due service or execution of the process of the court has been met with or is reasonably anticipated, have power to call upon any member of the South African Police Force, as established by the South African Police Service Act, 1995 (Act 68 of 1995), to render him or her aid.
- (3) The sheriff to whom process other than summonses is entrusted for service or execution shall in writing notify—
 - (a) the registrar or clerk of the court and the party who sued out the process that service or execution has been duly effected, stating the date and manner of service or the result of execution and return the said process to the registrar or clerk of the court; or
 - (b) the party who sued out the process that he or she has been unable to effect service or execution and of the reason for such inability, and return the said process to such party, and keep a record of any process so returned.
- (4) When a summons is entrusted to the sheriff for service, subrule (3) shall *mutatis mutandis* be applicable: Provided that the registrar or clerk of the court shall not be notified of the service and that the summons shall be returned to the party who sued out the summons.
- (5) In any court for which an officer of the Public Service has been appointed sheriff, the return of any process shall be deemed to have been properly effected if the said process is placed in a receptacle specially set apart for the attorney of that party in the office of the said sheriff.
- (6) After service or attempted service of any process, notice or document, the sheriff, other than a sheriff who is an officer of the Public Service, shall specify the total amount of his or her charges on the original and all copies thereof and the amount of each of his or her charges separately on the return of service.

- (7) The Director-General of Justice shall by notice in the Gazette publish the name of every court for which a sheriff who is an officer of the Public Service has been appointed.

MC R9 SERVICE OF PROCESS, NOTICES AND OTHER DOCUMENTS

- (1) A party requiring service of any process, notice or other document to be made by the sheriff shall provide the sheriff with the original or a certified copy of such process, notice or document, together with as many copies thereof as there are persons to be served: Provided that the registrar or clerk of the court may, at the written request of the party requiring service, hand such process, notice or document and copies thereof to the sheriff.
- (2) (a) Except as provided in paragraph (c) or in the case of service by post or upon order of the court, process, notices or other documents shall not be served on a Sunday or public holiday.
- (b) Service shall be effected as near as possible between the hours of 7:00 and 19:00.
- (c) An interdict, a warrant of arrest, and a warrant of attachment of property under section 30bis of the Act may be executed on any day at any hour and at any place.
- (3) All process shall, subject to the provisions of this rule, be served upon the person affected thereby by delivering a copy thereof in one or other of the following manners:
- (a) To the said person personally or to such person's duly authorised agent: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;
- (b) at the residence or place of business of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of this paragraph, when a building, other than an hotel, boarding house,

hostel or similar residential building, is occupied by more than one person or family, '**residence**' or '**place of business**' means that portion of the building occupied by the person upon whom service is to be effected;

- (c) at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over such person or, in the absence of a person in authority, to a person apparently not less than 16 years of age and apparently in charge at such person's place of employment;
- (d) if the person so to be served has chosen a domicilium citandi, by delivering a copy thereof at the domicilium so chosen:
Provided that the sheriff shall set out in the return of service the details of the manner and circumstances under which such service was effected;
- (e) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there is no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;
- (f) if the plaintiff or his or her authorised agent has given instructions in writing to the sheriff to serve by registered post, the process shall be so served: Provided that a debt counsellor who makes a referral to court in terms of section 86(7)(c) or 86(8)(b) of the National Credit Act, 2005 may cause the referral to be served by registered post or by hand;
- (g) in proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person's official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council;
- (h) to any agent or attorney who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected in any applicable manner prescribed in this rule;
- (i) where a local authority or statutory body is to be served, on the town clerk or assistant town clerk or mayor of such local authority or the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or

- (j) where the person to be served with any document initiating application proceedings is already represented by an attorney of record such document may be served upon such attorney by the party initiating the proceedings:

Provided that where service has been effected in the manner prescribed by paragraphs (b), (c), (e) or (g), the sheriff shall set out in the return of service of the process the name of the person to whom it has been delivered and the capacity in which such person stands in relation to the person, corporation, company, body corporate or institution affected by the process:

Provided further that whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit:

Provided furthermore that service of any process through which a divorce action or action for nullity of marriage is instituted shall only be effected by the sheriff on the defendant personally.

- (4) (a) The sheriff shall, on demand by the person upon or against whom process is served, exhibit to that person the original or certified copy of the process.
 - (b) The sheriff or other person serving the process or documents shall explain the nature and contents thereof to the person upon whom service is being affected and shall state in his or her return or affidavit or on the signed receipt whether he or she has done so.
- (5) Where the person to be served keeps his or her residence or place of business closed and thus prevents the sheriff from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door or security gate of such residence or place of business or to place such copy in the post box at such residence or place of business.
- (6) Service of an interpleader summons where claim is made to any property attached under process of the court may be made upon the attorney, if any, of the party to be served.
- (7) Where two or more persons are to be served with the same process, service shall be effected upon each, except—
 - (a) in the case of a partnership, when service may be affected by delivery at the office or place of business of such partnership, or if there be

none such, then by service on any member of such partnership in any manner prescribed in this rule;

(b) in the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected by delivery to any one of them in any manner prescribed in this rule;

(c) in the case of a syndicate, unincorporated company, club, society, church, public institution or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairperson or secretary or similar officer thereof in any manner prescribed in this rule.

(8) Service of a subpoena on a witness may be effected at a reasonable time before attendance is required in any manner prescribed in this rule.

(9) (a) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or appearance to defend, as the case may be, or by sending it by registered post to the postal address so given: Provided that, subject to rules 5 and 13, service of such notice, request, statement or other document may be effected by sending it by facsimile or electronic mail to the facsimile address or electronic mail address given in the summons or notice of intention to defend, as the case may be.

(b) An address for service, postal address, facsimile address or electronic address so given as contemplated in paragraph (a) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that paragraph at such new address.

(c) (i) Service by registered post under this subrule shall, until the contrary appears, be deemed to have been effected at 10 o'clock in the forenoon on the fourth day after the postmarked date upon the receipt for registration.

(ii) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 is applicable to service by facsimile or electronic mail.

(d) Service under this subrule need not be effected through the sheriff.

- (10) Subject to rule 10, where the court is satisfied that service cannot be effected in any manner prescribed in this rule and that the action is within its jurisdiction, it may make an order allowing service to be effected by the person and in the manner specified in such order.
- (11) Where service of an ex parte order calling upon the respondent to show cause at a time stated or limited in the order or of an interpleader summons is to be effected upon any party, service of such ex parte order or interpleader summons shall be effected—
- (a) in the case where the party to be so served is the State, at least 20 days; or
 - (b) in the case where any other party is to be served, at least 10 days, before the time specified in such ex parte order or inter-pleader summons for the appearance of such party.
- (12) Except where otherwise provided, notice of any application to the court shall be served—
- (a) in the case where the party to be served is the State or a servant of the State in his or her official capacity, at least 20 days; or
 - (b) in the case of any other party, at least 10 days, before the day appointed for the hearing of the application, but the court may on cause shown reduce such period.
- (13) (a) Unless otherwise provided, where service of process may be effected by registered post such service shall be effected by the sheriff placing a copy thereof in an envelope, addressing and posting it by pre-paid registered letter to the address of the party to be served and making application at the time of registration for an acknowledgment by the addressee of the receipt thereof as provided in regulation 44(5) of the regulations published under Government Notice R550 of 14 April 1960.
- (b) A receipt form completed as provided in regulation 44(8) of the said regulations shall be a sufficient acknowledgment of receipt for the purposes hereof.
 - (c) If no such acknowledgment be received the sheriff shall state the fact in his or her return of service of the process.
 - (d) Every such letter shall have on the envelope a printed or typewritten notice in the following terms:

'This letter must not be readdressed. If delivery is not effected before
20....., this letter must be delivered to the Sheriff of the Magistrate's Court at..... '

(14) Service of any process of the court or of any document in a foreign country shall be effected—

- a. by any person who is, according to a certificate of—
 - (i) the head of any South African diplomatic or consular mission, a person in the administrative or professional division of the public service serving at a South African diplomatic or consular mission or trade office abroad;
 - (ii) any foreign diplomatic or consular officer attending to the service of process or documents on behalf of the Republic in such country;
 - (iii) any diplomatic or consular officer of such country serving in the Republic; or
 - (iv) any official signing as or on behalf of the head of the department dealing with the administration of justice in that country, authorised under the law of such country to serve such process or document; or
- (b) by any person referred to in subparagraph (i) or (ii) of paragraph (a), if the law of such country permits him or her to serve such process or document or if there is no law in such country prohibiting such service and the authorities of that country have not interposed any objection thereto.

(15) Service of any process of the court or of any document in Australia, Botswana, Finland, France, Hong Kong, Lesotho, Malawi, New Zealand, Spain, Swaziland, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe may, notwithstanding subrule (14), also be effected by an attorney, solicitor, notary public or other legal practitioner in the country concerned who is under the law of that country authorised to serve process of court or documents and in the state concerned who is under the law of that state authorised to serve process of court or documents.

(16) (a) Any process of court or document to be served in a foreign country shall be accompanied by a sworn translation thereof into an official language of that country or part of that country in which the process or document is to be served, together with a certified copy of the process or document and such translation.

- (b) Any process of court or document to be served as provided in subrule (14), shall be delivered to the registrar or the clerk of the court, as the case may be.
- (c) Any process of court or document delivered to the registrar or clerk of the court, as the case may be, in terms of paragraph (b) shall be transmitted by him or her together with the translation referred to in paragraph (a), to the Director-General of International Relations and Cooperation or to a destination indicated by the Director-General of International Relations and Cooperation, for service in the foreign country concerned, and the registrar or clerk of the court shall satisfy himself or herself that the process of court or document allows a sufficient period for service to be effected in good time.

(17) Service shall be proved—

- (a) where service has been effected by the sheriff, by the return of service of such sheriff; or
- (b) where service has not been effected by the sheriff, nor in terms of subrule (14) or (15), by an affidavit of the person who effected service, or in the case of service on an attorney or a member of his or her staff, the Government of the Republic, the Administration of any Province or on any Minister, Premier, or any other officer of such Government or Administration, in his or her capacity as such, by the production of a signed receipt therefor.

(17A) (a) The document which serves as proof of service shall, together with the served process of court or document, without delay be furnished to the person at whose request service was effected.

- (b) The person at whose request service was effected shall file the document which serves as proof of service on behalf of the person who effected service with the registrar or clerk of the court when—
 - (i) he or she sets the matter in question down for any purpose;
 - (ii) it comes to his or her knowledge in any manner that the matter is being defended;
 - (iii) the registrar requests filing; or
 - (iv) his or her mandate to act on behalf of a party, if he or she is a legal practitioner, is terminated in any manner.

- (18) Service of any process of court or document in a foreign country shall be proved—
- (a) by a certificate of the person effecting service in terms of subrule (14)(a) or subrule (15) in which he or she identifies himself or herself, states that he or she is authorised under the law of that country to serve process of court or documents therein and that the process of court or document in question has been served as required by the law of that country and sets forth the manner and the date of such service: Provided that the certificate of a person referred to in subrule (15) shall be duly authenticated; or
 - (b) by a certificate of the person effecting service in terms of subrule (14)(b) in which he or she states that the process of court or document in question has been served by him or her, setting forth the manner and law of the country concerned permits him or her to serve process of court or documents or that there is no law in such country prohibiting such service and that authorities of that country have not interposed any objection hereto.
- (19) Whenever any process has been served within the Republic by a sheriff outside the jurisdiction of the court from which it was issued, the signature of such sheriff upon the return of service shall not require authentication by the sheriff.
- (20) Whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit.
- (21) Whenever a request for the service on a person in the Republic of any civil process or citation is received from a State, territory or court outside the Republic and is transmitted to the registrar or clerk of the court, as the case may be, in terms of any applicable law, the registrar or clerk shall transmit to the sheriff or any person appointed by a magistrate of the court concerned for service of such process or citation -
- (a) Two copies of the process or citation to be served; and
 - (b) Two copies of a translation in English of such process or citation if the original is in any other language.

- (22) Service under subrule (21) shall be effected by delivering to the person to be served one copy of the process or citation to be served and one copy of the translation, thereof in accordance with this rule.
- (23) After service has been effected as provided in subrule (22) the sheriff or person appointed for the service of such process or citation shall return to the registrar or the clerk of court concerned one copy of the process or citation together with –
- (a) proof of service, which shall be by affidavit made before a magistrate, justice of the peace or commissioner of oaths by the person by whom service has been effected and verified, in the case of service by the sheriff, by the certificate and seal of office of such sheriff or, in the case of service by a person appointed by the magistrate of the court concerned, by the certificate and seal of office of the registrar or clerk of the court concerned; and
 - (b) particulars of charges for the cost of effecting such service.
- (24) The particulars of charges for the cost of effecting service under subrule (21) shall be submitted to the taxing officer of the court concerned, who shall certify the correctness of such charges or other amount payable for the cost of effecting service.
- (25) The registrar or clerk of the court concerned shall, after effect has been given to any request for service of civil process or citation, return to the Director-General of Justice
- (a) the request for service referred to in subrule (21);
 - (b) the proof of service together with a certificate in accordance with Form 46 of Annexure 1 duly sealed with the seal of the court concerned for use out of the jurisdiction; and
 - (c) the particulars of charges for the cost of effecting service, and the certificate, or copy thereof, certifying the correctness of such charges.

MC R10 EDICTAL CITATION AND SUBSTITUTED SERVICE

- (1) (a) Save by leave of the court no process or document whereby proceedings are instituted shall be served outside the Republic.

(b) If service of process or document whereby proceedings are instituted cannot be effected in any manner prescribed in rule 9, or if process or a document whereby proceedings are instituted is to be served outside the Republic, the person desiring to obtain leave to effect service may apply for such leave to a presiding officer, who may consider the application in chambers.

(2) (a) Any person desiring to obtain leave in the circumstances contemplated in subrule (1)(b) shall make application to the court setting forth concisely the nature and extent of his or her claim, the grounds upon which it is based and upon which the court has jurisdiction to entertain the claim and also the manner of service which the court is asked to authorise:

Provided that if the manner of service is other than personal service, the application shall further set forth the last-known whereabouts of the person to be served and the inquiries made to ascertain his or her present whereabouts.

(b) Upon such application the court may make such order as to the manner of service as it deems fit and shall further order the time within which notice of intention to defend is to be given or any other step that is to be taken by the person to be served.

(c) Where service by publication is ordered, it may be in a form similar to Form 4 of Annexure 1, approved and signed by the registrar or clerk of the court.

(3) Any person desiring to obtain leave to effect service inside or outside the Republic of any document other than one whereby proceedings are instituted, may either make application for such leave in terms of subrule (2) or request such leave at any hearing at which the court is dealing with the matter, in which latter event no papers need be filed in support of such request, and the court may act upon such information as may be given from the bar or given in such other manner as it may require, and may make such order as it deems fit.

MC R34 FEES OF THE SHERIFF

(1) The fees and charges to be taken by a sheriff who is an officer of the Public Service shall be those prescribed in Part I of Table C of Annexure 2 and in the case of any other sheriff those prescribed in Part II of the said Table and Annexure.

(2) (a) Every account of fees or charges furnished by a sheriff shall contain the following note:

'You may require this account to be taxed and vouched before payment.'

(b) Where any dispute arises as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question.

(3) (a) Any party having an interest may by notice in writing require the fees and charges claimed by or paid to the sheriff to be taxed by the registrar or clerk of the court, and may attend on such taxation.

(b) Upon a taxation referred to in paragraph (a) the sheriff shall vouch to the satisfaction of the registrar or clerk of the court all charges claimed by him or her.

(c) A fee for the attending of the taxation shall be allowed-

(i) to the sheriff if the sheriff's fees or charges are taxed and passed in full, as allowed for in Table C; and

(ii) to the interested party concerned if the sheriff's fees or charges are taxed but not passed in full, on the same basis as the fee allowed to the sheriff under sub paragraph (i).

MC R36 PROCESS IN EXECUTION

(1) The process for the execution of any judgment for the payment of money, for the delivery of property whether movable or immovable, or for ejectment shall be by warrant issued and signed by the registrar or clerk of the court and addressed to the sheriff.

(2) A process issued under subrule (1) may be sued out by any person in whose favour any such judgment shall have been given, if such judgment is not then satisfied, stayed or suspended.

(3) A process issued under subrule (1) may at any time, on payment of the fees incurred, be withdrawn or suspended by notice to the sheriff by the party who has sued out such process:

Provided that a request in writing made from time to time by such party to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.

(4) Any alteration in a process issued under subrule (1) shall be initialled by the registrar or clerk of the court before it is issued by him or her.

(5) The registrar or clerk of the court shall at the request of a party entitled thereto reissue process issued under subrule (1) without the court having sanctioned the reissue.

(6) Any process issued under subrule (1) shall be invalid if a wrong person is named therein as a party, but no such process shall be invalid merely by reason of the misspelling of any name therein, or of any error as to date.

(7) Except where judgment has been entered by consent or default, process in execution of a judgment shall not be issued without leave of the court applied for at the time of granting the judgment, before the day following that on which the judgment is given.

MC R38 SECURITY BY EXECUTION CREDITOR

(1) If there is a claim made by any person to any property seized, or about to be seized by the sheriff, then, if the execution creditor gives the sheriff security to his or her satisfaction, to indemnify the sheriff against any loss or damage by reason of the seizure thereof, the sheriff shall retain or seize, as the case may be, and keep the said property.

(2) Unless the summons commencing the action has been served upon the defendant personally or the defendant has delivered notice of intention to defend or notice of attachment has been given to the defendant personally—

(a) (i) if any property is attached in execution, the execution creditor shall, at least 10 days before the day appointed for the sale of such property give security to the satisfaction of the sheriff for the payment to the

judgment debtor or any person if such attachment is set aside, of any sum which the judgment debtor or such person may in law be entitled to recover from the execution creditor for damages suffered by reason of such attachment or of any proceedings consequent thereon; and (ii) if security is not given, the attachment shall be automatically suspended until security is given: Provided that

(aa) the said attachment lapses after a period of four months from the date of the attachment; and

(bb) the execution debtor may, by endorsement to that effect on the warrant of execution, dispense with the giving of security under this rule; or

(b) if money is received by the sheriff under any form of execution other than from the proceeds of the sale in execution of property and security has been given in terms of paragraph (a) in respect thereof, such money shall not be paid to the execution creditor until he or she has given security for the restitution of the full amount received by the sheriff if the attachment of the money is thereafter set aside: Provided that the judgment debtor may in writing over his or her signature dispense with the giving of such security.

(3) The prescribed fee for security given under this rule shall without taxation be recoverable as part of the costs of execution.

(4) Any surety bond or other document of security given in terms of this rule may be sued upon by the judgment debtor or any person entitled thereto, without formal transfer thereof to him or her.

(5) This rule shall not apply where the party suing out the process in execution or the execution creditor is represented by Legal Aid South Africa.

[Rule 38 substituted by GN R1604 of 17 December 2021 (wef 1 February 2022).]

MC R39 GENERAL PROVISIONS REGARDING EXECUTION

(1) Unless otherwise ordered by the court, the costs and expenses of issuing a warrant and levying execution shall be a first charge on the proceeds of the

property sold in execution and may so far as such proceeds are insufficient be recovered from the judgment debtor as costs awarded by the court.

- (2) (a) Subject to any hypothec existing prior to attachment, all warrants of execution lodged with any sheriff appointed for a particular area or any other sheriff on or before the day immediately preceding the date of the sale in execution shall rank pro rata in the distribution of the proceeds of the goods sold in execution, in the order of preference referred to in rule 43(14)(c).
- (b) The sheriff conducting a sale in execution shall not less than 10 days prior to the date of sale forward a copy of the notice of sale to all other sheriffs appointed for the area in which the sheriff has been instructed to conduct a sale in respect of the attached goods.
- (c) The sheriff conducting a sale in execution shall accept from all other sheriffs appointed for that area or any other sheriff a certificate listing any attachment that has been made and showing the ranking of creditors in terms of warrants in the possession of those sheriffs.
- (3) (a) Withdrawal of attachment shall be effected by note made and signed by the sheriff on the warrant of execution that the attachment is withdrawn, stating the time and date of the making of such note.
- (b) The sheriff shall give notice in writing of a withdrawal of attachment and of the time and date thereof to the execution creditor, the judgment debtor, all other sheriffs appointed for that area or any other sheriff who has submitted a certificate referred to in subrule (2)(c) and to any other person by whom a claim to the property attached has been lodged with the sheriff: Provided that the property shall not be released from attachment for a period of four months if a certificate referred to in subrule (2)(c) or an unsatisfied warrant of execution lodged under subrule (2) remains in the hands of the sheriff.
- (4) If any property attached in execution is claimed by any third party as his or her property or any third party makes any claim to the proceeds of property so attached and sold in execution, the sheriff shall, subject to subrule (5), deal with such matter as provided in rule 44.
- (5) Notwithstanding a claim to property referred to in subrule (4) by a third party, the sheriff shall attach such property if the sheriff has not yet done so, and the

property shall remain under attachment pending the outcome of interpleader proceedings unless sooner released from attachment upon order of the court or otherwise, and subrules 41(14), (17) and (18) shall apply with appropriate changes to property so attached.

- (6) (a) On completion of any sale in execution of property, whether movable or immovable, the sheriff shall attach to the sheriff's return a vendue roll showing details of the property sold, the prices realised, and, where known, the names and addresses of the purchasers and an account of the distribution of the proceeds and shall send a copy of such vendue roll to all other sheriffs appointed for that area who have submitted certificates referred to in subrule (2)(c).
- (b) Where a warrant of execution has been lodged with the sheriff conducting a sale in execution by any other sheriff referred to in subrule (2)(a), the sheriff conducting the sale shall make payment in terms of a distribution account to any sheriff who submitted a certificate referred to in subrule (2)(c) in respect of that sale.
- (c) Payment in terms of a distribution account shall only be made after the distribution account has lain for inspection for a period of 15 days after the sheriff who has lodged a warrant of execution with the sheriff who conducted the sale, has received a copy of the distribution account.
- (7) No sheriff or person on behalf of the sheriff shall at a sale in execution purchase any of the property offered for sale either for himself or herself or for any other person.

MC R40 EXECUTION AGAINST A PARTNERSHIP

- (1) Where a judgment debtor is a partner in a firm and the judgment is against him or her for a separate debt, the court may, after notice to the judgment debtor and to his or her firm, appoint the sheriff as receiver to receive any moneys payable to the judgment debtor in respect of his or her interests in the partnership.
- (2) An appointment in terms of subrule (1) shall, until the judgment debt is satisfied, operate as an attachment of the interest of the judgment debtor in the

partnership assets and the sheriff so appointed shall notify all other sheriffs appointed for that area of such appointment.

- (3) Where a judgment is against a firm, the partnership property shall first be exhausted, so far as it is known to the judgment creditor, before the judgement is executed against the separate property of the partners.

MC R41 EXECUTION AGAINST MOVABLE PROPERTY

- (1) An execution creditor may, at his or her own risk, issue out of the office of the registrar or clerk of the court one or more warrants of execution in a form corresponding substantially with form 32 of Annexure 1.
- (2) (a) No process of execution shall be issued for the recovery of any costs awarded by the court to any party, until such costs have been taxed by the taxing master or agreed to in writing by the party liable for the payment of such costs in a fixed sum.
- (e) (i) A claim for specified costs already awarded to the execution creditor, which costs are still to be taxed, may be included in the warrant of execution.
- (ii) If such costs are subsequently taxed, they shall be included in the sheriff's account and plan of distribution only if the original bill of costs has been duly allocated and lodged with the sheriff before the date of the sale in execution.
- (3) When the sheriff is instructed, by any court process, to recover any sum of money by execution against the goods of any person, the sheriff shall proceed forthwith to the residence, place of employment or business of such person, unless the execution creditor or the instructing attorney gives different instructions regarding the location of the assets to be attached, and there
- (a) demand satisfaction of the warrant and, failing satisfaction;
- (b) demand that so much movable and disposable property be pointed out as the sheriff may deem sufficient to satisfy the said warrant, and failing such pointing out;
- (c) search for such property.
- (4) If on demand the judgment debtor pays the judgment debt and costs, or part thereof, the sheriff shall endorse the amount paid and the date of payment on

the original and copy of the warrant, which endorsement shall be signed by the sheriff and counter-signed by the judgment debtor or his or her representative.

- (5) If the property pointed out in terms of subrule (3)(b) is insufficient to satisfy the warrant, the sheriff shall nevertheless proceed to make an inventory and valuation of so much movable property as may be pointed out in part execution of the warrant.
- (6) If the judgment debtor does not point out any property as required in terms of subrule (3)(b), the sheriff shall immediately make an inventory and valuation of so much of the movable property belonging to the judgment debtor as the sheriff may deem sufficient to satisfy the warrant or of so much of the movable property as may be found in part execution of the warrant.
- (7) In so far as may be necessary for the execution of any warrant, the sheriff may open any door on any premises, or of any piece of furniture, and if access is refused or if there is no person there who represents the person against whom such warrant is to be executed, the sheriff may, if necessary, use force or a locksmith to that end.
- (8) The sheriff shall exhibit the original warrant of execution and hand to the judgment debtor or leave on the premises a copy thereof.
- (9) The sheriff shall sign and hand a copy of an inventory made under this rule to the judgment debtor or leave the same on the premises, which copy shall have appended thereto a notice of the attachment in a format that corresponds substantially with form 33 of Annexure 1.
- (10) As soon as the requirements of this rule have been complied with by the sheriff, the goods inventoried by the sheriff shall be deemed to be judicially attached.
- (11) The sheriff shall file with the registrar or clerk of the court any process with a return of what the sheriff has done thereon, and furnish a copy of such return and inventory to the party who caused such process to be issued.

- (12) Where perishables are attached, they may, with the consent of the judgment debtor or upon the execution creditor indemnifying the sheriff against any claim for damages which may arise from such sale, be sold immediately by the sheriff concerned in such manner as may be expedient.
- (13) Where money and documents are found and attached, the amount of money or number and kinds of documents shall be specified in the inventory, and any such money or documents shall thereupon be sealed and removed to the office of the sheriff and securely stored.
- (14) (a) Where movable property, other than money or documents, has been attached, the execution creditor or his or her attorney shall after notification of such attachment, instruct the sheriff in writing, whether the property shall be removed to a place of security or left upon the premises in the charge and custody of the judgment debtor or in the charge and custody of some other person acting on behalf of the sheriff.
- (b) Upon the execution creditor or his or her attorney satisfying the registrar or clerk of the court in writing of the desirability for the immediate removal of goods attached, either upon issue of the warrant of execution or at any time thereafter, the registrar or clerk of the court shall endorse his or her approval on the document containing the instructions, and authorise the sheriff in writing, to remove immediately from the possession of the judgment debtor all or any of the movable property attached.
- (c) In the absence of any instruction under paragraph (a) or authorisation under paragraph (b), the sheriff shall leave the attached property, other than money or documents, on the premises and in the possession of the person in whose possession the said movable property is attached.
- (15) (a) Any person whose movable property has been attached by the sheriff may, together with some person of sufficient means who binds himself or herself as surety to the satisfaction of the sheriff, undertake in writing to produce such property on the date appointed for the sale thereof, whereupon the sheriff shall

leave the said property attached and inventoried on the premises where it was found.

(b) The deed of suretyship shall be in the form that corresponds substantially with form 37A of Annexure 1.

(16) (a) If the judgment debtor does not, together with a surety, give an undertaking as contemplated in subrule (15)(a), then, unless the execution creditor directs otherwise, the sheriff shall remove the said goods to a convenient place of security or keep possession thereof on the premises where they were attached.

(b) The costs of such removal or storage shall be recoverable from the judgment debtor and defrayed out of the proceeds of the sale in execution.

(17) (a) Where a sheriff is instructed to remove the movable property, he or she shall do so without any avoidable delay, and he or she shall in the meantime leave the same in the charge or custody of some person who shall have the charge or custody in respect of the goods on the sheriff's behalf.

(b) Any person in whose charge or custody attached movable property has been left, shall not use, let or lend such property, or permit it to be used, let or lent, nor in any way do anything which will decrease its value and, if the attached property has produced any profit or increase, the custodian shall be responsible for any such profit or increase in like manner as he or she is responsible for the property originally attached, and shall deliver such profit or increase to the sheriff.

(c) If a person, other than the judgment debtor, in whose charge or custody movable property has been left, defaults on his or her duty such person shall not be entitled to recover any remuneration for taking charge and custody of the attached property.

(18) (a) Unless an order of court is produced to the sheriff requiring him or her to detain any movable property under attachment for such further period as may be stipulated in such order, the sheriff shall release from attachment such property which has been detained for a period exceeding four months unless a sale in execution of such property is pending.

(1) If such order was granted in terms of an ex parte application, such order shall not require confirmation.

(2) In the event of a claimant lodging an interpleader claim with the sheriff in accordance with rule 44, the period of four months referred to in paragraph (a) shall be suspended from the date on which the claimant delivers his or her affidavit to the sheriff until the final adjudication of the interpleader claim, including any review or appeal in respect of such interpleader claim.

- (19) (a)(i) Any movable property to be sold in execution of process of the court shall be sold publicly for cash to the highest bidder by the sheriff who removed the goods in terms of subrule (17)(a) or, with the approval of the magistrate, by an auctioneer or other person appointed by the sheriff, at or as near to the place where same was attached or to which same had been so removed as aforesaid.
- (ii) The provisions of rule 43(10) shall apply with appropriate changes to the sale in execution of movable property under this rule.
- (b) The execution creditor shall, after consultation with the sheriff, prepare a notice of sale and furnish two copies thereof to the sheriff in sufficient time to enable one copy to be affixed not later than 10 days before the day appointed for the sale on the notice board or door of the court-house or other public building in which the said court is held and the other at or as near as may be to the place where the said sale is to take place.
- (c) In addition to the requirements of paragraph (b), if in the opinion of the sheriff the value of the goods attached exceeds an amount equivalent to the monetary jurisdiction of the Small Claims Court, the sheriff shall indicate and direct the execution creditor to publish the notice of sale in a local or other newspaper circulating in the region or district not later than 10 days before the date appointed for the sale and to furnish the sheriff with a copy of the edition of the paper in which the publication appeared not later than the day preceding the date of sale.
- (d) In lieu of paragraph (c), the sheriff may post the notice of sale on the sheriff's office's website, upon being so instructed in writing by the execution creditor: Provided that the sheriff shall not later than 10 days before the appointed date of sale, affix on the notice board, the door of the court-house or other public building in which the said court is held, and the other, at or as near as the case may be, to the place where the said sale is to take place, a notice stating the date of the sale in

execution and the website on which the full details of the sale may be inspected.

(20) The day appointed for a sale in execution shall not be less than 15 days after attachment:

Provided that where the goods attached are of a perishable nature, or with the consent of the judgment debtor, the court may, upon application, reduce any period referred to in this subrule or subrule (19) to such extent and on such conditions as it may deem fit.

(21) Where property subject to a real right of any third person, is to be sold in execution, such sale must be subject to the rights of such third person unless he or she otherwise waives such rights.

(22) A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the said warrant and any warrant referred to in rule 39(2) and the costs of the sale.

(23) (a) Should the sheriff have a balance in hand after satisfaction of the claim of the execution creditor and of all warrants of execution lodged with the sheriff on or before the day immediately preceding the date of the sale and of all costs, the sheriff shall pay such balance to the judgment debtor if he or she can be found, failing which the sheriff shall pay such balance into court.

(b) The balance paid into court in terms of paragraph (a), if not disposed of before the expiration of three years, shall be paid into the National Revenue Fund after three months' notice of such intention has been given to the persons concerned, where after any application for the refund of such balance shall be directed to the National Revenue Fund by a person concerned.

MC R42 EXECUTION AGAINST MOVABLE PROPERTY (CONTINUED)

(1) If incorporeal property is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided.

(a) Where the property or right to be attached is a lease, a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when—

(i) notice has been given by the sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security, as the case may be;

(ii) the sheriff shall have taken possession of the document, if any, evidencing the lease, the bill of exchange, promissory note, bond or other security, as the case may be, or has certified that he or she has been unable, despite diligent search, to obtain possession of the document; and

(iii) in the case of a registered lease or any registered right, notice has been given to the registrar of deeds.

(b) (i) Where the incorporeal right in movable property sought to be attached is the interest of the judgment debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the sheriff has served notice of the attachment and a copy of the warrant of execution on the judgment debtor and on the owner of the movable property or any other party who has an interest therein.

(ii) The sheriff may, upon exhibiting the original of such warrant of execution to the owner of the movable property or any other party who has an interest therein, enter upon the premises where such property is and make an inventory and valuation of the said interest.

(c) In the case of the attachment of all other incorporeal rights in property-

(i) the attachment shall only be complete when-

(aa) notice of the attachment has been given in writing by the sheriff to all interested parties and, where the asset consists of an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered; and

(bb) the sheriff shall have taken possession of the document evidencing the ownership of such property or right, or shall have certified that he or she has been unable to obtain possession of the document, despite diligent search;

(ii) the sheriff may, upon exhibiting the original of the warrant of execution to the person having possession of property in which

incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

- (2) Attachment of property subject to a lien must be effected in accordance with the provisions of subrule (1)(b), with necessary changes.
- (3) The method of attachment of property under section 32 of the Act shall be the same as that of attachment in execution, with appropriate changes.

MC R43 EXECUTION AGAINST IMMOVABLE PROPERTY

(1)(a) Subject to the provisions of rule 43A, no warrant of execution against the immovable property of any judgment debtor shall be issued unless-

- (i) a return has been made of any process issued against the movable property of the judgment debtor from which it appears that the said person has insufficient movable property to satisfy the warrant; or
- (ii) such immovable property has been declared to be specially executable by the court.

(b) A warrant of execution against immovable property shall contain

- (i) a full description of the nature, magisterial district and physical address of the immovable property to enable it to be traced and identified by the sheriff; and
- (ii) sufficient information to enable the sheriff to give effect to subrule (3) hereof.

(2) The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated, upon a warrant of execution corresponding substantially with Form 32 of Annexure 1.

(3) (a) Notice of the attachment, corresponding substantially with Form 33 of Annexure I, shall be served by the sheriff upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is occupied by some person other than the owner, also upon such occupier.

(b) Any notice referred to in paragraph (a) Shall-

- (i) draw attention to the provisions of subrule (8)(a) (iii); and
- (ii) be served according to the provisions of rule 9, except that service upon the registrar of deeds or other officer charged with the registration of immovable property may also be effected by the sheriff by means of a registered letter, duly prepaid and posted, addressed to the officer intended to be served.

(4)(a) When effecting the attachment, the sheriff may enter buildings or structures on the immovable property in order to ascertain the improvements made to the immovable property, as well as the condition of such improvements:

Provided that where the sheriff after reasonable attempts is unable to gain access onto the immovable property or into any building or structure on account of the property, building or structure being locked, the sheriff may use a locksmith to gain entry.

- (b) After attachment, any sale in execution shall take place in the district in which the attached immovable property is situated and shall be conducted by the sheriff of such district who first attached the property: Provided that the sheriff in the first instance and subject to the provisions of paragraph (d) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.
- (c) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record the bonds or other encumbrances which are registered against the attached immovable property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(5) Subject to rule 43A and any order made by the court, no immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless

- (a) the execution creditor has caused notice of the intended sale, corresponding substantially with Form 34 of Annexure 1, to be served upon—
 - (i) preferent creditors personally;
 - (ii) the local authority, if the property is

rated; and

(iii) the body corporate, if the property is a sectional title unit,

calling upon the aforesaid entities to stipulate within 10 days of a date to be stated, a reasonable reserve price or to agree in writing to a sale without reserve, and has provided proof to the sheriff that such entities have so stipulated or agreed; or

(b) subject to the provisions of section 66(2)(b) of the Act, the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice.

(6) The sheriff may by notice served upon any person require such person to deliver up to the sheriff forthwith, all documents in such person's possession or control relating to the debtor's title to the said property.

(7) (a) The sheriff conducting the sale shall appoint a day and place for the sale of the attached immovable property, such day being, except by special leave of a magistrate, not less than 45 days after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.

(b)(i) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the attached immovable property, its improvements, magisterial district and physical address, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale.

(ii) the execution creditor must furnish the sheriff with as many copies of the notice of sale as the sheriff may require.

(c) The execution creditor shall-

(i) Publish the notice once in a newspaper circulating daily or weekly in the district in which the attached immovable property is situated and in the Gazette not less than five days and not more than 15 days before the date of the sale; and

- (ii) provide the sheriff conducting the sale, by hand, or by facsimile or electronic mail, with one satisfactory photocopy of each of the notices published in the newspaper and the Gazette, respectively.
- (d) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall forward a copy of the notice of sale referred to in paragraph (b) to every execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and shall simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.
- (e) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall affix-
 - (i) one copy of the notice on the notice-board of the magistrate's court of the district in which the attached immovable property is situated, or if the said property is situated in the district where the court out of which the warrant was issued is situated, then on the notice-board of such court; and
 - (ii) one copy at or as near as may be to the place where the said sale is actually to take place.

(8)(a)(i) Not less than 35 days prior to the date of the sale, the execution creditor shall prepare the conditions of sale, corresponding substantially with Form 33A of Annexure 1, upon which the attached property is to be sold and shall submit such conditions to the sheriff conducting the sale, for the purposes of settling them.

(ii) In addition to any other terms, the conditions of sale shall include any conditions ordered by the court.

(iii) Not less than 25 days prior to the date of the sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.

(iv) Not less than 20 days prior to the data of the sale, the sheriff shall settle the conditions of sale.

(v) The sale in execution and the conditions of sale shall comply with the provisions of any law relating to auctions, in particular the Consumer Protection Act, 2008 and the regulations promulgated thereunder.

(b)(i) The execution creditor shall thereafter supply the said sheriff with three copies of the conditions of sale, one of which shall lie for

inspection by interested parties at the office of the sheriff for 15 days prior to the date of the sale.

- (ii) The sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.
- (c) Not less than 15 days prior to the date of the sale, the sheriff shall serve one copy of the conditions of sale on the judgment debtor.
- (d) Not less than 10 days prior to the date of all known affected parties apply to the magistrate of the district in which the attached immovable property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an appropriate order as to costs.

(9) The execution creditor shall appoint a conveyancer to attend to the transfer of the attached immovable property sold in execution:

Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.

(10) (a) Immovable property attached in execution shall be sold by public auction by the sheriff or a private auctioneer appointed in terms of paragraph (b).

(b) The execution creditor or any person having an interest in the due and proper realisation of the attached immovable property may, by notice given to the sheriff within 15 days after attachment, but subject to the provisions hereinafter contained, require that such property be sold by an auctioneer in the ordinary course of business and may in such notice nominate the auctioneer to be employed.

(c)(i) Where a notice in terms of paragraph (b) is given by any person other than the execution creditor, such notice must be accompanied by the deposit of a sum sufficient to cover the additional expense of sale by an auctioneer in the ordinary course of business, and in default of such a deposit such notice shall be void.

(ii) A notice in terms of paragraph (b) shall lapse if the services of an auctioneer are not obtainable.

(iii) If after satisfying the claim of the execution creditor and all warrants of execution lodged with the sheriff on or before the day immediately preceding the date of the sale and all costs there are

surplus proceeds of the sale of the immovable property, the deposit must be refunded to the depositor: Provided that if there is no surplus, such deposit must, as far as may be necessary, be applied in payment of the auctioneers' fees and expenses.

(d) If two or more notices in terms of paragraph (b) are given, the first shall have preference.

(11)(a)(i) If the purchaser fails to carry out any obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a magistrate summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the attached immovable property may be put up for sale again.

(ii) The report shall be accompanied by a notice corresponding substantially with Form 33B of Annexure 1.

(iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.

(b) Any loss sustained by reason of the purchaser's default may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgment of a magistrate given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before a magistrate for the aforesaid purpose.

(c) If the purchaser is already in possession of the immovable property, the said sheriff may, on notice to affected persons apply to a magistrate for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.

(12) Subject to the provisions of rule 43A and subrule (5) hereof-

(1) the sale shall be conducted upon the conditions stipulated under subrule (8); and

(2) the immovable property shall be sold to the highest bidder.

(13)(a) All moneys in respect of the purchase price of the immovable property sold in execution shall be paid to the sheriff and the sheriff shall retain such moneys in his or her trust account until transfer has been given to the purchaser.

(b) The sheriff conducting the sale shall give transfer to the purchaser against payment of the purchase money and upon performance of

the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.

- (c) No amount of the purchase money shall be paid out until the provisions of subrule (14) have been complied with.

(14)(a) After conclusion of the sale, but before preparation by the sheriff of a plan of distribution, the execution creditor or his or her attorney shall provide the sheriff with a certificate of all money paid by the judgment debtor to the execution creditor or his or her attorney after the issue of the warrant of execution.

- (b)(i) Within 10 days after the date of registration of the transfer, the sheriff shall have prepared a plan of distribution of the proceeds in order of preference, and must forward a copy of such plan to the registrar or clerk of the court and to all other sheriffs appointed in that district.

- (ii) Immediately thereafter the said sheriff shall give notice to all parties who have lodged warrants and to the execution debtor that the plan of distribution will lie for inspection at his or her office and the office of the registrar or clerk of the court for 15 days from a date mentioned, and unless such parties signify in writing their agreement to the plan, such plan will so lie for inspection.

- (c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference:

- (i) Claims of preferent creditors ranking in priority in their legal order of preference; and thereafter

- (ii) Claims of other creditors whose warrants have been lodged with the sheriff in the order of preference appearing from sections 96 and 98A to 103 (inclusive) of the Insolvency Act, 1936 (Act 24 of 1936).

- (d) Any interested person objecting to the plan must—

- (i) before the expiry of the period referred to in paragraph (b)(ii), give notice in writing to the sheriff and all other interested persons of the particulars of the objection; and

- (ii) within 10 days after the expiry of the period referred to in paragraph (b) (ii), bring such objection before a magistrate for review upon 10 days' notice to the sheriff and the said persons.
- (e) The magistrate on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as he or she deems appropriate.
- (f) If-
 - (i) no objection is lodged to such plan; or
 - (ii) the interested parties signify their concurrence therein; or
 - (iii) the plan is confirmed or amended on review,the sheriff shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser, pay out in accordance with the plan of distribution.

(15) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any immovable property offered for sale either for himself or herself or for any other person

MC R43A EXECUTION AGAINST RESIDENTIAL IMMOVABLE PROPERTY

- (1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.
- (2) (a) A court considering an application under this rule must—
 - (i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and
 - (ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.
- (b) A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the

court, having considered all relevant factors, considers that execution against such property is warranted.

- (c) The registrar or clerk of the court shall not issue a warrant of execution against the residential immovable property of any judgment debtor unless a court has ordered execution against such property.

(3) Every notice of application to declare residential immovable property executable shall be-

- (a) substantially in accordance with Form 1B of Annexure 1;
- (b) on notice to the judgment debtor and to any other party who may be affected by the sale in execution, including the entities referred to in rule 43(5)(a): Provided that the court may order service on any other party it considers necessary;
- (c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and
- (d) served by the sheriff on the judgment debtor personally: Provided that the court may order service in any other manner.

(4)(a) The applicant shall in the notice of application-

- (i) state the date on which the application is to be heard;
 - (ii) inform every respondent cited therein that if the respondent intends to oppose the application or make submissions to the court, the respondent must do so on affidavit within 10 days of service of the application and appear in court on the date on which the application is to be heard;
 - (iii) appoint a physical address which shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the courthouse at which the applicant will accept service of all documents in these proceedings; and
 - (iv) state the applicant's postal, facsimile or electronic mail address where available.
- (b) The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in paragraph (a) (ii).

(5) Every application shall be supported by the following documents, where applicable, evidencing

- (a) the market value of the immovable property;
- (b) the local authority valuation of the immovable property;
- (c) the amounts owing on mortgage bonds registered over the immovable property;
- (d) the amount owing to the local authority as rates and other dues;
- (e) the amounts owing to a body corporate as levies; and
- (f) any other factor which may be necessary to enable the court to give effect to subrule (8):
Provided that the court may call for any other document which it considers necessary.

(6)(a) A respondent, upon service of an application referred to in subrule (3), may—

- (i) oppose the application; or
 - (ii) oppose the application and make submissions which are relevant to the making of an appropriate order by the court; or
 - (iii) without opposing the application, make submissions which are relevant to the making of an appropriate order by the court.
- (b) A respondent referred to in paragraph (a)(i) and (ii) shall-
- (i) admit or deny the allegations made by the applicant in the applicant's founding affidavit; and
 - (ii) set out the reasons for opposing the application and the grounds on which the application is opposed.
- (c) Every opposition or submission referred to in paragraphs (a) and (b) shall be set out in an affidavit.
- (d) A respondent opposing an application or making submissions shall, within 10 days of service of the application
- (i) deliver the affidavit referred to in paragraph (c);
 - (ii) appoint a physical address which shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the courthouse at which documents may be served upon such respondent; and

(iii) state the respondent's postal, facsimile or electronic mail address where available.

(7) The registrar or clerk of the court shall place the matter on the roll for hearing by the court on the date stated in the Notice of Application.

(8) A court considering an application under this rule may-

- (i) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate;
- (ii) order the furnishing by-
 - (i) a municipality of rates due to it by the judgment debtor; or
 - (ii) a body corporate of levies due to it by the judgment debtor;
- (iii) on good cause shown, condone-
 - (i) failure to provide any document referred to in subrule (5); or
 - (ii) delivery of an affidavit outside the period prescribed in subrule (6)(d);
- (iv) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt;
- (v) set a reserve price;
- (vi) postpone the application on such terms as it may consider appropriate;
- (vii) refuse the application if it has no merit;
- (viii) make an appropriate order as to costs, including a punitive order against a party who delays the finalisation of an application under this rule; or
- (ix) make any other appropriate order.

(9)(a) In an application under this rule, or upon submissions made by respondent, the court must consider whether a reserve price is to be set.

- (b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the court shall take into account-
- (i) the market value of the immovable property;
 - (ii) the amount owing as rates or levies;
 - (iii) the amounts owing on registered mortgage

bonds;

(iv) any equity which may be realised between the reserve price and the market value of the property;

(v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)(a) to (e), whether or not equity may be found in the immovable property, as referred to in subparagraph (iv);

(vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation;

(vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;

(viii) any prejudice which any party may suffer if the reserve price is not achieved; and

(ix) any other factor which in the opinion of the court is necessary for the protection of the interests of the execution creditor and the judgment debtor.

(c) If the reserve price is not achieved at a sale in execution, the court must, on a reconsideration of the factors in paragraph (b) of this subrule and its powers under this rule, order how execution is to proceed.

(d) Where the reserve price is not achieved at a sale in execution, the sheriff must submit a report to the court, within 5 days of the date of the auction, which report shall contain—

(i) the date, time and place at which the auction sale was conducted;

(ii) the names, identity numbers and contact details of the persons who participated in the auction;

(iii) the highest bid or offer made; and

(iv) any other relevant factor which may assist the court in performing its function in paragraph (c).

(e) The court may, after considering the factors in paragraph (d) and any other relevant factor, order that the property be sold to the person who made the highest offer or bid.

MC R43B ENFORCEMENT OF FOREIGN CIVIL JUDGEMENT

- (1) Whenever a certified copy of a judgment referred to in section 3(1) of the Enforcement of Foreign Civil Judgments Act, 1988 (Act 32 of 1988), is filed with the registrar or clerk of the court in the Republic, such registrar or clerk of the court shall register that judgment by numbering it with a consecutive number for the year during which it is filed and by noting the particulars in respect of the judgment referred to in paragraphs (a), (b) and (c) of the said section on the case cover.
- (2) A judgment creditor shall, together with the certified copy of a judgment referred to in subrule (1)—
 - (a) file an affidavit made by himself or herself or by somebody else who can confirm the following facts stating -
 - (i) the amount of interest due, the appropriate rate of interest and how the amount of interest has been calculated; and
 - (ii) whether any amount has been paid by the judgment debtor since judgment, and, if so, whether such amount has been deducted from the capital amount of the judgment debt or from the interest or costs, as the case may be; and
 - (b) if any amount payable under the judgment is expressed in a currency other than the currency of the Republic, file a certificate issued by a banking institution registered in terms of section 4 of the Banks Act, 1965 (Act 23 of 1965), stating the rate of exchange prevailing at the date of the judgment.
- (3) A notice issued in terms of section 3(2) of the Enforcement of Foreign Civil Judgments Act, 1988 (Act 32 of 1988), shall contain
 - (a) the consecutive number referred to in subrule (1);
 - (b) the date on which the judgment was registered;
 - (c) the balance of the amount payable under the judgment;
 - (d) the taxed costs awarded by the court of the designated country;
 - (e) the interest, if any, which by the law or by order of the court of the designated country concerned is due on the amount payable under the judgment up to the time of registration of the judgment;
 - (f) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining a certified copy of the judgment;
 - (g) the names of the parties concerned; and
 - (h) the name of the court where the judgment was given.

MC R44 INTERPLEADER CLAIMS

(1)(a) Where any third party (hereinafter in this subrule referred to as the 'applicant') has in his or her custody or possession property to which two or more persons (hereinafter in this rule referred to as the 'claimants') make adverse claims the applicant may sue out a summons in the form prescribed for that purpose in Annexure 1 calling upon the claimants to appear and state the nature and particulars of their claims and have such claims adjudicated upon.

(b) If the property in question consists of money, the applicant shall when suing out the summons pay the amount thereof into court.

(c) The applicant shall annex to a summons referred to in paragraph (a) an affidavit setting out that-

- (i) he or she claims no interest in the subject matter in dispute other than for charges or costs;
- (ii) he or she is not colluding with any of the claimants; and
- (iii) in the case of property other than money paid into court in terms of paragraph (b), he or she is willing to deal with the property as the court may direct.

(2)(a) Where any person other than the execution debtor hereinafter in this subrule referred to as the 'claimant') makes any claim to or in respect of property attached by the sheriff in execution of any process of the court or where any such claimant makes any claim to the proceeds of property so attached and sold in execution the sheriff shall require from such claimant to lodge an affidavit in triplicate with the sheriff within 10 days from the date on which such claim is made, setting out-

- (i) the claimant's full names, identity number and occupation;
- (ii) the claimant's residential address and business address or address of employment; and
- (iii) the nature and grounds of his or her claim substantiated by any relevant evidence.

(b) (i) Within 15 days after the date on which the claim is made the sheriff shall notify the execution creditor and all

other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the claim.

(ii) Simultaneously with the notice referred to in subparagraph (i), the sheriff shall deliver one copy of the claimant's affidavit to the execution creditor and one to the execution debtor.

(c) (i) The execution creditor shall, within 10 days of receipt of notice of the claimant's claim and affidavit, advise the sheriff in writing whether he or she admits or rejects the claimant's claim.

(ii) If the execution creditor gives the sheriff notice within the period stated in paragraph (i) that he or she admits the claim, he or she shall not be liable for any costs, fees or expenses afterwards incurred and the sheriff may withdraw from possession of the property claimed.

(3)(a) If the execution creditor gives the sheriff notice that he or she rejects the claim, the sheriff shall within 10 days from date of such notice prepare and issue out a summons in the form prescribed for that purpose in Annexure 1 calling upon the claimant and the execution creditor to appear on the date specified in the summons to have the claim of the claimant adjudicated upon.

(b) The sheriff shall notify all other sheriffs appointed for that area who have submitted certificates referred to in rule 39(2)(c) of the date specified in the summons sued out under paragraph (a) and of the judgment of the court.

(c) The registrar or clerk of the court shall sign and issue the summons.

(4) If any claimant does not appear in pursuance of any summons sued out under this rule or appears but fails or refuses to comply with any order made by the court after his or her appearance, the court may make an order declaring him or her and all persons thereafter claiming under him or her barred from making any claim in respect of the subject matter referred to in the summons against the applicant or the sheriff.

(5) If any claimant referred to in this rule appears in pursuance of any summons sued out under this rule, the court may—

- (a) order him or her to state, orally or in writing on oath or otherwise, as the court may deem expedient, the nature and particulars of his or her claim;
- (b) order that the matters in issue shall be tried on a day to be appointed for that purpose and, if any such claimant is a claimant referred to in subrule (1), order which of the claimants shall be plaintiff and which defendant for the purpose of trial; or
- (c) try the matters in dispute in a summary manner.

(6) Where the matters in issue are tried, whether summarily or otherwise, the provisions of rule 29 as to the trial of an action shall mutatis mutandis apply.

(7) The court may, in and for the purposes of any interpleader proceedings, make such order as to any additional expenses of execution occasioned by the claim and as to payment of costs incurred by the applicant or sheriff as it may deem fit.

MC R46 ATTACHMENT OF EMOLUMENTS-BY-EMOLUMENTS ATTACHMENT ORDER

(1) When an emoluments attachment order has been authorised by the court, an application to issue that order must be made on a form corresponding substantially with Form 38A of Annexure 1.

(2) An emoluments attachment order shall be issued on a form corresponding substantially with Form 38 of Annexure 1, and shall contain sufficient information to enable the garnishee to identify the judgment debtor, including the date of birth, identity number or passport number and employee number of the judgment debtor.

MC R47 ATTACHMENT OF A DEBT BY GARNISHEE ORDER

(1) An application for an attachment of a debt shall be supported by an affidavit or affirmation by the creditor or a certificate by his or her attorney stating that—

- (a) a court-
 - (i) has granted judgment to the judgment creditor; or
 - (ii) has ordered the payment of a debt referred to in section 55 of the Act and costs in specific instalments;
 - (b) the judgment or order referred to in subrule (1)(a) is still unsatisfied, stating the amounts still payable thereunder;
 - (c) the garnishee resides, carries on business or is employed within the district, with mention of the address of the garnishee; and
 - (d) a debt is at present or in future owing or accruing by or from the garnishee to the judgment debtor and the amount thereof.
- (2) Unless an application for a garnishee order is directed to the court which granted the judgment or order referred to in subrule (1)(a), a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit or affirmation or certificate referred to in subrule (1).
- (3) Sufficient information including the identity number or work number or date of birth of the judgment debtor shall be furnished in a garnishee order to enable the garnishee to identify the judgment debtor.
- (4) Upon an application under this rule the court may require such further evidence as it may deem fit.
- (5) Upon an application under this rule the court may order the garnishee to pay to the judgment creditor or his or her attorney so much of the debt at present or in future owing or accruing by or from him or her to the judgment debtor as may be sufficient to satisfy the said judgment, together with the costs of the garnishee proceedings (including the costs of service), or failing such payment to appear before the court on a day to be named in the said order and show cause why he should not pay such debt.
- (6) The registrar or clerk of the court shall note upon the face of an order made under subrule (5) the day it was made.
- (7) An order made under subrule (5) shall be served upon the garnishee and

upon the judgment debtor and shall operate as an attachment of the said debt in the hands of the garnishee.

- (8) The judgment debtor and the garnishee may appear on the day fixed for the hearing of the application, but may not question the correctness of the judgment on which the application is based.
- (9) If the garnishee does not dispute his or her indebtedness to the judgment debtor, or allege that he or she has a set-off against the judgment debtor or that the debt sought to be attached belongs to or is subject to a claim by some other person, or if he or she shall not appear to show cause as provided in subrule (5), the court may order the garnishee to pay the debt (or such portion of it as the court may determine) to the judgment creditor or his or her attorney on the dates set out in the said order, and should the garnishee make default, execution for the amount so ordered and costs of the said execution may be issued against the garnishee.

Rules 36 to 43, inclusive shall mutatis mutandis apply to execution in terms of this subrule.

- (10) If the garnishee disputes his or her liabilities to pay the debt or alleges that he or she has any other defence, set-off or claim in reconvention which would be available to him or her if he or she were sued for the said debt by the judgment debtor, the court may order the garnishee to state, orally or in writing, on oath or otherwise, as to the court may seem expedient, the particulars of the said debt and of his or her defence thereto and may either hear and determine the matters in dispute in a summary manner or may order that-

- (a) the matters in issue shall be tried under the ordinary procedure of the court; and
- (b) for the purpose of such trial, the judgment creditor shall be plaintiff and the garnishee defendant, or vice versa.

- (11) If the garnishee alleges that the debt belongs to or is subject to a claim by some other person the court may extend the return day and order such other person to appear and state the nature and particulars of his or her claim and either to maintain or relinquish it, and may deal with the matter as if the judgment creditor and such other person were claimants in interpleader in terms of rule 44.

- (12) If the judgment debtor alleges that the judgment has been satisfied or is for some other reason not operative against him or her, or that the garnishee is not indebted to him or her, the court may try the issue summarily.
- (13) After hearing the parties or such of them as appear the court may—
- (a) order payment by the garnishee in terms of subrule (9);
 - (b) declare the claim of any person to the debt attached to be barred;
 - (c) dismiss the application; or
 - (d) make such other order as it may deem fit.

MC R49 RESCISSION AND VARIATION OF JUDGMENTS

(1) A party to proceedings in which a default judgment has been given, or any person affected by such judgment, may within 20 days after obtaining knowledge of the judgment serve and file an application to court, on notice to all parties to the proceedings, for a rescission or variation of the judgment and the court may, upon good cause shown, or if it is satisfied that there is good reason to do so, rescind or vary the default judgment on such terms as it deems fit:

Provided that the 20 days'

period shall not be

applicable to a request for rescission or variation of judgment brought in terms of subrule (5) or (SA).

(2) It will be presumed that the applicant had knowledge of the default judgment 10 days after the date on which it was granted, unless the applicant proves otherwise.

(3) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who wishes to defend the proceedings, the application must be supported by an affidavit setting out the reasons for the defendant's absence or default and the grounds of the defendant's defence to the claim.

(4) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who does not wish to defend the

proceedings, the applicant must satisfy the court that he or she was not in wilful default and that the judgment was satisfied, or arrangements were made to satisfy the judgment, within a reasonable time after it came to his or her knowledge.

(5) (a) Where a plaintiff in whose favour a default judgment was granted has consented in writing that the judgment be rescinded or varied, either the plaintiff or the defendant against whom the judgment was granted, or any other person affected by such judgment, may, by notice to all parties to the proceedings, apply to the court for the rescission or variation of the default judgment, which application shall be accompanied by written proof of the plaintiff's consent to the rescission or variation.

(b) An application referred to in paragraph (a) may be made at any time after the plaintiff has consented in writing to the rescission or variation of the judgment.

(5A) (a) Where a judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid in full, a court may, on application by the judgment debtor or any other person affected by the judgment, rescind that judgment.

(b) The application contemplated in paragraph (a)-

(i) must be made on a form corresponding substantially with Form 5C of Annexure 1;

(ii) must be accompanied by an affidavit with annexures providing reasonable proof that the judgment debt, the interest and the costs have been paid; and

(iii) must be served on the judgment creditor not less than 10 days prior to the hearing of the application.

(6) Where an application for rescission or variation of a default judgment is made by any person other than an applicant referred to in subrule (3), (4) or (5), the application must be supported by an affidavit setting out the reasons why the applicant seeks rescission or variation of the judgment.

(7) All applications for rescission or variation of judgment other than a default judgment must be brought on notice to all parties, supported by an affidavit setting out the grounds on which the applicant seeks the rescission or variation,

and the court may rescind or vary such judgment if it is satisfied that there is good reason to do so.

- (8) Where the rescission or variation of a judgment is sought on the ground that it is void from the beginning, or was obtained by fraud or mistake, the application must be served and filed within one year after the applicant first had knowledge of such voidness, fraud or mistake.
- (9) A magistrate who of his or her own accord corrects errors in a judgment in terms of section 36(1)(c) of the Act shall, in writing, advise the parties of the correction.

MC R56 INTERDICTS, ATTACHMENTS TO SECURE CLAIMS AND *MANDAMENTEN VAN SPOLIE*

- (1) Application to the court for an order of an interdict or attachment or for a mandament van spolie shall be made in terms of rule 55.
- (2) Every application referred to in subrule (1) shall be accompanied by an affidavit stating the facts upon which the application is made and the nature of the order applied for.
- (3) The court may, before granting an order upon an application referred to in subrule (1), require the applicant to give security for any damages which may be caused by such order and may require such additional evidence as it may think fit.
- (4) Unless otherwise ordered by a court, an order for the attachment of goods shall ipso facto be discharged upon security being given by the respondent to the sheriff for the amount to which the order relates, together with costs.
- (5) The security contemplated in subrule (4) may be given to abide the result of the action instituted or to be instituted; and may be assigned by the respondent to part only of the order and shall in that event operate to discharge the order as to that part only.

MC R57 ATTACHMENT OF PROPERTY TO FOUND OR CONFIRM JURISDICTION

- (1) Any application to the court for an order of attachment of property under section 30bis of the Act may be made ex parte.

- (2) (a) Any application for an order of attachment of property under section 30bis of the Act shall be supported by an affidavit in which is stated—
 - (i) the name, address, occupation and place of residence of the applicant;
 - (ii) the name, and, if known, the address, occupation and place of residence of the respondent;
 - (iii) the amount of the claim or the value of the matter in dispute and facts from which it is apparent that the action to be instituted against the respondent is within the jurisdiction of the court and that the attachment is necessary;
 - (iv) whether the attachment is intended to found or confirm jurisdiction;
 - (v) details of the property, including its ownership, value and situation;
 - (vi) such other information as may be necessary to secure an order; and
 - (vii) the terms of the order applied for.
- (b) An affidavit contemplated in paragraph (a) shall be made by the applicant or, if thereto authorised, by someone on his or her behalf and shall state whether the deponent knows of his or her own knowledge the facts to which he or she deposes: Provided that where the facts are not known to the deponent of his or her own knowledge but are alleged to be true to the best of his or her information and belief, it shall be stated how the information was obtained or on what grounds he or she bases his or her belief.
- (c) Any application for an order in regard to service of any process in any action referred to in section 30bis of the Act may be combined with any application for attachment referred to in paragraph (a).

- (3) The court may, before granting an order of attachment of property under subrule (2) require the applicant to give security for any damages which may be caused by such order and may, in regard to any application under subrule (2), require such additional evidence as it may deem fit.
- (4) (a) Any order of attachment under subrule (2) shall call upon the respondent to show cause at a time and on a date stated in the order why such order should not be confirmed.
- (b) The return date for an order of attachment under subrule (2) may be anticipated by the respondent upon 12 hours' notice to the applicant.
- (c) Where the respondent appears to show cause against an order of attachment under subrule (2), the court may order the applicant or deponent to the affidavit or the respondent to attend for examination or cross-examination and may confirm, discharge or vary such order on such terms as to costs as it may deem fit.
- (5) The minutes of any order referred to in this rule which are required for service or execution shall be prepared by the applicant and approved and signed by the registrar or clerk of the court and shall state that the return date may be anticipated by the respondent upon 12 hours' notice to the applicant and that the applicant may obtain release of his or her property upon security being given as hereinafter provided.
- (6) (a) Upon receipt of the minutes of the order and of a copy of the affidavit on which it was made the sheriff shall proceed to attach the property specified therein.
- (b) Subject to paragraph (c), the rules relating to the powers and duties of the sheriff in regard to the method of attachment in execution against movable and immovable property shall, in so far as those rules are appropriate and can be applied, mutatis mutandis apply to an attachment of property under this Rule.
- (c) Subject to any order of the court, the sheriff shall where movable property is attached under this rule, remove such property to a place of security or, if such property be inconvenient to remove, shall leave such property upon the premises in the charge and custody of some person acting on his or her behalf.

- (d) Any expense incurred in removing property attached under this rule to a place of security or for the storage of such property or in leaving such property in the charge or custody of some person acting on behalf of the sheriff, shall be borne by the applicant and shall, subject to any order of the court, be costs in the cause.
- (7) Unless the court shall otherwise order, any property attached as provided in this rule shall, upon security being given to the satisfaction of the sheriff of the court for the amount of the applicant's claim and the costs of the application for attachment, be released from attachment.
- (8) An order made for the attachment of property under subrule (1) shall ipso facto be discharged upon security being given by the respondent as provided in subrule (7).